



## **Single Statement of Refusal By Employee Deemed Misconduct in Missouri**

As an employment-at-will state, employers in Missouri do not have to establish misconduct in order to terminate an employee's employment, barring an employment contract or labor agreement. Yet, employers who want to bar those former employees from receiving unemployment compensation must present evidence of misconduct connected with employment by the employee. There is frequent litigation in Missouri on whether the act for which someone was terminated qualifies as misconduct connected with employment under the unemployment compensation laws.

In a recent case of first impression, the Missouri Court of Appeals for the Southern District of Missouri held on February 26, 2007 that an employee's single statement of refusal to comply with work directives from a supervisor constitutes misconduct. *Dixon v. Stoam Industries, Inc.*, 216 S.W.3d 688, (Mo.App. S.D., 2007). In this case, an employee was approached by a supervisor and was told to "move over and do a different process." The employee responded by saying that he was working on something else and "wasn't going to stop what [he] was doing and go over there and do that the rest of the night." The employee was immediately told to leave and was fired.

Writing for the majority, Judge Gary Lynch held that there were no guiding opinions on whether an employee's refusal to comply with reasonable work directives constituted misconduct. The court then looked to related cases on insubordination and the obligations of employees to obey the lawful and reasonable rules of employers. The court found the employee admitted his refusal to follow the supervisor's instructions and those instructions were lawful. The court held "that an employee's refusal to comply with a lawful and reasonable directive from a supervisor constitutes misconduct as that term is defined. . ." *Id.*, p.3. The employee was properly denied unemployment compensation according to the court.

In general, the burden on an employer to prove misconduct in Missouri became easier at the end of 2006 with the amendments to the state unemployment laws. The first of these changes related to misconduct for violating tardiness and misconduct rules. The second of these changes constituted what some referred to as a zero-tolerance policy on drugs and alcohol in the workplace.

According to the new statutory provision, evidence of tardiness and absenteeism by themselves constitute a rebuttable presumption (a burden which the employee has to overcome) of misconduct disqualifying the employee from some benefits and insulating the employer from being charged by the state for the unemployment costs. In order to take advantage of this presumption, employers must have an attendance policy and the employee must be made aware of the policy prior to the absence or tardy upon which they are discharged. R.S.Mo. 288.050.3

The unemployment statute was also amended in 2006 as a result of Missouri court opinions which required employers to establish that an employee was actually impaired at work before it was deemed misconduct, even if the employee was under the influence of alcohol or drugs. Under the now amended statute, any employee who is at work with detectable levels of alcohol or controlled substances has committed misconduct. The statute requires that employees must be notified of the employer's workplace policy including notice that a violation may result in suspension or termination of employment. R.S. Mo. 288.050.

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