

California Code Of Regulations

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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

## 1256-42 Discharge for Misconduct -Violation of Employer's

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-42@ Discharge for Misconduct -Violation of Employer's Rules

### Rules

#### (a)

Scope. This section relates to discharges from the most recent work due to an employee's violation of a rule of the employer. Section 1256-30 of these regulations sets forth general principles also applicable under this section. For interpretations of violations of employer rules relating to the manner of performance of work by an employee, see Section 1256-38 of these regulations.

#### (b)

General. A discharge by an employer of an individual for violation of an employer rule is for misconduct connected with the work if the rule is reasonable, the individual knew or should have known the rule, and the violation is willful or wanton, material, and substantially injures or tends to injure the employer's interests. If the individual has previously violated a minor employer rule or has previously violated the same or a similar employer rule with the knowledge of the employer, a discharge is for misconduct connected with the work if the violation substantially injures or tends to injure the employer's interests and has been preceded by prior warnings or reprimands for previous violations, or if the individual's course of conduct as a whole demonstrates a substantial disregard of the employer's interests following prior warnings or reprimands for violations of other employer rules. (See Section 1256-36 of these regulations relating to an

employee's insubordination which includes interpretation of the circumstances under which an employer's rule is reasonable or unreasonable.) EXAMPLE 1. Nurse A, a medication nurse, was discharged for deliberately reducing by 50 percent the prescribed amount of medication administered to a patient in a hospital without the permission of a doctor. Nurse A knew the hospital rule that medication could not be reduced without consulting the doctor, intentionally did not consult the doctor, and used the nurse in charge as an excuse for reducing the prescribed medication while knowing that the medication was the sole responsibility of nurse A. Nurse A was discharged by the hospital for violating the medication rule. Nurse A's discharge is for misconduct since the rule was known, reasonable, deliberately disobeyed, material, and affected the employer's interest. However, there would be no misconduct had nurse A established a bona fide belief that a full dosage would be detrimental to the patient, that the regular nurse in charge agreed with this opinion, and that the doctor for the patient had made known to nurse A that the doctor would not object to a reduced prescription dosage in the discretion of the medication nurse and that this practice was common in the hospital. Under the latter circumstances, there is no willful violation of a rule and the practice would have been condoned by the employer, with the result that no misconduct would have been present.

**(c)**

Clothes and Appearance. Some employers may establish reasonable rules which include standards of hygiene, mode of dress, or personal appearance. Individual employees may choose to maintain a mode of dress or grooming or personal appearance in such matters as hair style or beard which does not comply with standards established by reasonable employer rules. Some employers' standards are established to protect the health, safety or welfare of other employees or of

the public, or to protect and preserve a particular business atmosphere or a business image of reliability to patrons. The individual employee may decline any reasonable alternative offered by the employer to meet the employer's standards. Under these circumstances, the employer's discharge of an employee is for misconduct and a compelling state interest exists if all of the following three conditions are met: (1) the employer's rule rationally relates to the enhancement of the employer's business; (2) the benefit to the employer outweighs the impairment of the employee's constitutional rights; and (3) there is no available alternative which would be less restrictive of constitutional rights of mode of dress or grooming or personal appearance. Thus, an employer's order to an employee to shave his beard would be reasonable if the beard was unsanitary or would adversely affect the patronage or production of the employer's particular business. The order would be unreasonable if it results from mere personal distaste of the employer or a mere ruse to discharge the employee. Also, an employer's rule that employees must confine long hair, if worn, by a hair net while at work for health or safety reasons or because customers objected to long hair is reasonable; the employee's refusal to wear a hair net at work or trim long hair as required by the employer rule is misconduct.

