

UTAH DEPARTMENT OF WORKFORCE SERVICES



***“NAVIGATING UNEMPLOYMENT INSURANCE:  
JUST CAUSE, GOOD CAUSE, AND COMMON  
PROCEDURAL ERRORS”***

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## **I. THE PURPOSE OF UNEMPLOYMENT INSURANCE BENEFITS**

- a. An insurance policy for the economy.
  - i. Employer's pay the premiums
  - ii. Workers collect the benefits.
- b. Utah Admin. Code R994-102-101(4) – The rules are construed liberally and doubts should be resolved in favor of finding coverage for workers.

## **II. ELIGIBILITY DETERMINED BY THE NATURE OF THE SEPERATION**

- a. Most separations are the result of either an employer initiated discharge or an employee initiated voluntary quit.
- b. The two different types of separation are governed by two different standard.

## **III. DISCHARGE – JUST CAUSE**

- a. A separation is a discharge if the employer was the moving party in determining the date the employment ended. R994-405-201
- b. Employer has the burden of proving the following elements to show just cause:
  - i. Culpability – Conduct must be sufficiently serious.
    - 1. Consider length of employment
    - 2. Consider isolated nature of the incident
    - 3. Focus on the final incident
    - 4. Consider the proximity of the discharge to the final incident
  - ii. Knowledge – Claimant must know the employer's expectations
    - 1. Submit written policies as evidence
    - 2. Submit written warnings as evidence
    - 3. Universal standard of conduct – George Costanza rule
      - a. Violence
      - b. Theft
      - c. Fraud
      - d. Sexual relations with the cleaning lady.
  - iii. Control – Claimant must have control over conduct.
    - 1. Beware of attendance issues due to illness of claimant or dependent.



- a. Consider requesting medical documentation to establish ongoing chronic problem to avoid charges.
  2. The employer must show the claimant had the skills and ability to do the job.
    - a. If the evidence shows the claimant never consistently performed his or her duties successfully, you will need something more than “I’m sure he could do the job if he applied himself.”
- c. Quit vs. Discharge
  - i. Resignations are treacherous; use caution.
    1. If a claimant gives two weeks notice and the employer wants him to leave before the end of two weeks, the employer needs to pay the claimant for the entire two weeks, or the resignation will be considered a discharge.
    2. An announcement that the claimant is looking for another job is NOT a resignation.
  - ii. Quitting in anticipation of discharge
    1. The underlying reasons for an impending discharge are controlling.
      - a. If the claimant quit to avoid a discharge that would have been disqualifying, then it is a discharge.
      - b. If the claimant quit to avoid discharge that would not have been disqualifying, the separation would be a voluntary quit.
  - iii. Refusal to follow instructions
    1. If the claimant refused to follow instructions and knew discharge would result, the separation is a quit.
- d. Discharge must be for conduct in connection with employment.
  - i. Conduct does not need to be on the premises or during work hours, but it must be connected to the employment.
    1. Employees should refrain from conduct that is detrimental to the business or that brings dishonor to the business’s name.
    2. Employer can also show harm to goodwill, efficiency, employee morale, discipline, honesty and trust.
  - ii. Shoplifting auditor case – auditor shoplifted from a client.
- e. Criminal conduct



- i. Incarceration is generally disqualifying, BUT it must be for proven or admitted criminal conduct.
- ii. If there is no conviction or plea, discharge for an arrest or incarceration will generally be nondisqualifying.
- iii. If there is a conviction or plea later on, the employer can ask the Department to reopen the case, at which time there will likely be a reversal of the charges.

#### **IV. VOLUNTARY QUIT – GOOD CAUSE/EQUITY AND GOOD CONSCIENCE**

- a. A separation is a voluntary quit if the claimant was the moving party in ending the employment relationship.
- b. The claimant has the burden of meeting one of two different standards: Good cause or equity and good conscience.
- c. Good cause – The claimant must show that continuing the employment would have caused an adverse effect that the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work that is shown to have been illegal or to have been unsuitable new. R994-405-102

- i. Adverse effect is broken down into the following subparts:

##### **1. Hardship**

- a. Separation was motivated by a hardship sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed.

