



MISCONDUCT AND EMPLOYMENT INSURANCE

Section 30 of the *Employment Insurance Act*¹ stipulates that a person cannot receive employment insurance benefits if they lose their job because of their misconduct or if they voluntarily leave their job without just cause. The notion of misconduct has been defined in the case law over the years, because it is not defined in the act or the regulations.

Acts or omissions considered to be misconduct can be classified into five broad categories:

1) Illegal union activities

For example, this may involve participating in an illegal strike.

2) Absences from work

The fact that an employee is often late can constitute misconduct. The same is true of absences, if the employee does not inform the employer of the absence as soon as possible, does not give the employer reasons for his absence² or does not obtain the employer's prior authorization to be absent or late.³

3) Insubordination

This primarily involves an employee refusing to comply with the employer's orders, instructions or rules, or disobeying them. For example, an employee who refuses to perform a task that usually forms part of his functions⁴ or refuses to work reasonable and properly paid overtime may be guilty of misconduct in certain circumstances.

4) Hostile conduct

Every employee must act towards his employer, his colleagues, clients and the general public in such a manner as to avoid improper behaviour that may be perceived as an insult, harassment or provocation.

A lack of respect, rude behaviour, insolence, insults, threats and harassment may, if they constitute offensive behaviour that is incompatible with the performance of the functions for which their perpetrator was hired, constitute misconduct.

An assault obviously constitutes misconduct, unless the employee was provoked and had to defend himself.

¹ S.C. 1996, c. 23.

Text prepared by
M^e Karine L. Ruel,
lawyer at the
Montreal North
legal aid office

Contact Us

Commission des
services juridiques
Communications
Department
2 Complexe Desjardins
East Tower
Suite 1404
P.O. Box 123
Succursale Desjardins
Montreal, Quebec
H5B 1B3

Telephone: 514-873-3562
Fax: 514-873-7046

* The information set out in this document is not a legal interpretation.

The masculine is used to designate persons solely in order to simplify the text.



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5) Failure to comply with rules established by the employer

This may involve rules dealing with the following matters:

- clothing or appearance (wearing a uniform, hair length, etc.)
- safety (wearing protective eyewear or boots, etc.)
- consumption of alcohol⁵ or drugs⁶ (consuming alcohol on the work premises or coming to work drunk)
- serious professional lapses (sleeping on the job,⁷ using supplies for personal purposes, taking petty cash without authorization, etc.)
- the commission of a criminal offence, insofar as an essential condition of employment is no longer met.⁸

These are examples of the many possible situations that could be considered to be misconduct and exclude a claimant from receiving employment insurance benefits.

It should be noted that in order to constitute misconduct, the alleged act or omission must be wilful or deliberate or so reckless as to approach wilfulness.

The purpose of the provisions of the *Employment Insurance Act* is to provide financial support to employees who lose their job through no fault of their own and to encourage their reintegration into the job market.

Note: The decisions cited below are available on the website of the Federal Court of Appeal at: <http://decisions.fca-caf.gc.ca/en/index.html>.

² *Canada (Attorney General) v. Bergeron*, 2011 FCA 284.

³ *Canada (Attorney General) v. Caron*, 2009 FCA 141.

⁴ *Canada (Attorney General) v. Jolin*, 2009 FCA 303.

⁵ *Canada (Attorney General) v. Doucet*, 2012 FCA 105.

⁶ *Lepretre v. Canada (Attorney General)*, 2011 FCA 30.

⁷ *Canada (Attorney General) v. Roberge*, 2009 FCA 336.

⁸ *Canada (Attorney General) v. Levesque*, 2010 FCA 238.

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