

DOES AN EMPLOYEE QUALIFY FOR UNEMPLOYMENT COMPENSATION BENEFITS IF THE EMPLOYEE REFUSES TO RELOCATE?

Employers often ask whether an employee qualifies for unemployment compensation when the employee refuses the employer's request to relocate. The answer will depend on the individual factual circumstances of each case. This article will focus on employment relationships where there are no written employment contract, union agreement or civil service rights involved.

If an employee has engaged in willful misconduct, unemployment compensation benefits will be denied. A deliberate violation of an employer's rules or policies is generally considered to be willful misconduct. If an employee is fired for refusing or failing to follow a specific order by the employer, both the reasonableness of the employer's demand and the reasonableness of the employee's refusal must be examined to determine if the employee's refusal constitutes willful misconduct. Therefore, in a failure to relocate case, the reasons for the proposed relocation and the employee's reasons for failing to relocate will be closely examined.

Employees must know that an employer is permitted to make reasonable changes in the duties, time and place of employment. Generally speaking, an employee must accept the change or risk ineligibility for unemployment compensation benefits. For example, one court said it is reasonable for an employer to require the lowest paid and only remaining part-time employee to pick up mail at the post office, where the employer had reduced staff due to financial concerns. In another case, an accounting clerk who had access to confidential and sensitive information but refused to execute forms authorizing a background check was denied unemployment compensation benefits because such a request was reasonable and not too intrusive.

In the case of a termination for refusal to relocate, the Pennsylvania Commonwealth Court determined that it is willful misconduct for an employee to fail to abide by a municipal residency requirement when the employee is advised of the requirement. Likewise, that Court determined in a separate case that it is willful misconduct for an employee to refuse to relocate from Indiana, Pennsylvania to the State College area where this relocation was a condition of his employment. Consequently, if an employer can demonstrate that the relocation was reasonable in light of all the facts and circumstances of the case, it is possible that the employee will forfeit unemployment compensation benefits. Factors that may be considered include the nature of the industry, the reason for the relocation, whether the relocation was a condition of employment, the costs of the relocation, and the effects of relocation on all parties. Moreover, the relocation requirement must be applied consistently and not in a discriminatory fashion.

If an employee quits employment due to the employer's request to relocate, the employee may forfeit benefits unless the employee can show necessitous and compelling reasons for the quit. Where an employee quits a job, the employee bears the burden of proving that relocation constitutes necessitous and compelling reasons for quitting. An employee may meet his burden by demonstrating the relocation request was a substantial unilateral change in the employment agreement or that the employee was deceived as to the conditions of employment. Also, the employee may succeed on his unemployment compensation claim if he can show the relocation

would be onerous. However, the employee must show that he acted with ordinary common sense in quitting and reasonable efforts were made to preserve the employment in order to qualify for unemployment compensation benefits.

Employers should notify employees prior to the employment of the specific need for relocation. The employer's specific expectation should be spelled out in writing in advance. If it is determined that relocation is necessary after the employee begins employment, employers should explain the reasons for the relocation, offer to cover some of the expenses associated with the relocation, and have a specific plan in place that supports the rationale for the relocation. If more than one employee must be relocated, the employer must consistently apply the policies concerning all employees' relocation. If possible, specific policies and guidelines regarding relocation should be provided to all employees upon their initial employment or as soon as the employer determines that a relocation request will be made.

If you have any questions about this topic or any Employment Law matter, please do not hesitate to contact me at 1-877-LAW-2555.

Debra R. Mehaffie
Attorney-at-Law
Scaringi & Scaringi, P.C.