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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

1256-16 Voluntary Leaving -Good Cause -Leave of Absence

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-16@ Voluntary Leaving -Good Cause -Leave of Absence

(a)

Scope. This section deals with the effect that a leave of absence has under Section 1256 of the code. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section. Whether an individual is disqualified for benefits because he or she has voluntarily left his or her most recent work to take time off from work depends upon whether the purpose of the absence was for good cause. Sections 1256-4 through 1256-23 of these regulations discuss what circumstances are good cause.

(b)

Leave of Absence--Existence and Effect. A true leave of absence does not exist if an employee merely leaves for a fixed period of time with an understanding that he or she will be rehired at the end of that period only if work is available. In such a case if no work is available when the period expires the employment has been terminated when the employee first left and the employee has voluntarily left work at the commencement of the period. A true leave of absence exists if the employer and the employee mutually agree that the employee will return to his or her work after a period of absence and that the employment relationship is not terminated although the performance of services is suspended for the period of the absence from work. A leaving of work occurs at the commencement of a true leave of absence. If the true leave of absence is not mandatory but is requested by

the employee, or if the employee refuses a mandatory leave and files a claim after the reason for the mandatory leave has ended, then the employee has left work voluntarily. Whether the employee has left for good cause is determined by the purpose or reason for which the employee takes or refuses the true leave of absence. If an employee has good cause for leaving but either fails to request a leave of absence or refuses to take one which is available or offered, the good cause may be nullified. Although a true leave of absence preserves the employment relationship, there is a termination of the employment relationship if the claimant during the leave demonstrates an intent not to return to work by resigning, securing another job, or registering for work. If during or at the expiration of a true leave of absence the employer replaces, lays off, or discharges an employee, or if the employer fails to return the employee to his or her work at the expiration of the leave and thus lays off the employee, there is a layoff or discharge at the time of such action. If a true leave of absence is mandatory due to an employer policy or pursuant to a collective bargaining agreement and the employee resigns or files a claim before the reason for the mandatory leave has ended, the employer is the moving party and the employee has left his or her work involuntarily and is not subject to disqualification under Section 1256 of the code.

(c)

Employee's Refusal of Leave. An employee who may have good cause to leave work temporarily but who refuses a true leave of absence offered by his or her employer has voluntarily left work without good cause. EXAMPLE 1. The employer required that A leave work because of her pregnancy. The employer offered A a leave of absence which, if accepted, would have extended for three months after the birth of the child. A refused the leave because she felt she would be too busy after the birth of the child. Subsequent to the birth of the child, A filed

a claim for benefits. When A refused the leave of absence she voluntarily left her work for reasons that were not good cause.

(d)

Employee's Failure to Request Leave. Good cause for leaving work is nullified if the employee fails to request a leave of absence and the following conditions exist: (1) The employer has an established leave of absence policy which the employee knew or should have known. (2) The employer would probably have granted the leave. (3) An effort by the employee to maintain the employment relationship would have been reasonable under the circumstances. (4) The leave of absence would have preserved the employment relationship. EXAMPLE 2. B

was required to have surgery. B's employer had no provision for any leave of absence. B quit without asking for a leave, underwent surgery and, upon recovery, filed a claim for benefits. Since B had good cause for leaving, the employer had no leave policy, and it was clear that a request for a leave would have been futile, B's failure to request a leave did not nullify B's good cause due to health problems for leaving work. EXAMPLE 3. C had child care problems which required C to leave work temporarily. Although C was aware of the employer's leave policy, C did not request a leave because C did not believe it would be granted, and C's employer had indicated a leave would probably have not been granted. Since it was improbable that C would have been granted a leave, C's failure to request a leave did not nullify C's good cause due to child care problems for leaving work.

EXAMPLE 4. D had been granted a two months' leave of absence for reasons of health. The collective bargaining agreement provided sick leaves could be extended for a maximum of two years. D was still ill after the two months and it was unknown when D's health would improve. D and the employer mutually agreed an extension of the leave would be useless and D resigned. Since D had

acted reasonably in obtaining a leave for two months, and no useful purpose would be served by an indefinite extension, D's good cause due to health reasons for leaving work was not nullified. EXAMPLE 5. E left work because E had child care problems. E did not request a leave of absence because E stated E thought leaves were granted only for personal illness. However, E's employer had previously granted E two separate leaves because of E's child care problems. Since E knew the employer's leave policy and had taken leave in the past, E's voluntary leaving is without good cause due to E's unreasonable failure to request a leave which nullifies E's good cause for leaving.

(1)

The employer has an established leave of absence policy which the employee knew or should have known.

(2)

The employer would probably have granted the leave.

(3)

An effort by the employee to maintain the employment relationship would have been reasonable under the circumstances.

(4)

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