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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 1256-43@ Discharge for Misconduct -Violation of Law

(a)

Scope. This section relates to discharge from the most recent work for misconduct due to violation of law. Section 1256-30 of these regulations sets forth general principles also applicable under this section.

**(b)**

Off-Work Violations of Law. Criminal acts or other violations of law are not necessarily misconduct. For example, an individual's criminal act outside of working hours and away from the employer's premises usually would have no connection with the work and would not be misconduct under Section 1256 of the code (see related discussion in Section 1256-33 of these regulations). However, an employee's criminal act or other violation of law outside of working hours and away from the employer's premises can be misconduct if the employee uses information obtained from the work to carry out the crime or other violation of law, or there is any other substantial connection with the work. EXAMPLE 1. A janitor, A, was arrested for drunk driving while off duty. The employer discharged A. A's discharge is not for misconduct because A's off-duty intoxication did not relate to work performance and did not substantially injure the employer's interests. EXAMPLE 2. B, a television repair person, while repairing a customer's television set in the customer's home, noted the layout of the home, access characteristics, and the nature and location of property in the home. That night B

returned and stole property from the customer's home. B was convicted of the theft. The employer discharged B. B's violation of law is misconduct due to the clear connection with the work even though the act was off duty and away from the employer's premises. EXAMPLE 3. C, a bookkeeper in a bank, persisted in drawing personal checks against C's account in that bank when there were insufficient funds to cover the checks. The bank discharged C for this violation. C's violation was misconduct even though off duty since bank employees are expected to reflect honesty and integrity due to the special character of their work. An employee's lack of integrity reflects on the bank's integrity and adversely affects the employer's interests.

**(c)**

**On-the-Job Violations of Law.** An employee's on-the-job criminal act or other violation of law is misconduct if the act is substantial in nature, regardless of the employer's prior warnings or reprimands. An employee's on-the-job criminal act or other violation of law is not misconduct if the act is minor in nature, unless the employee commits the act after prior warnings or reprimands by the employer for similar acts. However, in no event will an employee's criminal act or other violation of law be misconduct if the employer had ordered, participated in, or condoned the employee's action. EXAMPLE 4. D, a taxicab driver, was en route to pick up a passenger when D was hailed by a person on the opposite side of the street. D glanced off the road toward the person in accordance with a company policy to identify possible customers and report cab requests to the company dispatcher. D was involved in a minor accident as a result of this action. The employer discharged D. D's action was not misconduct, but at most was a good faith error in judgment in an attempt to carry out company policy. EXAMPLE 5. E, a taxicab driver, was involved in a series of six accidents within a short period of

time while driving cab. In addition, E repeatedly violated traffic laws by failing to make boulevard stops, by driving on the wrong side of the street, and by making prohibited mid-block "U" turns. The employer had given E a safety course and as each accident occurred discussed preventive measures. The employer gave E a disciplinary suspension following one of the accidents. Shortly after a later accident, the employer was held liable in damages and discharged E. E's action was misconduct because it was clearly substantial, prejudicial to the employer's interests, and not the result of mere inefficiency.