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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

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Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-34@ Discharge for Misconduct -Dishonesty

1256-34 Discharge for Misconduct -Dishonesty

(a) Scope. This section relates to discharge for misconduct in connection with the most recent work based upon an employee's dishonesty. "Dishonesty" includes such acts and statements as lying, theft, making false entries on records, and other actions showing a lack of truthfulness and integrity. "Dishonesty" includes both criminal and noncriminal dishonest acts and statements. Section 1256-30 of these regulations sets forth general principles also applicable under this section.

(b)

General. An employee who has engaged in dishonest acts or statements connected with the most recent work and for that reason is discharged has been discharged for misconduct even though other employees engaged in similar past acts or conduct or the employee has previously successfully engaged in substantial dishonesty without reprimand or warning or the employer has no specific rule forbidding dishonesty. Dishonesty does not exist if the employee's act or statements arise from a good-faith misunderstanding between the employer and employee where a reasonable person would not have interpreted the acts or statements as dishonest under the circumstances. An employee who willfully urges or aids another person to engage in a dishonest act which injures or tends to injure the employer's interests, or in a dishonest statement which is intended to and does cause or threaten substantial economic damage to the employer or a

substantial threat to the health or safety of the employer, has engaged in dishonesty and misconduct even though the dishonest act or statement is committed or made by the other person. An employee who willfully fails to report to the employer the dishonest acts or statements of a co-employee causing substantial harm to the employer has engaged in dishonesty. No duty usually exists to report a dishonest act or statement if the effect is minor and insubstantial. An example is the pilfering of the employer's property of little value such as a pencil. However, supervisory employees or guards charged with a duty to prevent any acts of dishonesty must prevent even minor and insubstantial acts or report such acts to the employer if they occur. EXAMPLE 1. X observed a co-employee steal a stack of paper money from the employer's cash till. X did not report the theft to the employer. The employer discharged X for this failure. X has engaged in dishonesty by failing to report a theft of a co-employee causing substantial harm to the employer. The discharge is for misconduct.

(c)

Cash. (1) Shortages. Cash shortages refers to an employee's loss of the employer's money without intent to convert or the conversion of the money to the employee's own use. Cash shortages arise from an employee's misconduct only where the employee fails to follow a rule of the employer for handling cash or the employee has shown negligence of such degree or recurrence as to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligation to the employer. If negligence is involved, including a failure to follow a rule of the employer for handling cash, prior warnings or reprimands are relevant to the degree or recurrence of negligence. If an employee acts in good faith and to the best of his or her ability in handling the employer's cash, a loss is ordinarily attributed to inefficiency, inability, incapacity,

or good-faith errors in judgment or discretion, or some combination of these factors, and not to misconduct. An employee's inexcusable failure to report known cash shortages where the employee is responsible for the handling of the cash is misconduct. (2) Misappropriation. Cash misappropriation refers to an employee's willful taking or withholding the employer's money with the intent to convert or the conversion of the money to the employee's own use. Cash misappropriation is misconduct regardless of whether there have been any prior warnings or reprimand for similar prior conduct or whether there is any employer rule against theft.

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Misappropriation. Cash misappropriation refers to an employee's willful taking or

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(d)

Conversion of Other Property. An employee's theft or unauthorized possession or use of noncash property of the employer, other employees, or customers is misconduct. An employee who reasonably believes he or she is authorized to possess or use the employer's noncash property engages in misconduct if he or she refuses to return such property to the employer or other person upon request.

(e)

False Work Records or Statements About Co-workers, Employer, Work. An employee who willfully makes false statements which relate to work records, co-employees, the employer or the work, and which substantially injure or tend to injure the employer's interests or are a substantial violation of the employee's duty and obligation to the employer has engaged in misconduct. False statements are willful when made with the employee's full knowledge of falsity, or made when the employee does not believe the statement is true, or made carelessly when the employee does not care whether the statement is true or not and has no basis for believing that the statement is true. Examples of false statements include, but are not limited to: (1) Giving false reasons for absence from work to induce the employer to grant a leave which would not have been granted had the true reasons been given. (2) Making malicious false statements, more serious than common gossip, about the employer or co-employees which cause customers to withdraw patronage, or damage employee morale or cause serious friction between employees. (3) Representing that the employee has performed a task

when he or she has not done so, resulting in a reasonably foreseeable substantial injury or potential injury to the employer's interests. (4) Submitting false work time reports, false travel expense claims, or false reports of the employer's income or expenditure of the employer's money. (5) Making false statements on work applications concerning information reasonably and materially related to the selection of qualified applicants for the job or the employer's interests.

COMMENTS. Under subdivision (e)(5) relating to false work applications, provisions of California codes may govern the questions an employer may legally ask prospective employees. For example, Section 432.7 of the Labor Code prohibits asking an employment applicant for information concerning an arrest which did not result in conviction except for certain peace officer or law enforcement positions, certain positions at health facilities for specified criminal charges, and instances where the applicant is out on bail or on his or her own recognizance pending a trial of a criminal charge.

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Representing that the employee has performed a task when he or she has not done so, resulting in a reasonably foreseeable substantial injury or potential injury to the employer's interests.

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Submitting false work time reports, false travel expense claims, or false reports of the employer's income or expenditure of the employer's money.

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