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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

**1256-39 Discharge for Misconduct -Relations with Other**

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-39@ Discharge for Misconduct -Relations with Other Employees

**Employees****(a)**

Scope. This section relates to discharge from the most recent work for misconduct due to some unsatisfactory relationship of an employee with co-workers (see Section 1256-36 of these regulations for discussion of relationships of an employee to the employer or supervisors). Section 1256-30 of these regulations sets forth general principles also applicable under this section.

**(b)**

General. Some unsatisfactory relations of an employee with co-workers involve an employee's deliberate acts which may constitute a wanton disregard of an employee's duty to the employer and substantially injure or tend to injure the employer's interest without regard to whether the employee has been given prior warnings or reprimands concerning similar acts. This type of misconduct can include an employee's inexcusable fighting on the job with co-workers, use of offensive language in relations with co-workers, or dishonesty on the job towards co-workers. On the other hand, other acts of an employee in relation to co-workers may be negligent in nature and may cause less severe or minimal damage to the employer's interests. This type of conduct usually will not be misconduct unless the employee persists in the conduct after prior warnings or reprimands for similar acts. This type of act arises in cases of annoying co-workers,

failing to pay debts to co-workers resulting in fights or controversy, or failing to cooperate with co-workers in performing the work.

**(c)**

Deliberate Wanton Disregard of Employer's Interests.(1) Fighting on the Job.

Fighting with co-workers on the job is misconduct if the employee has provoked an attack or is the aggressor, regardless of provocation. Fighting on the job is not misconduct if an employee who is attacked on the job without provocation defends himself or herself against an attack. EXAMPLE 1. A, a taxicab driver, signaled for a left turn when B, a fellow employee, drove over a double line, cut in front of A's cab, and drove into a taxi stand. A decided to report the incident and therefore talked to another co-worker to ask if the co-worker had seen the incident. B objected and grabbed A and struck a blow which A deflected. A moved away. B charged A again. A in self-defense knocked B to the ground. The employer discharged A. A did not seek or provoke a fight with B. A's acts were reasonable and proper and A's self-defense was not misconduct. EXAMPLE 2. D became irritated when co-employee C deliberately placed a filled tile container on D's hand truck of empty containers. D swore at C and slammed the container down in front of C, nearly hitting C. C thereupon hurled pieces of tile at D and injured D. The employer discharged C. C had substantial provocation for attacking D, but this does not excuse C's fighting on the job. C's acts were not in self-defense and were misconduct. (2) Offensive Oral Statements. An employee's acts constitute misconduct if the employee addresses a co-worker on the job in vulgar, profane, abusive, obscene, derogatory, or offensive language of a vile nature if the language is unjustified and not within the normal exchange and customary good-natured banter between employees. COMMENTS. Normal practices in the establishment where the employee is employed and the circumstances under

which oral statements were made are relevant to whether misconduct is involved. Language used in a machine shop or a warehouse may not be appropriate language in a bank, department store, or government office. The normal exchange among workers differs according to the occupation. Vulgar language is also used among employees in some occupations as friendly banter. The circumstances under which the employee makes oral statements are taken into consideration.

EXAMPLE 3. In an industrial establishment, a woman employee asked E for certain supplies. E was unable to give her immediate service. E believed that the woman employee complained to her supervisor about the incident. When E saw the woman employee later in the day E said, "Some people sure are asinine." The woman employee complained to the employer. The employer discharged E for using alleged abusive and profane language. E's statement was not misconduct because it was not abusive or profane and did not go beyond the customary give and take between employees in an industrial establishment.

EXAMPLE 4. F waved an open pocket knife at a co-worker and stated, "This blade would reach your heart. You could be lying on the floor dead." The co-worker was frightened and intimidated. F later apologized and declared that F was joking. The employer discharged F due to the incident. F's act was well beyond normal banter, disrupted order on the job, and was misconduct.

(3) Dishonesty to Co-workers. An employee who engages in dishonest conduct on the job affecting co-workers, such as stealing the tools or other personal property of a co-worker on the job, commits an act of misconduct.

