

Illinois Amends Unemployment Act

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Amendments to the Illinois Unemployment Insurance Act, which take effect on Jan. 3, 2016, may mean employers will have a better chance of winning challenges to claims for unemployment benefits in instances where employees have engaged in specific types of misconduct. The changes to the Act, which Gov. Bruce Rauner signed into law on Dec. 4, include a new list of specific employee actions that constitute misconduct sufficient to disqualify an employee from unemployment benefits. For years, the Illinois Department of Employment Security has applied a general definition of misconduct in its analysis of eligibility for unemployment benefits that states “the term ‘misconduct’ means 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.” This definition meant the employer had to prove – with supporting evidence – such issues as how it provided warnings or instructions, how the employee repeated the misconduct, and how the employee’s conduct harmed the employer. Starting in 2016, the Act also will include the following specific work-related circumstances under the definition of misconduct, notwithstanding the general definition of misconduct in the Act:

1. Falsification of an employment application, or any other documentation provided to the employer, to obtain employment through subterfuge.
2. Failure to maintain licenses, registrations, and certifications reasonably required by the employer, or those that the individual is required to possess by law, to perform his or her regular job duties, unless the failure is not within the control of the individual.
3. Knowing, repeated violations of the attendance policies of the employer that are in compliance with state and federal law following a written warning for an attendance violation, unless the individual can demonstrate that he or she has made a reasonable effort to remedy the reason or reasons for violations or that the reason or reasons were out of the individual’s control. Attendance policies of the employer shall be reasonable and provided to the individual in writing, electronically, or via posting in the workplace.
4. Damaging the employer’s property through conduct that is grossly negligent.
5. Refusal to obey an employer’s reasonable and lawful instruction, unless the refusal is due to lack of ability, skills, or training for the individual required to obey the instruction or the instruction would result in an unsafe act.
6. Consuming alcohol, illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner, on the employer’s premises during working hours in violation of the employer’s policies.
7. Reporting to work under the influence of alcohol or illegal or non-prescribed prescription drugs, or using an impairing substance in an off-label manner in violation of the employer’s policies, unless the individual is compelled to report to work by the employer outside of

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scheduled and on-call working hours and informs the employer that he or she is under the influence of the substances included in this provision.

8. Grossly negligent conduct endangering the safety of the individual or co-workers.

To prepare for the changes, Illinois employers should ensure that attendance policies are up to date (and allow for time off in accordance with state or federal laws) and distributed via employee handbooks, notice postings, or in electronic form. If you do not already have employees sign a form to acknowledge their receipt and understanding of employer policies pertaining to attendance, alcohol/ drugs, and other key reasonable work rules, now would be a good time to consider doing so. Such documentation will be useful to demonstrate employees are on notice of the policies and understand that corrective action will be taken up to and including termination. Then, supervisors and managers should ensure that they are enforcing policies in a consistent manner and documenting any corrective action. In the event an employee must be separated for a reason included in the new list of “misconduct,” the documentation then can be used to provide a response to claims with the Illinois Department of Employment Security. The amendments to the Act also eliminate an offset that had reduced the unemployment benefits of older workers. Illinois currently reduces unemployment benefits for eligible individuals by one-half of the amount that an individual receives in Social Security retirement benefits – reportedly only one of two states that currently have such a practice in place. When the amendments take effect in January, the Social Security offset will be eliminated. According to published reports, the elimination of the offset for social security could amount to as much as \$25 million a year in unemployment benefits to older workers. The changes to the Act, which are in Public Act 99-0488, can be found [here](#).