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**(d)**

**Gambling or Game Playing.** Some employers have specific rules prohibiting gambling or other game playing on the job. Nearly all employers expect and require that employees perform the work for which the employees were hired during normal work hours. Thus, an employee's gambling or game playing on the job during normal work hours may be misconduct. Usually an employee's gambling or game playing on the employer's premises during off-duty hours would not be misconduct. It would be misconduct if the employee had been given prior warnings or reprimands for similar acts and the employee's ability to work is affected or there is a substantial injury to the employer's interests. An employee's gambling or game playing off the job would not be misconduct unless this affected the employee's ability to work or caused a substantial injury to the employer's interests. This could occur if an employee who holds a position of financial, supervisory, or executive trust engaged in public gambling with adverse effect on the employer. The employer would be affected if customers or potential customers identified the employee with the employer and criticized the employee's public gambling, or withheld or withdrew business from the employer. In no event would an employee's gambling or game playing be misconduct if the

employer had ordered, participated in, or condoned the employee's activity.

**(e)**

**Marriage.** If an individual is discharged by an employer because the employer has a rule forbidding the employment of married persons of one sex or of both sexes and the individual either conceals married status at the time of employment or is married after employment, the discharge is not for misconduct connected with the work. The rule is an unreasonable intrusion on the right to marry. Neither is it misconduct connected with the work for an individual who holds a job for which an employer prohibits employment of married persons, to fail to seek transfer, prior to marriage, to another job with the employer to which the employer's prohibition against married employees does not apply.

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**Money Matters.** Many employers establish rules governing the handling of an accountability for money by employees in their work. Some intentional violations of these rules can have a potential for substantial injury to the employer's interests and a single violation can be misconduct. Other violations can cause relatively minor injury to the employer's interests and not be misconduct in the absence of prior warnings or reprimands by the employer for similar prior violations (see Section 1256-34 of these regulations for interpretation of what is misconduct if a cash shortage concerning money matters is involved). An employee who substantially violates the terms of an arrangement by the employer allowing the employee to purchase items from the employer at a discount has engaged in misconduct. A typical substantial violation would be the employee's reselling of a purchased item without required prior approval of the employer or in violation of written employer prohibitions known to the employee. **EXAMPLE 2.** B, a grocery checker, had been told of the employer's written rule requiring a written

record of each individual sale. B's work station as a grocery clerk was near the liquor department which did not have a separate checker. When a customer came to B with a single liquor purchase, B accepted the money and after the grocery transaction was completed would either record the single liquor purchase or combine the single liquor purchase with other single purchases and record one purchase. B did this to avoid making the customer wait in line. The employer knew that B and other grocery checkers followed these practices, despite the written rule to the contrary. B's supervisor knew of the practices and participated in them. The employer discharged B for violating the single purchase rule. B's discharge is not for misconduct because the action was condoned by the employer and served the employer's interests by promoting efficient checking service. The error was at most ordinary negligence in isolated instances or good faith errors in judgment.

EXAMPLE 3. A sales checker, C, while checking one customer, would accept money from another customer in the exact amount for a purchase and delay ringing up that sale until the current customer had been served. The employer's rule prohibited this practice. On some occasions, C would defer ringing up the sale until several customers had been served, but also deposited any cash received in the cash drawer. The employer discharged C for violating the purchase rule. C's violations are not misconduct since C was never warned or reprimanded for a violation of procedure and at most the violations are isolated instances of negligence or good faith errors in judgment. EXAMPLE 4. A cab driver, D, was required by the employer to keep a log of daily fares on a trip sheet. The cab meter also recorded the mileage and fare paid for each trip. The cab company operated under strict state and city regulations requiring detailed trip information for every driver. On one workday, a comparison of D's trip sheet and the meter recording showed a discrepancy of 20 unpaid miles. D blamed the discrepancy on

faulty recording by the meter, but the meter was found to be accurate. The employer discharged D for failure to explain the discrepancy, but did not allege theft or misappropriation of the fares by D. D's discharge is for misconduct due to potential loss by the employer of licensing because of strict regulations and D's failure to explain the discrepancy must be considered a deliberate and substantial violation.

**(g)**

Motor Vehicles. Section 1256-43 of these regulations interprets what is or is not misconduct where a violation of law is involved in an employee's use or operation of motor vehicles. If an employee's willful or wanton violation of an employer rule for the use, maintenance, or operation of a motor vehicle involves potential substantial injury to the employer's interests, a discharge for violation of the rule is for misconduct. If a violation of an employer rule involves less serious consequences, a discharge for the violation is not for misconduct in the absence of prior warnings or reprimands for similar violations by the employee. **EXAMPLE 5.** The duties of employee E were to drive the employer's new cars from a freight depot to the employer's storage warehouse. The employer's rule was that employees should check oil levels when driving the cars. E failed to check the oil level and damaged a connecting rod in a car E drove because the car had no oil. The employer discharged E. E's discharge is not for misconduct since a single act of negligence with relatively minor damage to the employer's interest is involved and there was no prior violation or warning or reprimand.

