

## Illinois Supreme Court “Upgrades” Willful Misconduct Requirements in Unemployment Cases

Article By:

McDermott Will & Emery

---

The longstanding statutory definition of “*willful misconduct*” that would disqualify an unemployment insurance claimant has been “the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual’s behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.”

Previously, *Illinois* appellate courts had upheld denials of benefit claims in the absence of a specific rule when such a rule could be inferred by commonsense realization that certain conduct intentionally and substantially disregards an employer’s interests. However, the Illinois Supreme Court repudiated those cases.

The claimant, an airline employee with 24 years of service, had been asked by a friend at another airline whether she could do something special for a passenger scheduled to fly on the claimant’s airline. Her supervisor (who testified he had no personal knowledge of the incident leading to her termination) testified she was fired because she had “circumvent[ed] the policy and procedures of having management approval” by asking a catering employee to provide champagne to the passenger and asking a flight attendant to upgrade the passenger to first class. While the claimant’s termination letter cited two policies relating to misrepresentation and dishonesty, the employer’s protest of the claim for benefits did not cite those policies. Instead, the protest said the claimant left her work area without her manager’s approval to secure an undocumented upgrade for a friend of a friend, and that her conduct violated a reasonable and known policy she had been made aware of through personal computer-based training.

The claimant testified that she merely asked whether the favors were possible. She said the catering employee did not tell her it was not possible and the flight attendant said the upgrade would be no problem. Finally, she said that she was not aware of a rule or policy requiring a manager’s approval of requests for special treatment for a passenger and that she and acquaintances at other airlines did favors for the passengers of each other’s airlines in the past.

The Illinois Supreme Court unanimously held that “in the absence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a *prima facie* intentional tort.” Here, because there was no evidence submitted of a rule or policy

prohibiting an employee from requesting champagne or an informal upgrade for a passenger, and the claimant's testimony suggested it was not uncommon, the court found the agency's denial of benefits clearly erroneous.

Effective January 3, 2016, the statutory definition was amended to add a helpful list of certain circumstances that can qualify as misconduct, including falsification of documents to secure employment; failure to maintain required license, registration or certification; violation of reasonable legal attendance policies that are provided to the employee; gross negligence causing damage to the employer's property or endangering others; refusal to obey reasonable and lawful employer instructions; and certain substance abuse violations.

However, to insure that the company is able to successfully protest unemployment insurance claims on other bases that are important to the company, employers in the future should consider the following in light of this recent decision:

- For conduct that is to be prohibited that is not illegal, the employer will be required to introduce evidence that the employer:
  - Promulgated a reasonable policy or rule that the employee violated and that provides guidelines that are or should be known to the employee, and
  - Communicated the policy or rule to the employee.
- The documentation relating to the termination, the unemployment insurance protest and the evidence and testimony at the hearing should be consistent.
- The employer representative(s) providing testimony at the hearing should have personal knowledge of:
  - The policy or rule,
  - The employee's knowledge of the rule, and
  - The circumstances relating to the violation of the policy or rule that triggered the termination.

© 2025 McDermott Will & Emery

---

National Law Review, Volume VI, Number 41

Source URL: <https://natlawreview.com/article/illinois-supreme-court-upgrades-willful-misconduct-requirements-unemployment-cases>