

Workers' Comp LAW BLOG

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Employee Misconduct Equals Missed Benefits

With the strike of a pen and the fanfare of cameras and reporters, Governor Haley announced the passage of new legislation modifying the existing South Carolina law on eligibility for unemployment benefits. The new law, S.C. Code Ann. §41-35-120(2), allows for a period of five (5) months or twenty (20) weeks of ineligibility of benefits for employees who were discharged for “misconduct” from their most recent employer.

To be successful for a reduction of twenty (20) weeks of benefits, an employer must demonstrate the termination was for “misconduct.” The new law defines misconduct as:

“conduct evincing such willful and wanton disregard of an employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in the carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer’s interest or the employer’s duties and obligations to his employer. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.”

The law provides that a hearing officer may still reduce benefits from five (5) weeks to nineteen (19) weeks if the employee was discharged for anything other than misconduct or gross misconduct. The current law already precludes a disqualification of any benefits for gross misconduct such as theft and drug abuse.

Recently the South Carolina Department of Employment and Work Force, formally known as the South Carolina Employment Security Commission, has come under scrutiny for decisions to award a record amount of benefits. No doubt this new legislation is a result of the high number of individuals found eligible for benefits recently. As always, employers need to properly document terminations and reasons for terminations as evidence will be critical in defending claims for unemployment benefits.

About Christian Boesl

Christian is a shareholder and chair of the firm's Employment Practice Group. His practice focus includes both employment law and workers' compensation. Although Christian's practice concentrates in State Court, Federal District Court and the Workers' Compensation Commission, he also maintains an active practice pursuing alternative dispute resolution for his clients. Christian joined Collins & Lacy as a law clerk and stayed on as an attorney after being admitted to the South Carolina Bar. During law school, Christian was an Honor Council Justice, 2002 Moot Court Champion and quarterfinalist in the Herbert J. Weschler National Criminal Law Moot Court Competition.

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