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If we fire a lazy employee, will she be eligible to collect unemployment benefits?

Q. We have an employee who does not work very hard, and her productivity is only mediocre. If we terminate her, will she be able to collect unemployment compensation?

A. Probably. The North Carolina Employment Security Law favors employees. Thus, a terminated employee will receive unemployment benefits unless the termination was for employee misconduct or substantial fault.

The act defines misconduct as:

"Conduct evincing such a willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer."

The term "substantial fault" is defined by the act to include those acts or omissions of employees over which they exercised reasonable control and which violate reasonable requirements of the job.

Substantial fault does not include:

- Minor infractions of rules unless such infractions are repeated after the employee received a warning
- The employee's inadvertent mistakes
- Failure to perform work because of insufficient skill, ability or equipment.

In most cases, employees will receive unemployment benefits if terminated for poor performance. However, if the employer properly documents and plans the termination, the Employment Security Commission may find the employee was terminated for substantial fault.

In those cases, the employee will be partially denied benefits. What's more, the employer's account will not be charged for any benefits paid.

7600 Leesburg Pike, Suite 300, Falls Church, VA 22043-2004 (800) 543-2002
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