



## Discharge for Misconduct (Firing)

**What the law says:** This issue is covered by Section 29(1)(b) of the *Michigan Employment Security Act*. The Act provides that if a worker is fired from a job due to misconduct that occurred in connection with the work, then the worker will be “disqualified” from benefits. The worker must then get another job and have earnings with that employer to “requalify” for benefits. But the employer from whom the worker was fired will not be charged for the benefits, even if the worker requalifies and draws benefits.

**What court cases have said:** Unemployment compensation cases say that to be misconduct, the actions by the worker must be harmful to the interests of the employer, and must be done intentionally or in disregard of the employer’s interests. Actions that are grossly negligent will also be considered misconduct. A single incident of misconduct or of gross negligence may be enough to disqualify a worker from unemployment benefits. A worker who commits many infractions may be disqualified, even if none of the infractions, alone, would be misconduct resulting in disqualification. However, the final incident in a series, for which the worker is fired, must itself show an intentional disregard of the employer’s interests.

However, if the actions by the worker show merely the worker’s inability to do the job correctly, or show an isolated case of bad judgment or negligence, then the worker will not be disqualified from receiving unemployment benefits. (This does not necessarily mean the employer did not have a good reason for firing the worker.) Acts committed by the worker that have no connection with the work will not result in disqualification if the employer fires the worker for them.

*Examples:* If a worker is consistently absent or tardy from work, without a justifiable excuse, the worker could be disqualified from receiving benefits. If a worker is discharged based on an arrest occurring on the worker’s own time and not connected with the job, then the worker would not be disqualified.

If a worker is discharged for being unable to meet production quotas, but is otherwise a cooperative worker, that worker will probably not be disqualified from receiving unemployment benefits.

**Proof at the Hearing:** If either the employer or the unemployed worker appeals the case to an Administrative Law Judge, then the employer must prove that the worker engaged in misconduct and that the misconduct occurred in connection with the work. Except in the most serious offenses, the employer must also prove that the worker was aware of the employer’s work rules and that the actions of the worker were harmful to the employer.

A statement at the hearing by either party is a form of proof. The statements at the hearing of witnesses may also be helpful in proving a case, since they give added weight to the statements of the worker or employer. Documents supported by testimony at the hearing may also be used as proof.

**For Further Help:** The Unemployment Insurance Agency Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing on this issue. Call 1-800-638-3994, Item 2.