

Texas Business Today

Joe Esparza
Commissioner Representing Employers

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Texas Employers,

Welcome to the March issue of *Texas Business Today*!

The Texas labor market achieved new record-high levels for jobs, Texans employed, and the civilian labor force following over-the-month increases in February. Texas employers are creating thousands of opportunities for Texans, and the Texas Workforce Commission has the resources they need to train and upskill their workforce.

I recently visited Vernon, TX, to present Vernon College with a \$142,500 grant that will support the growing demand for truck drivers in the area. Vernon College met with local employers of CDL drivers and found an overwhelming demand for the occupation. With the purchase of a new truck with additional seating, Vernon College will be able to add more courses and serve waitlisted students. I come from a trucking family, and during the pandemic I saw firsthand how truckers never stopped—their hard work kept supply chains moving. It's great to see a true partnership of education and employers!



These investments in the workforce of the future are investments in the prosperity of Texas business.

Looking ahead for the month, don't forget to check out the list of our Texas Conference for Employers to see when we will be in your area. To find a conference near you, please visit: <https://twc.texas.gov/texas-conference-employers>

Let's keep Texas the best place in the nation to live, work, and do business!



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Join us at your local Texas Conference for Employers



A Good Business Reason Does Not Equal Misconduct

By: Elsa Ramos

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When it comes to unemployment claims, not all job separations are created equal. If an employer initiates a job separation by discharging, firing, or terminating an employee, the employee will be qualified for unemployment benefits unless the employer can prove that the employee was discharged for “misconduct connected with the work.” See https://efte.twc.texas.gov/ui_law_qualification_issues.html#dq-mc.

Simply put, misconduct is bad behavior in an employee’s power to control. Often, employers discharge employees based on very compelling business reasons and expect to win the unemployment claims that follow. But not all good business reasons constitute “misconduct connected with the work.” Let’s explore a few of these.

Inability to perform the job

Commission precedent **Appeal No. 1456-CA-77** states that, “Where a claimant has performed her work to the best of her ability, her inability to meet the employer’s

standards or inability to perform the work to the employer's satisfaction does not constitute misconduct connected with the work.”

We are all familiar with this type of situation. Perhaps a new hire was just the wrong fit. Or the transfer of an existing employee to a new position did not work out.

When faced with this scenario, some employers—understandably—choose to discharge an employee who is not performing as expected. However, because this type of job separation is not based on an employee's misconduct, the employee is likely to be qualified for benefits in case of an unemployment claim.



Looking for another job

When employers learn that an employee is looking for opportunities elsewhere, they usually respond in a less than enthusiastic manner. Employers may feel that the employee is not fully committed to, and supportive of, the business, or that the individual's continued employment may have a detrimental effect on employee

morale. For these reasons, discharging the employee looking for greener pastures is not uncommon.

However, employers should know that looking for another job is not considered misconduct connected with the work. If the unemployment claim matters, employers might consider holding off on terminating the employee and waiting for the employee to resign.

Not meeting sales quota

Remember that “misconduct connected with the work” requires bad behavior in an employee's power to control. A salesperson can be reporting to work when scheduled, following the employer's instructions, and yet still fall short of the employer's desired sales numbers. Because there are many factors that can affect a sale, sales are seldom completely in an employee's power to control.

Like with inability to perform the job, if an employee was working to the best of their ability but could not meet the sales goals, the employer may be unable to prove misconduct. This is true even if the employer placed the employee on a performance improvement plan or issued disciplinary warnings.

Conclusion

Deciding whether to discharge an employee is ultimately a decision for the employer. However, employers should understand that when it comes to unemployment claims, terminating an employee for a good or compelling business reason is not the same as discharging someone for “misconduct connected with the work.”

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Hiring Issues • Medical Leave-Related Laws • Personnel Policies and Handbooks • Independent Contractors and Unemployment Tax Issues • The Unemployment Claims and Appeals Process • Texas and Federal Wage and Hour Laws



Employer Hotline Hours: M-F, 8am-5pm

*Information provided by employment law attorneys in the Office of the
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Texas Workforce Commission*

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