

# Fired for misconduct: Can former employee collect unemployment benefits?

**Q. A former employee engaged in misconduct, which resulted in his discharge. Now he is requesting unemployment compensation benefits under California law. Is an employee entitled to these benefits if he or she is no longer employed, regardless of the circumstances?**

**A.** California provides unemployment compensation benefits to certain employees who are no longer employed, but there are several situations that can prevent an individual from receiving such benefits.

The California Unemployment Insurance Code specifically disqualifies certain employees from receiving unemployment compensation benefits, including those who were discharged for misconduct, left work voluntarily and without good cause, refused to accept suitable employment without good cause or failed to apply for suitable employment when notified by a public employment office.

Further, an employee cannot claim unemployment insurance benefits if he or she was unable or unavailable to work during the week for which he or she is claiming benefits.

**Q. Now I know that our former employee may not be eligible for unemployment benefits, as he was discharged for misconduct. What behavior qualifies as misconduct sufficient to deny unemployment insurance benefits under California law?**

**A.** Under California Code of Regulations Title 22 Section 1256-30, an employer must establish the following elements to demonstrate that a former employee engaged in misconduct:

- The individual owed a material duty to the employer under his or her employment contract.
- There was a substantial breach of this duty.
- The breach was “a willful or wanton disregard of that duty.”
- The breach disregarded the employer’s interests and injured or tended to injure the employer’s interests.

There also needs to be a causal connection between the individual’s breach of duty and his or her discharge to demonstrate that the discharge was for misconduct.

Examples of misconduct severe enough to preclude collection of unemployment benefits may include stealing from an employer, intoxication at work, sleeping on the job, creating false records and sexual harassment.

Misconduct is not likely to be established and preclude collection of unemployment benefits if the employee was simply inefficient, unable to perform adequately, made a mistake, was ordinarily negligent on occasion or made a good-faith error. For example, a clerk who failed to file properly a document and was discharged for his error would not have been discharged for misconduct, and thus his error would not be sufficient to impede his right to collect unemployment compensation benefits.