



# In The Trenches

By Thomas R. Barton

## Practical Answers to Your HR Questions

**Q** *I am the comptroller for a small company. We are considering firing an employee for poor performance. He has a poor attitude, and doesn't get on well with his co-workers. The last straw was when he refused a direct order to perform a task that is part of his job. If we fire him, will he be eligible for unemployment compensation?*

**A** Probably not. Under the Utah Workforce Services Code, a former employee is not eligible for benefits if he has been discharged for "just cause," or for an act "which is deliberate, willful, or wanton and adverse to the employers' rightful interest." Utah Code Ann. 35A-4-405(2). It is the former employer's burden to prove that there was just cause to support the discharge. In order to prove this, the employer must show three things: 1) that the employee's conduct was culpable; 2) that the employee had knowledge of the conduct the employer expected; and 3) that the conduct causing the discharge was within the employee's control.

The applicable regulations state that run-of-the-mill poor performance will not satisfy the "just cause" standard. However, there are some recognized universal standards of behavior, which, if violated, will constitute "just cause." One of these is insubordination. Employers have the right to expect that supervisors will be respected and that reasonable instructions, given in a civil manner, will be obeyed. If you can show that this was the case, then the employee's claim for benefits may be denied.

A word of caution: The Division of Workforce Services is generally employee friendly, and these cases are very fact sensitive. The Division's "just cause" standard is not the same as generally accepted notions of just cause; nor does it make any difference if the employment was at-will. As a practical matter, the Division will be inclined to believe the former employee's story, and you will need to have a strong case of insubordination in order to prevail.

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If you have questions you would like considered for publication in future issues of *HR Views*, please send them to [pamgunnell@pipelinewireless.net](mailto:pamgunnell@pipelinewireless.net).

**Q** *Same employer, same employee. The employee's act of insubordination occurred on Friday, at the end of his shift. As he left, the employee told his supervisor that he was "through with this job." The employee's next shift is not until Tuesday. With respect to unemployment, would it be better to fire him now for insubordination, or wait until Tuesday to see if he shows up?*

**A** You should probably wait to see if he reports for work. It will be more difficult for the employee to recover unemployment benefits if he quits, as opposed to getting fired. However, just because he quits does not mean that he can't recover benefits.

If an employee quits voluntarily without good cause, the employee is not eligible for unemployment benefits. However, if the employee left work "under circumstances where it would be contrary to equity and good conscience" to deny benefits, then benefits will be allowed. Utah Code Ann. 35A-4-405(1). Unlike the situation where an employee is fired, in the case of a quit, the burden of proving good cause is with the former employee—not the employer. In order to prove good cause, the former employee must show that a quit was necessary in order to prevent an adverse effect which the employee could not control or prevent. It will be relevant whether the employee: 1) could have continued working while looking for a new job; 2) explored other alternatives with the company, like a transfer or a different schedule; or 3) made a good faith effort to work out his/her differences with the company before quitting.

In your case, you will want to evaluate all the facts before you make a decision. If you feel that allowing the employee back to work will create an even bigger problem, you may decide to fire him. If he makes a claim for unemployment benefits, you can then present a case of insubordination if you choose. Remember, you are not required to challenge a former employee's entitlement to benefits in situations like this. If the Division makes an initial determination of eligibility, you may decide that it is not worth the time and effort to fight it. However, you need to remember that such claims for benefits are tracked by the Division, and they could result in an increase in your unemployment contribution rate. ■