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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

## **1256-21 Voluntary Leaving -Good Cause -Union Relations**

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-21@ Voluntary Leaving -Good Cause -Union Relations

**(a)** Scope. This section relates to whether good cause for leaving the most recent work exists when an individual's leaving of work is caused by occurrences relating to union status, union rules, union activities, or other circumstances relating to union relations. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section.

### **(b)**

Objections to Union. (1) An individual's refusal to join or retain membership in or pay an agency service fee to a bona fide labor organization which has a collective bargaining agreement with the employer which provides that union membership or fee payment is a condition of hire or continued employment, or an individual's personal objection to all unions, some specific unions, union officials, or union practices and policies, is not good cause for voluntarily leaving work unless based on a bona fide conscientious objection. (For discussion of conscientious objection as a basis for leaving work, see Section 1256-6 of these regulations.) (2) The result is different if a worker does not have to join a union or pay a union fee. If union membership or payment of a union agency service fee is not a condition of hire or continued employment under a collective bargaining agreement, an individual's refusal to join or to retain membership in a bona fide labor organization or pay the fee is not good cause for voluntarily leaving work unless

the individual's refusal is based on a bona fide conscientious objection or the individual is threatened with and has a reasonable fear of, or is subjected to, physical injury to force him or her to join or to remain a member of a union.

**(1)**

An individual's refusal to join or retain membership in or pay an agency service fee to a bona fide labor organization which has a collective bargaining agreement with the employer which provides that union membership or fee payment is a condition of hire or continued employment, or an individual's personal objection to all unions, some specific unions, union officials, or union practices and policies, is not good cause for voluntarily leaving work unless based on a bona fide conscientious objection. (For discussion of conscientious objection as a basis for leaving work, see Section 1256-6 of these regulations.)

**(2)**

The result is different if a worker does not have to join a union or pay a union fee. If union membership or payment of a union agency service fee is not a condition of hire or continued employment under a collective bargaining agreement, an individual's refusal to join or to retain membership in a bona fide labor organization or pay the fee is not good cause for voluntarily leaving work unless the individual's refusal is based on a bona fide conscientious objection or the individual is threatened with and has a reasonable fear of, or is subjected to, physical injury to force him or her to join or to remain a member of a union.

**(c)**

Union Rule. An individual who voluntarily leaves work as required by a union rule to which an employer has not agreed voluntarily leaves work without good cause.

EXAMPLE 1. X and Y, members of the Sailors Union of the Pacific, sailed under a Class B permit. A union rule required Class B permit men to leave ship after 90

days. X left ship after 90 days at the request of union representatives. Y left ship after 90 days on Y's own initiative due to the union rule. The employer had not agreed to the union rule. X and Y left work without good cause since they could have remained on ship except for the union rule to which the employer was not a party.

**(d)**

Union Disciplinary Action. An individual who leaves work because of union disciplinary action taken against the individual due to an infraction of a union rule or other offense against union discipline has voluntarily left work without good cause if the action of the union is not arbitrary or capricious and if the individual has an opportunity to protest the union charge through any customary union procedure.

**(e)**

Grievance Procedure. Except as provided by Section 1256.2 of the code, and except as provided by Section 1256-15 of these regulations with respect to a serious injury or illness, an individual who leaves work due to any complaint or objection to working conditions, but has not used an existing grievance procedure to review the complaint or objection, or has filed a grievance but left work prior to disposition of the grievance, has voluntarily left work without good cause unless a grievance has been filed and there is an unreasonable delay in the disposition of the grievance. COMMENTS. Under Section 1256.2 of the code, an individual leaves work with good cause if he or she leaves because his or her employer intentionally deprived him or her of equal employment opportunities because of race, color, religious creed, sex, national origin, ancestry, or physical handicap. However, this provision does not apply if the deprivation is based upon a bona fide occupational qualification or applicable federal or state security regulations, or if

the employer's action is unintentional. If the deprivation by the employer is unintentional, the employee must make reasonable efforts to provide the employer an opportunity to remove the unintentional deprivation of equal employment opportunities (see Section 1256.2-1 of these regulations).

