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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

1256-32 Discharge for Misconduct -Duty to Employer

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-32@ Discharge for Misconduct -Duty to Employer

(a)

Scope. This section relates to discharge for misconduct in connection with the most recent work based upon acts or statements of an employee detrimental to the employer's interests. Section 1256-30 of these regulations sets forth general principles also applicable under this section.

(b)

Employee's Duty Toward Employer. An employee owes an implicit duty to support and serve the employer's interests and not to willfully or wantonly engage in acts or statements which evince an attitude of disregard of the employer's interests. Except in aggravated circumstances, ordinarily the first instance of an employee's isolated willful or wanton act or statement showing disregard of the employer's interests would not be sufficiently substantial to constitute misconduct. If the employee continues the acts or statements after warning or reprimand, his or her conduct viewed as a whole may constitute a willful and substantial breach and justify a discharge for misconduct, particularly if the repeated acts or statements occur within a relatively short span of time.

(c)

Types of Acts or Statements. An employee who makes disparaging statements concerning his or her supervisor, the employer, or the employer's product, service or business, or who deliberately incites or agitates co-employees to damage the

employer's premises, equipment or materials, has engaged in acts which may be misconduct. Mere griping or normal complaints through proper channels, or in a customary manner about some aspect of the work, however, does not injure or tend to injure the employer's interests, and may even be desirable or encouraged by the employer as a method to improve work conditions and employee morale. Proper channels for complaints ordinarily would be through an employee's immediate supervisor, or a grievance committee if one exists or in accordance with any applicable collective bargaining agreement procedure. Bona fide union activities not in violation of the employer's rules are not grounds for a discharge for misconduct. **EXAMPLE 1.** An employee argued at work with a co-employee about a work assignment. The employer reprimanded the employee who responded that "if the employer would stay around there would not be any trouble." The remark was not in the presence of others. The employer discharged the employee for this remark. While the remark showed a lack of good judgment, there was no substantial harm to the employer's interests. There was no misconduct.

(d)

Aid to Competition. An employee who deliberately aids the employer's competitor, for example, by sending customers to the competitor, except as an accommodation allowed by the employer, or giving the competitor confidential business information, lists of customers or trade secrets, has engaged in misconduct. If an employee, without the knowledge and approval of his or her employer, accepts work for a competitor, the employee has engaged in misconduct. An employee who, while working for the employer, diverts customers to the employee's own independent business, has engaged in misconduct.

However, an employee who merely discusses with co-employees an intention to

engage in his or her own independent business in the future has not engaged in misconduct, even if the discussion continues after a warning from the employer, if there is no disruption of the employer's business or dissatisfaction among employees caused by this activity.