- i. Example: failure to pay wages on time.

##### **2. Ability to control or prevent**

- a. Even if there is an adverse effect, good cause will not be found if the claimant:

- i. reasonably could have continued working while looking for other employment,
  - ii. had reasonable alternatives that would have made it possible to preserve the job, or



iii. did not give the employer notice of the circumstances causing the hardship.

1. Did you contact HR?

2. Did you follow the grievance procedure?

ii. Illegal work.

1. If the employer requires the claimant to violate state or federal law or if the claimant's legal rights were violated, then good cause for quitting is established, BUT

2. the employer must be aware of the violation and refused to comply with the law.

a. Example: truck drivers and DOT regulations.

iii. Unsuitability of new work

1. If the claimant is quitting a job that he or she just started because it turned out to be unsuitable, good cause can be established.

a. Timing of the quit is critical. If the claimant hangs around too long, the strength of unsuitability as the basis weakens significantly.

d. If the claimant fails to show good cause, he or she can still get benefits if the equity and good conscience standard is met (except in cases of quit to accompany spouse).

i. This is a safety net for cases in which denying benefits to a claimant, even if good cause was not shown, would be harsh or unfair.

ii. To receive benefits under this standard, the claimant must show he or she:

1. acted reasonably

a. the decision to quit must be logical, sensible, or practical.

2. demonstrated a continuing attachment to the labor market

a. the claimant must show an immediate effort to find new employment after quitting.

e. Quit vs. Discharge

i. As with discharges, there are situations in which it may not be clear whether the separation was a quit or a discharge:



1. Leaving prior to the effective date of a termination
  - a. The separation is a quit if the claimant leaves before the date of a termination. In cases of reductions in force, an announced layoff does not generally constitute good cause for quitting.
2. Leaving to avoid pending discipline.
  - a. If the discipline was reasonable, then the separation is considered a quit.
3. Leaving due to a remark or action of the employer or coworker
  - a. The claimant has the responsibility to confirm rumors or remarks about pending discharge before quitting. If the claimant fails to do so, the separation is a quit
4. Resignation
  - a. If the claimant announces a definite date of resignation and is paid through that date, the separation is a quit.
  - b. If the claimant announces an intent to quit but agrees to stay on for an indefinite period of time, the separation is a quit even if the employer determines the date of separation.
  - c. If the claimant resigns but later attempts to rescind, the reasonableness of the employer's refusal is the primary factor.
    - i. The employer already hired a replacement
    - ii. The employer took actions based on the claimant's resignation that are now impractical to reverse.
5. Notice of impending discharge with no end date
  - a. If the employer tells the claimant that it intends to discharge him, but that it will allow him to stay while he finds another job, the separation will be a quit. However, good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge.



## V. OTHER ISSUES

### a. The residuum rule.

- i. In *Wagstaff v. Department of Employment Sec.*, 826 P.2d 1069,1072 (Utah App. 1992), the Utah Court of Appeals stated, with respect to hearsay evidence:
- ii. . . . Although there was nothing wrong with admission of this hearsay evidence, "findings of fact cannot be based exclusively on hearsay evidence. They must be supported by a residuum of legal evidence competent in a court of law." *Id.* See *Department of Air Force v. Department of Employment Sec.*, 786 P.2d 1366, 1369 (Utah App.), cert. denied, 795 P.2d 1138 (Utah 1990). [Emphasis added].

### b. Information requests.

- i. Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.
  1. If the employer fails to provide information without good cause, its appeal rights may be forfeited and the appeal dismissed.
- ii. A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

### c. Timeliness

- i. 24 hour notice of intent to participate
  1. Excusable neglect
- ii. Failure to file an appeal to the ALJ or Board on time
  1. Good cause