**(f)**

Collective Bargaining Agreement. Except as provided by Section 1256.2 of the code, and except as provided by subdivision (e) of this section, if an individual leaves work due to an employer's violation of a provision of a collective bargaining agreement, the individual's leaving is with good cause if a reasonable person genuinely desirous of retaining employment would have left work under the same circumstances because of undue hardship or other real, substantial, and compelling reasons (see subdivision (i)(1) of this section for the effect of an employer's violation of collective bargaining agreement provisions on wages and hours of work). An individual who leaves work as required by a collective bargaining agreement provision, to which the employer has agreed, leaves work involuntarily in accordance with the agreement and is not subject to disqualification under Section 1256 of the code for voluntarily leaving work without good cause. If an arbitrator or court has held in a final decision that an employer has violated a substantial provision of the collective bargaining agreement and thereafter the employer persists in the same violation, an individual's leaving of work for this reason is for good cause if the violation is of such nature as to cause a reasonable person genuinely desirous of retaining employment to leave work.

**(g)**

Employer Discrimination Due to Union Relations. If an individual leaves work because the employer has engaged in harassment, discrimination, or coercion

against the individual to compel him or her to resign from or not to join a bona fide labor organization, or because of authorized union activity, the individual's leaving of work is with good cause, except as provided by subdivision (e) of this section. If an individual leaves work because the employer requires, as a condition of continuing employment, that the individual join or retain membership in a company union dominated by the employer, the leaving is with good cause.

**(h)**

Union Intimidation of Employee. (1) In the absence of a trade dispute with the employer, if the individual is directly threatened with and has a reasonable fear of, or is subjected to, physical injury by union members unless the individual conforms to union practices or demands not contained in a collective bargaining agreement, the individual's voluntary leaving of the work due to the threat of, or subjection to, physical injury is with good cause. An example is direct threats by union members to physically assault an individual who produces more than a maximum work quota enforced by a union. (2) If an individual who is not a union member has been working but is prevented from reporting for work and voluntarily resigns from the work because in a trade dispute the union has established picket lines which the individual refuses to cross because he or she is directly threatened with and has a reasonable fear of or is subjected to, physical injury by the union members, the individual has voluntarily left work with good cause.

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In the absence of a trade dispute with the employer, if the individual is directly threatened with and has a reasonable fear of, or is subjected to, physical injury by union members unless the individual conforms to union practices or demands not contained in a collective bargaining agreement, the individual's voluntary leaving of

the work due to the threat of, or subjection to, physical injury is with good cause. An example is direct threats by union members to physically assault an individual who produces more than a maximum work quota enforced by a union.

**(2)**

If an individual who is not a union member has been working but is prevented from reporting for work and voluntarily resigns from the work because in a trade dispute the union has established picket lines which the individual refuses to cross because he or she is directly threatened with and has a reasonable fear of or is subjected to, physical injury by the union members, the individual has voluntarily left work with good cause.

**(i)**

Wages and Hours of Work. (1) Collective Bargaining Agreement. If an individual voluntarily leaves work because the employer changes wages or hours of work in violation of the terms of a collective bargaining agreement, the individual leaves with good cause if prior to leaving the individual has used any existing grievance procedure or complaint remedy, or has filed a grievance or complaint and the employer's violation continues after an unreasonable delay in the disposition of the grievance or complaint, and either of the following conditions exists: (A) The wages paid are substantially less than those specified in the collective bargaining agreement, or the hours of work are substantially changed from those specified in the collective bargaining agreement. (B) The wages paid or hours of work differ from those specified in the collective bargaining agreement and the individual is subject to union disciplinary action if he or she continues to work under conditions in violation of the collective bargaining agreement. COMMENTS. Occasional requests by the employer that a worker work a few minutes overtime ordinarily would not be substantial breach of the collective bargaining agreement. A minor difference in wages would justify a complaint by the worker with the Labor

Commissioner but would not justify leaving work with good cause unless the worker is subject to union disciplinary action if the individual continues working. Wages and hours of work may have been negotiated at conditions more favorable than those prevailing for similar work in the locality. Thus, the employer's changed wages or hours of work in violation of the collective bargaining agreement might be equal to or more favorable than the prevailing conditions but still be a substantial change to justify leaving work for good cause. Wages and hours of work changed by the employer in violation of the collective bargaining agreement to be substantially less favorable than those prevailing for similar work in the locality would always be a substantial change to justify leaving work for good cause. In every instance, the individual must take steps to preserve the job, including use of complaint and grievance procedures, prior to leaving work. A failure to do so results in a leaving without good cause. (2) No Collective Bargaining Agreement. If an individual voluntarily leaves work because the employer changes wages or hours of work to conditions not conforming to union rules, and the employer has no collective bargaining agreement with the union, the individual has left work without good cause unless any of the reasons specified by subdivision (b) of Section 1256-22 of these regulations exists.