### **(1)**

Fighting on the Job. Fighting with co-workers on the job is misconduct if the employee has provoked an attack or is the aggressor, regardless of provocation. Fighting on the job is not misconduct if an employee who is attacked on the job without provocation

defends himself or herself against an attack. EXAMPLE 1. A, a taxicab driver, signaled for a left turn when B, a fellow employee, drove over a double line, cut in front of A's cab, and drove into a taxi stand. A decided to report the incident and therefore talked to another co-worker to ask if the co-worker had seen the incident. B objected and grabbed A and struck a blow which A deflected. A moved away. B charged A again. A in self-defense knocked B to the ground. The employer discharged A. A did not seek or provoke a fight with B. A's acts were reasonable and proper and A's self-defense was not misconduct. EXAMPLE 2. D became irritated when co-employee C deliberately placed a filled tile container on D's hand truck of empty containers. D swore at C and slammed the container down in front of C, nearly hitting C. C thereupon hurled pieces of tile at D and injured D. The employer discharged C. C had substantial provocation for attacking D, but this does not excuse C's fighting on the job. C's acts were not in self-defense and were misconduct.

## **(2)**

Offensive Oral Statements. An employee's acts constitute misconduct if the employee addresses a co-worker on the job in vulgar, profane, abusive, obscene, derogatory, or offensive language of a vile nature if the language is unjustified and not within the normal exchange and customary good-natured banter between employees.

COMMENTS. Normal practices in the establishment where the employee is employed and the circumstances under which oral statements were made are relevant to whether misconduct is involved. Language used in a machine shop or a warehouse may not be appropriate language in a bank, department store, or government office. The normal exchange among workers differs according to the occupation. Vulgar language is also used among employees in some occupations as friendly banter. The circumstances under which the employee makes oral statements are taken into consideration.

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supplies. E was unable to give her immediate service. E believed that the woman employee complained to her supervisor about the incident. When E saw the woman employee later in the day E said, "Some people sure are asinine." The woman employee complained to the employer. The employer discharged E for using alleged abusive and profane language. E's statement was not misconduct because it was not abusive or profane and did not go beyond the customary give and take between employees in an industrial establishment. EXAMPLE 4. F waved an open pocket knife at a co-worker and stated, "This blade would reach your heart. You could be lying on the floor dead." The co-worker was frightened and intimidated. F later apologized and declared that F was joking. The employer discharged F due to the incident. F's act was well beyond normal banter, disrupted order on the job, and was misconduct.

**(3)**

Dishonesty to Co-workers. An employee who engages in dishonest conduct on the job affecting co-workers, such as stealing the tools or other personal property of a co-worker on the job, commits an act of misconduct.

**(d)**

Willful Acts After Prior Warning or Reprimand. (1) Annoying Co-workers. An employee who is discharged for unjustifiably annoying co-workers by frequent bickering or by horseplay on the job, after prior warning or reprimands for similar conduct, is discharged for misconduct. EXAMPLE 5. G frequently argued with co-workers on the job despite repeated warnings to stop this conduct. Another co-worker participated with G in starting arguments and bickering among co-workers. The employer discharged G and the other co-worker due to their annoying of co-workers. G was discharged for misconduct by persistently annoying co-workers after prior warnings. EXAMPLE 6. H played various on-the-job pranks on new employees despite the employer's warnings to stop this conduct. H

handed a broken glass jar to a co-worker on the job whose hand was cut on the jar. H leaped over moving machinery on the job. H's co-workers complained to the employer about H's horseplay and annoying and dangerous conduct. The employer discharged H due to the horseplay and dangerous conduct. H's discharge was for misconduct due to repeated horseplay dangerous to co-workers. (2) Debts to Co-workers. A worker's failure to pay a debt due to a co-worker is a personal matter not affecting the employer's interest. However, if the nonpayment of the debt results in on-the-job fights or disputes, the employer's interest is affected and whether misconduct exists is determined under the interpretations set forth under subdivision (c) or other applicable provisions of this section. (3)

Noncooperation with Co-workers. Ordinarily an employee's failure to cooperate with co-workers on the job in isolated instances would not be misconduct in the absence of prior warnings or reprimands. However, if the specific acts of noncooperation relate to the scope of an employee's defined work duties, Sections 1256-30 and 1256-36 of these regulations interpret the circumstances under which misconduct is or is not present.

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glass jar to a co-worker on the job whose hand was cut on the jar. H leaped over moving machinery on the job. H's co-workers complained to the employer about H's horseplay and annoying and dangerous conduct. The employer discharged H due to the horseplay and dangerous conduct. H's discharge was for misconduct due to repeated horseplay dangerous to co-workers.

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Debts to Co-workers. A worker's failure to pay a debt due to a co-worker is a personal matter not affecting the employer's interest. However, if the nonpayment of the debt results in on-the-job fights or disputes, the employer's interest is affected and whether misconduct exists is determined under the interpretations set forth under subdivision (c) or other applicable provisions of this section.

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