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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 1256-22@ Voluntary Leaving -Good Cause -Wages

## 1256-22 Voluntary Leaving -Good Cause -Wages

**(a)** Scope. This section relates to whether good cause for leaving the most recent work exists when an individual leaves work due to dissatisfaction with wages.

Section 1256-21 of these regulations governs if a collective bargaining agreement exists. For provisions as to an individual who leaves work to seek other work or to accept other work, see Section 1256-19 of these regulations. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section.

### **(b)**

Good Cause. An individual who leaves work due to dissatisfaction with some aspect of wages has left work with good cause if the leaving of work is for any one or any combination of the following reasons: (1) The wages paid by the employer are less than the minimum wages required by federal or state law and the employer refuses to pay such minimum wages. (2) The individual has no reasonable assurance of payment of wages when due, or the employer repeatedly does not pay wages when due, or the employer willfully refuses to pay wages when due. (3) The individual is notified of a transfer or demotion to another position with the employer at a substantial reduction in pay, or under any conditions which render the other position not "suitable employment" under Section 1258, 1258.5, or 1259 of the code. For example, an individual leaves work

for good cause, pursuant to Section 1259 of the code, if the leaving is due to the fact that an individual after diligently working on a piece-rate or commission basis for a reasonable time is paid substantially less than the wages prevailing for similar work in the locality. (4) The employer substantially breaches the agreement with an employee as to the agreed rate of pay. (For breach of other conditions of hire, see Sections 1256-21 and 1256-23 of these regulations.) (5) The employer makes substantial misrepresentations to the employee as to the duties, hours, working conditions, or wages for the job. COMMENTS. Under paragraph (3) of subdivision (b), if factors other than a pay reduction influence an individual's decision to leave the work, all such factors are evaluated to determine whether a reasonable person genuinely desirous of retaining employment would have left the work. Additional factors may include skills required and the possible loss of skills in the other position, opportunities for advancement and increase in pay, seniority and recall rights affected, working conditions, hours of work, location of the position and the effect on the distance and cost of commuting, any additional expenses due to the other position, time worked in the prior job and relative permanency of the new position, the individual's prospects for obtaining other employment at a wage commensurate with prior earnings, and the individual's awareness of the labor market and the effect upon employment prospects, among others. However, a pay decrease of 20% or more, taken alone, is a substantial reduction in pay to establish good cause for leaving work where the employee is notified of a transfer or demotion to another position with the employer. Pay includes the basic wage, shift differentials, board and room furnished by the employer, and guaranteed overtime. Pay also includes fringe benefits such as vacation pay and insurance if such fringe benefits are currently available or set schedules and information to value the fringe benefits for the

former and other position are available. Speculative fringe benefits whose receipt is dependent on contingencies, such as pension, vacation and sick leave, are given less weight to the extent that their values and the probability of future realization are uncertain. Incentive pay would not be compared unless it is prevailing practice in the industry. Moreover, regardless of pay, in some cases the loss of skills in another position may justify leaving the work; for example, a stenographer might refuse a downgrade to a clerk-typist position due to the importance of preserving stenographic skills to maintain ability for employment at the higher skill.

**(1)**

The wages paid by the employer are less than the minimum wages required by federal or state law and the employer refuses to pay such minimum wages.

**(2)**

The individual has no reasonable assurance of payment of wages when due, or the employer repeatedly does not pay wages when due, or the employer willfully refuses to pay wages when due.

**(3)**

The individual is notified of a transfer or demotion to another position with the employer at a substantial reduction in pay, or under any conditions which render the other position not "suitable employment" under Section 1258, 1258.5, or 1259 of the code. For example, an individual leaves work for good cause, pursuant to Section 1259 of the code, if the leaving is due to the fact that an individual after diligently working on a piece-rate or commission basis for a reasonable time is paid substantially less than the wages prevailing for similar work in the locality.

**(4)**

The employer substantially breaches the agreement with an employee as to the agreed rate of pay. (For breach of other conditions of hire, see Sections 1256-21 and

1256-23 of these regulations.)

**(5)**

The employer makes substantial misrepresentations to the employee as to the duties, hours, working conditions, or wages for the job. COMMENTS. Under paragraph (3) of subdivision (b), if factors other than a pay reduction influence an individual's decision to leave the work, all such factors are evaluated to determine whether a reasonable person genuinely desirous of retaining employment would have left the work. Additional factors may include skills required and the possible loss of skills in the other position, opportunities for advancement and increase in pay, seniority and recall rights affected, working conditions, hours of work, location of the position and the effect on the distance and cost of commuting, any additional expenses due to the other position, time worked in the prior job and relative permanency of the new position, the individual's prospects for obtaining other employment at a wage commensurate with prior earnings, and the individual's awareness of the labor market and the effect upon employment prospects, among others. However, a pay decrease of 20% or more, taken alone, is a substantial reduction in pay to establish good cause for leaving work where the employee is notified of a transfer or demotion to another position with the employer. Pay includes the basic wage, shift differentials, board and room furnished by the employer, and guaranteed overtime. Pay also includes fringe benefits such as vacation pay and insurance if such fringe benefits are currently available or set schedules and information to value the fringe benefits for the former and other position are available. Speculative fringe benefits whose receipt is dependent on contingencies, such as pension, vacation and sick leave, are given less weight to the extent that their values and the probability of future realization are uncertain. Incentive pay would not be compared unless it is prevailing practice in the industry. Moreover, regardless of pay, in some cases the loss of skills in another position may justify leaving the work; for