**(1)**

Collective Bargaining Agreement. If an individual voluntarily leaves work because the employer changes wages or hours of work in violation of the terms of a collective bargaining agreement, the individual leaves with good cause if prior to leaving the individual has used any existing grievance procedure or complaint remedy, or has filed a grievance or complaint and the employer's violation continues after an unreasonable delay in the disposition of the grievance or complaint, and either of the following conditions exists: (A) The wages paid are substantially less than those specified in

the collective bargaining agreement, or the hours of work are substantially changed from those specified in the collective bargaining agreement. (B) The wages paid or hours of work differ from those specified in the collective bargaining agreement and the individual is subject to union disciplinary action if he or she continues to work under conditions in violation of the collective bargaining agreement. COMMENTS.

Occasional requests by the employer that a worker work a few minutes overtime ordinarily would not be substantial breach of the collective bargaining agreement. A minor difference in wages would justify a complaint by the worker with the Labor Commissioner but would not justify leaving work with good cause unless the worker is subject to union disciplinary action if the individual continues working. Wages and hours of work may have been negotiated at conditions more favorable than those prevailing for similar work in the locality. Thus, the employer's changed wages or hours of work in violation of the collective bargaining agreement might be equal to or more favorable than the prevailing conditions but still be a substantial change to justify leaving work for good cause. Wages and hours of work changed by the employer in violation of the collective bargaining agreement to be substantially less favorable than those prevailing for similar work in the locality would always be a substantial change to justify leaving work for good cause. In every instance, the individual must take steps to preserve the job, including use of complaint and grievance procedures, prior to leaving work. A failure to do so results in a leaving without good cause.

**(A)**

The wages paid are substantially less than those specified in the collective bargaining agreement, or the hours of work are substantially changed from those specified in the collective bargaining agreement.

**(B)**

The wages paid or hours of work differ from those specified in the collective bargaining



agreement and the individual is subject to union disciplinary action if he or she continues to work under conditions in violation of the collective bargaining agreement. COMMENTS. Occasional requests by the employer that a worker work a few minutes overtime ordinarily would not be substantial breach of the collective bargaining agreement. A minor difference in wages would justify a complaint by the worker with the Labor Commissioner but would not justify leaving work with good cause unless the worker is subject to union disciplinary action if the individual continues working. Wages and hours of work may have been negotiated at conditions more favorable than those prevailing for similar work in the locality. Thus, the employer's changed wages or hours of work in violation of the collective bargaining agreement might be equal to or more favorable than the prevailing conditions but still be a substantial change to justify leaving work for good cause. Wages and hours of work changed by the employer in violation of the collective bargaining agreement to be substantially less favorable than those prevailing for similar work in the locality would always be a substantial change to justify leaving work for good cause. In every instance, the individual must take steps to preserve the job, including use of complaint and grievance procedures, prior to leaving work. A failure to do so results in a leaving without good cause.

**(2)**

No Collective Bargaining Agreement. If an individual voluntarily leaves work because the employer changes wages or hours of work to conditions not conforming to union rules, and the employer has no collective bargaining agreement with the union, the individual has left work without good cause unless any of the reasons specified by subdivision (b) of Section 1256-22 of these regulations exists.

**(j)**

Trade Dispute. During a trade dispute the employer-employee relationship is suspended but not terminated. Thus, issues may arise under the trade dispute disqualification provided by Section 1262 of the code. No issue arises under the

voluntary leaving without good cause provisions of Section 1256 of the code unless there is an unequivocal severance of the employment relationship during the trade dispute. Section 1256-1 of these regulations interprets the circumstances under which this severance does or does not occur. When a trade dispute ends, an employee's failure to return to work is a voluntary leaving of work raising an issue under Section 1256 of the code (see the regulation applicable to the particular facts in the series interpreting "good cause" for voluntary leaving, Sections 1256-4 to 1256-23, to determine whether there is "good cause" for the leaving).