

---

HOUSE BILL 2734

---

State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Clements, Chandler and Condotta

Read first time 01/12/2006. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to disqualification from unemployment compensation  
2 for using or being under the influence of intoxicating liquor or a  
3 controlled substance while acting in the scope of employment; amending  
4 RCW 50.04.294; and creating new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 50.04.294 and 2003 2nd sp.s. c 4 s 6 are each amended  
7 to read as follows:

8            With respect to claims that have an effective date on or after  
9 January 4, 2004:

10            (1) "Misconduct" includes, but is not limited to, the following  
11 conduct by a claimant:

12            (a) Willful or wanton disregard of the rights, title, and interests  
13 of the employer or a fellow employee;

14            (b) Deliberate violations or disregard of standards of behavior  
15 which the employer has the right to expect of an employee;

16            (c) Carelessness or negligence that causes or would likely cause  
17 serious bodily harm to the employer or a fellow employee; or

18            (d) Carelessness or negligence of such degree or recurrence to show  
19 an intentional or substantial disregard of the employer's interest.

1 (2) The following acts are considered misconduct because the acts  
2 signify a willful or wanton disregard of the rights, title, and  
3 interests of the employer or a fellow employee. These acts include,  
4 but are not limited to:

5 (a) Insubordination showing a deliberate, willful, or purposeful  
6 refusal to follow the reasonable directions or instructions of the  
7 employer;

8 (b) Repeated inexcusable tardiness following warnings by the  
9 employer;

10 (c) Dishonesty related to employment, including but not limited to  
11 deliberate falsification of company records, theft, deliberate  
12 deception, or lying;

13 (d) Repeated and inexcusable absences, including absences for which  
14 the employee was able to give advance notice and failed to do so;

15 (e) Deliberate acts that are illegal, provoke violence or violation  
16 of laws, or violate the collective bargaining agreement. However, an  
17 employee who engages in lawful union activity may not be disqualified  
18 due to misconduct;

19 (f) Violation of a company rule if the rule is reasonable and if  
20 the ~~((claimant))~~ employee knew or should have known of the existence of  
21 the rule; ~~((or))~~

22 (g)(i) With respect to claims that have an effective date on or  
23 after the effective date of this act, using or being under the  
24 influence of intoxicating liquor or any nonprescribed controlled  
25 substance when the employee is:

26 (A) Driving, or is in actual physical control of, a motor vehicle  
27 while acting within the scope of employment; or

28 (B) Acting within the scope of employment in a position identified  
29 as a safety-sensitive position by written employer policy that was in  
30 effect when the conduct occurred and concerning which the affected  
31 employee received actual notice.

32 (ii) For purposes of this subsection (2)(g):

33 (A) "Controlled substance" means the same as the definition in RCW  
34 69.50.101;

35 (B) "Motor vehicle" means the same as the definition in RCW  
36 46.04.320; and

37 (C) "Under the influence" means the standard established by the  
38 employer in a written policy that was in effect when the conduct

1 occurred and concerning which the affected employee received actual  
2 notice or, if the employer has not established such a written policy,  
3 the same as the standard in RCW 46.61.502.

4 (iii) This subsection (2)(g) does not limit application of this  
5 section to other misconduct involving intoxicating liquor or controlled  
6 substances; or

7 (h) Violations of law by the ((claimant)) employee while acting  
8 within the scope of employment that substantially affect the  
9 ((claimant's)) employee's job performance or that substantially harm  
10 the employer's ability to do business.

11 (3) "Misconduct" does not include:

12 (a) Inefficiency, unsatisfactory conduct, or failure to perform  
13 well as the result of inability or incapacity;

14 (b) Inadvertence or ordinary negligence in isolated instances; or

15 (c) Good faith errors in judgment or discretion.

16 (4) "Gross misconduct" means a criminal act in connection with an  
17 individual's work for which the individual has been convicted in a  
18 criminal court, or has admitted committing, or conduct connected with  
19 the individual's work that demonstrates a flagrant and wanton disregard  
20 of and for the rights, title, or interest of the employer or a fellow  
21 employee.

22 NEW SECTION. Sec. 2. The commissioner of the employment security  
23 department may adopt such rules as are necessary to implement this act.

24 NEW SECTION. Sec. 3. If any part of this act is found to be in  
25 conflict with federal requirements that are a prescribed condition to  
26 the allocation of federal funds to the state or the eligibility of  
27 employers in this state for federal unemployment tax credits, the  
28 conflicting part of this act is inoperative solely to the extent of the  
29 conflict, and the finding or determination does not affect the  
30 operation of the remainder of this act. Rules adopted under this act  
31 must meet federal requirements that are a necessary condition to the  
32 receipt of federal funds by the state or the granting of federal  
33 unemployment tax credits to employers in this state.

--- END ---