

HOUSE BILL REPORT

EHB 1749

As Passed House:

March 14, 1995

Title: An act relating to defining misconduct for unemployment insurance purposes.

Brief Description: Defining misconduct for unemployment insurance purposes.

Sponsors: Representatives Clements, Lisk, Blanton, Chandler, Lambert, Honeyford, Sheldon, Horn, Skinner, Hargrove, Fuhrman, Stevens, Radcliff, Huff, Schoesler and Backlund.

Brief History:

Committee Activity:

Commerce & Labor: 2/21/95, 2/28/95, 3/1/95 [DP].

Floor Activity:

Passed House: 3/14/95, 62-36.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 7 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Chris Cordes (786-7117).

Background: A person claiming unemployment insurance benefits is disqualified if he or she was discharged or suspended by the employer for misconduct connected with the work. The claimant is disqualified for five weeks and until he or she works and earns a specified amount of wages.

Since 1993, "misconduct" has been defined as an employee's act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business.

Before the 1993 amendment, "misconduct" was not defined in the statute, but was interpreted through court cases. The Washington Supreme Court used the following

test for on-the-job misconduct: (1) the employer's rule that was violated was reasonable under the circumstances of the employment; (2) the violative conduct was connected with work; (3) the employee's conduct violated the rule; and (4) the violations were intentional, grossly negligent, or continued to take place after notice or warnings, and the conduct was not mere incompetence, inefficiency, erroneous judgment, or ordinary negligence.

For off-the-job misconduct, the court also required a showing that the conduct resulted in some harm to the employer's interest and was done with the intent or knowledge that the employer's interest would suffer.

Summary of Bill: The definition of misconduct for purposes of unemployment insurance is modified. Language is deleted that required the employee to act in willful disregard of the employer's interest with the effect being to harm the employer's business. New provisions are added that define on-the-job misconduct and off-the-job misconduct.

On-the-job misconduct is an employee's act or failure to act that violates a reasonable written rule of the employer, that is connected with the employee's work, and that is intentional or grossly negligent, or is continued after documented notice or warning. It does not include an employee's conduct that is a result of incompetence, inefficiency, erroneous judgment, or ordinary negligence.

Off-the-job misconduct is an employee's act or failure to act that violates a reasonable written rule of the employer, that is connected with the employee's work, that has a reasonable and direct relation to the conduct of the employers business, that results in some harm to the employer's interest, and that was done with the intent or knowledge that the employer's interest would suffer.

If an employer contests benefits based on misconduct that violated an unwritten employer rule, the employer has the burden of proving the elements of the misconduct and must also establish, by at least two witnesses, that the rule and the expectation that the rule would be followed were communicated to the worker.

Appropriation: None.

Fiscal Note: Requested on February 14, 1995.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The current test determining misconduct for unemployment purposes is very subjective. It is also too restrictive, and very difficult to interpret. There are no court cases that provide guidance to the employers or the Employment Security department. This bill would provide a definition that is workable for employees,

employers, and the agency. All parties should, however, be willing to discuss language that would make the definition clear for everyone.

Testimony Against: The bill would reverse the current law and take the law back to the status under several court cases. These cases put the burden on the worker because there was no definition of a reasonable employer rule and no review of whether the rule was applied to all employees of the employer. Any concern about abuse of the system is controlled because an employee who breaks a rule is penalized by being fired. This bill creates another penalty. It is not clear how this bill would be interpreted and, therefore, it implicates an employee's free speech and collective action rights.

Testified: (In favor) Representative Jim Clements, prime sponsor; and Clif Finch, Association of Washington Business. (Opposed) Jeff Johnson, Washington State Labor Council. (Neutral) Graeme Sackrison, Employment Security Department.