example, a stenographer might refuse a downgrade to a clerk-typist position due to the importance of preserving stenographic skills to maintain ability for employment at the higher skill.

**(c)**

No Good Cause. An individual who leaves work due to dissatisfaction with some aspect of wages has left work without good cause if the leaving of work is for any one or any combination of the following reasons: (1) The individual knew the wages at the time of hire but later leaves work because such wages are not commensurate with his or her experience, or are less than wages paid in prior employment, or are less than prevailing wages paid for similar work in the locality. (2) The work has incidental expenses and the employer has no duty to provide for such incidental expenses, such as special clothing, tools, or gasoline, and (A) it is customary that the individual worker pays the incidental expenses; or (B) it is not customary that the individual worker pays the incidental expenses but such expenses are minor or are compensated by bonus, premium wages, or other remuneration paid by the employer. (3) The employer demands reasonable periodic deductions from the individual's wages for cash shortages, or breakage or loss of equipment caused by the individual's culpable negligence or willful dishonesty. (4) The individual's request for a wage increase was denied by the employer, if the wages paid were not substantially less than the prevailing rate for similar work in the locality and the employer's refusal was not a breach of the contract of hire or an act of discrimination. However, if the employer's act is discriminatory, such as a denial of like wages to the individual for like work performed by other employees of like seniority, the individual's leaving of work for such discrimination is with good cause. (5) The employer refuses to make an advance on wages, except that good cause exists if advances are required by the employer's rules

and the individual meets the requirements of such rules. (6) The individual leaves work because it is compensated on a commission or piece-rate basis but the compensation is not substantially less than the prevailing wage for a reasonable time for similar work in the locality and the method of compensation is customary in the industry or occupation, or the individual fails to work for a reasonable time in order to determine the level of compensation. If the prevailing wage cannot be determined, the individual who leaves work because it is compensated on a commission or piece-rate basis has left without good cause unless his or her commissions or other remuneration are substantially less than prior earnings and the reduction is not due to any fault of the individual such as lack of effort or failure to follow the employer's instructions. COMMENTS. Subdivisions (b) and (c) of this section do not attempt to cover every possible type of situation in which wages issues may arise. If a new type of situation not treated in this section arises, the general principles of Sections 1256-1, 1256-2, and 1256-3 of these regulations would apply.

**(1)**

The individual knew the wages at the time of hire but later leaves work because such wages are not commensurate with his or her experience, or are less than wages paid in prior employment, or are less than prevailing wages paid for similar work in the locality.

**(2)**

The work has incidental expenses and the employer has no duty to provide for such incidental expenses, such as special clothing, tools, or gasoline, and (A) it is customary that the individual worker pays the incidental expenses; or (B) it is not customary that the individual worker pays the incidental expenses but such expenses are minor or are compensated by bonus, premium wages, or other remuneration paid by the employer.

**(3)**

The employer demands reasonable periodic deductions from the individual's wages for cash shortages, or breakage or loss of equipment caused by the individual's culpable negligence or willful dishonesty.

**(4)**

The individual's request for a wage increase was denied by the employer, if the wages paid were not substantially less than the prevailing rate for similar work in the locality and the employer's refusal was not a breach of the contract of hire or an act of discrimination. However, if the employer's act is discriminatory, such as a denial of like wages to the individual for like work performed by other employees of like seniority, the individual's leaving of work for such discrimination is with good cause.

**(5)**

The employer refuses to make an advance on wages, except that good cause exists if advances are required by the employer's rules and the individual meets the requirements of such rules.

**(6)**

The individual leaves work because it is compensated on a commission or piece-rate basis but the compensation is not substantially less than the prevailing wage for a reasonable time for similar work in the locality and the method of compensation is customary in the industry or occupation, or the individual fails to work for a reasonable time in order to determine the level of compensation. If the prevailing wage cannot be determined, the individual who leaves work because it is compensated on a commission or piece-rate basis has left without good cause unless his or her commissions or other remuneration are substantially less than prior earnings and the reduction is not due to any fault of the individual such as lack of effort or failure to follow the employer's instructions. COMMENTS. Subdivisions (b) and (c) of this section

do not attempt to cover every possible type of situation in which wages issues may arise. If a new type of situation not treated in this section arises, the general principles of Sections 1256-1, 1256-2, and 1256-3 of these regulations would apply.