**(h)**

Property--Removal by Employee. An employee's willful or wanton removal of an employer's property from the employer's premises in violation of an employer rule known to the employee and without the express or implied permission of the

employer is misconduct, unless the property is of little or no use to the employer.

EXAMPLE 6. Employee F while in route at work to the restroom saw a damaged padlock on the ground near a trash can. F took the padlock away from F's work station and hammered it to see if it would open. F was away from F's work station for five minutes. The employer discharged F for destroying the employer's property in violation of the employer's rule against damaging the employer's property. F's discharge is not for misconduct since the property had no value, and F's violation of the employer's rule was trivial and casual and lacking in the willful or wanton disregard for the employer's interests required for misconduct.

**(i)**

Safety. Employers may establish rules to protect the safety of employees or those who purchase or use the employer's product or service. Safety rules are almost always reasonable. An employee's willful or wanton violation of such safety rules is misconduct if the employer's interests are substantially jeopardized or injured or if the violation is repeated after the employee has been given warnings or reprimands. For interpretation of whether misconduct exists where the violation is of employer rules for safety of co-employees, see also Section 1256-39 of these regulations. For interpretation of whether misconduct exists where an employee violates a law or violates both an employer rule and a related law, see Section 1256-43 of these regulations. EXAMPLE 7. G, an assembler for an aircraft manufacturer, rode a bicycle without authorization across an airport runway. This act violated the employer's posted signs prohibiting unauthorized entry on the run-way. A plane approaching the runway for landing pulled up and circled to avoid hitting G. The employer discharged G for violating the rule. G's discharge is for misconduct involving violation of a reasonable rule for the protection of the safety of plane, passengers and crews as well as employees, with a substantial danger



created by violations.

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Store Purchases. Many employers in retail merchandising establish rules governing the purchase of merchandise by their own employees. For example, an employer might require that each purchase by an employee be accompanied by a sales slip, or entered into a ledger or record book. The purpose of employer rules of this type is often to prevent theft by employees. An employee's willful or wanton violation of an employer's rules relating to the employee's own store purchases ordinarily involves substantial injury or tendency to injure the employer's interests and is misconduct. Employers may also establish rules governing the wrapping, mailing, delivery, charging or exchange of purchases by customers. An employee's violation of employer rules relating to store purchases by customers usually will be relatively minor in consequences and is not misconduct, unless the violation occurs after prior warnings or reprimands for similar violations (see subdivision (f) of this section and Section 1256-34 of these regulations for interpretation of whether misconduct exists where an employee's violation relates to employer rules concerning the handling of money). **EXAMPLE 8.** H was discharged by the employer because H left the employer's store with a 33-cent purchase not accompanied by a sales slip as required by an employer rule. However, H had not been told of the employer's rule, and had previously purchased items without sales slips or any warning by the employer. The employer discharged H for the violation. H's discharge is not for misconduct because H had no knowledge of the employer's rule, had not been previously warned, and H's violation was not deliberate. However, if H had been warned for any prior violations and then had violated the rule, a discharge would have been for deliberate acts and thus for misconduct.

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Time Clock. Employers in some establishments have rules for employees reporting into and out of work requiring punching time clocks. Often the rule is that each employee must personally punch the time clock. An employee's knowing violation of such a rule is misconduct, unless there is no falsification of time worked by the employee and the violation is an isolated instance. Intentional substantial falsification of time worked is misconduct. EXAMPLE 9. J, a security guard, left J's post early and had another guard punch J's time card out at the regular quitting time. The employer discharged J for violating the employer's rule that each employee must personally punch out the time card when leaving work. J's discharge is for misconduct due to a deliberate violation of a substantial employer interest and involves falsification of time worked.