

## “MISCONDUCT” AS IT RELATES TO DISQUALIFICATION FOR UNEMPLOYMENT BENEFITS

Vermont’s unemployment law recognizes two types of misconduct as disqualifying; simple misconduct and gross misconduct. Discharge for inability to meet performance standards is generally not considered misconduct.

### SIMPLE MISCONDUCT

**Definition:** Simple misconduct is work related conduct that is in substantial disregard of an employer’s interests. Such conduct may be willful or intentional, but it may also be unintentional conduct that results from extreme carelessness, indifference, or lack of effort. Simple performance deficiencies will generally not be considered misconduct. Employers will generally be expected to provide employees notice and an opportunity to improve their conduct, except in extreme cases. The misconduct **MUST** be work related; off-duty conduct is generally not the basis for a finding of misconduct.

**Written warnings are often the best method for advising and documenting the worker’s need to improve conduct.**

**Consequence:** Disqualification from receiving benefits for up to 15 weeks, with a minimum of 6 weeks, from the time the unemployment claim is filed. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner.

#### **Examples:**

- Repeated tardiness or unexcused absences;
- Rudeness to customers or other employees;
- Insubordination;
- Intentional misrepresentation on a job application.

### GROSS MISCONDUCT

**Definition:** Gross misconduct is work related conduct that demonstrates a flagrant and wanton disregard of an employer’s interests. 21 V.S.A §1344 defines gross misconduct as:

“For purposes of this section, “gross misconduct” means conduct directly related to the employee’s work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer’s business interest, and that has direct and significant impact upon the employer’s business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, and conduct that constitutes a felony, or repeated incidents after written warnings of either unprovoked insubordination or public use of profanity.”

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**Consequence:** Total disqualification from receiving benefits until the claimant once again secures employment and works long enough to earn the equivalent of 6 times their weekly benefit amount. The employer’s experience rating record is relieved of charges, provided the initial request for information was received in a timely manner. Effective July 1, 2012, wages earned from the employer against whom the gross misconduct was committed are excluded from use in computing the weekly benefit amount.

**Examples:**

- Loss or damage of property due to extreme carelessness or indifference;
- Use of company vehicle to run personal errands while on the clock, when the employee is supposed to be conducting company business;
- Creating a hostile workplace environment through repeated insubordination or continued use of profane language;
- Refusing to participate in an employer-mandated safety exercise;
- Failure of an employee in charge of adult sexual offenders to maintain close physical proximity to their charges at all times while they were in certain public places.
- Inappropriate behavior by employee when handling or supervising children;
- Unprovoked outburst when asked to move from a preferred workstation to a different station that the employer needs and inappropriate behavior detrimental to the employer's business;
- Heavy equipment operator ignoring safety protocols, after warnings, when the safety violation leads to an accident or property damage;
- Employee discharged after yelling at supervisor and using the F-word within proximity of children in his charge at the time.

**PERFORMANCE**

Generally speaking, performance deficiencies will not be considered misconduct. An employer may certainly choose to fire an employee for being a slow learner, or for not performing tasks quickly or carefully enough. However, the department will not consider this misconduct unless the employer can demonstrate deliberate indifference, malingering, or complete lack of effort on the employee's part.