

Effective Documentation – Terminations Due to Misconduct

The burden of proof is on the employer if the discharge is for alleged misconduct. You must have the documentation to prove your case. In all states misconduct can usually be established if the supervisors take some basic steps to document why the person was separated. When dealing with state unemployment agencies, appropriate written documentation is generally crucial to determining a claimant's eligibility for benefits.

The general criteria for determining misconduct¹ is as follows:

- **There must be a reasonable rule, policy or standard covering the action.**
- **The action must be connected with the work**
- **The employee must violate the rule, policy or standard**

FINAL INCIDENT – Be prepared to provide the final incident that led to the discharge. The final incident is extremely important in misconduct cases. The incident cannot be trivial or outside of the employee's control.

PRIOR DISCIPLINARY ACTION AND RELEVANT COMPANY POLICY AND PROCEDURE

- Have documented both verbal and written warnings with dates and brief description of what was said.
- Written warnings should be signed by both parties or witnessed by a third party.

IMMEDIATE ACTION – If termination is warranted because of a final or major act of misconduct, the discharge should not be delayed for reasons of convenience. A significant delay may cause the state to question the true reason for the discharge.

AVOID HEARSAY – Terminations should be based on firsthand knowledge and competent evidence, not hearsay or conjecture. As mentioned, the evidence should be reviewed with the employee to afford an opportunity for a response.

EXPLAIN DISCHARGE – Specific reason(s) for discharge should be given after reviewing the facts with Personnel or Human Resources Department and the reasons should be documented effectively.

¹ States define misconduct in the unemployment process differently. Make sure you understand what is required in your state.