



2024 Offboarding Palooza!

**Tricky Separations:
Working Through
Special Cases**

EQUIFAX®

Workforce
Solutions

Thanks for joining our webinar



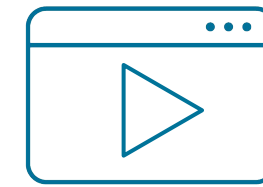
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Today's Speakers



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Agenda

- 1 Performance Discharge: Misconduct vs. Inability
- 2 Understanding Attendance Issues
- 3 Still Working and Filing for Unemployment Benefits
- 4 Understanding Partial Benefits



Performance Discharge

Misconduct vs. Inability

Why is it important to know the difference?



Misconduct is a protestable reason for separation.

An **inability** to perform the job is a non-protestable issue.

Misconduct

Misconduct generally exists when an employee's work behavior **shows disregard** for expected standards of behavior.

What is Misconduct?

Misconduct is generally when there are deliberate, willful, or intentional acts by the employee that:

- Violate local, state or federal laws
- Could cause injury to another person
- Violate a company's policy after prior warnings

Documentation That Can Help Prove Misconduct

A Detailed Description

Details that
could help
support your
case are:

The dates of
employment

A description of
the final incident

The person who
terminated the
employee

A copy of the
company policy
& a document
signed by the
employee
acknowledging
receipt of the
policy/handbook

Copies of Prior Warnings

It can help
improve your
case to
include
copies of
prior
warnings that
have:

Details of similar
incidents

Date of the
incident(s)

Details of what
happened

Statement of
further
disciplinary
actions

Isolated Incident



A **single isolated incident** of poor judgment or ordinary carelessness, by itself, generally is not considered misconduct.

Document Previous Ability

It could improve your case to include documentation showing that the employee **was previously meeting standards.**

Outline Specific Acts

Specific acts which could demonstrate misconduct may include:

- Excessive personal phone calls or emails
- Long breaks
- Long Lunches
- Carousing
- Unauthorized computer use

Inability

Inability generally exists when an employee was hired to do a job and, for whatever reason, **cannot grasp how to perform the job.**

Or, an employee was able to perform the job to the standard of the company in the past, but a **new system was put in place that changes how the job is performed.**

What is Inability?

Inability is generally when an employee:

- Cannot grasp how to perform the job
- Is not breaking any rules or purposefully doing something wrong
- Is trying his/her best, but the position is a bad fit

Inability Example



**Sally was
ultimately
discharged**

**Sally is a Travel
Agent in a Call
Center**

**She must book 10
trips per day**

**Sally can only
book 5 trips per
day even after
training**

**Sally's manager
worked with her
one-on-one**

**Would Not
Vs.
Could Not**

Examples of Misconduct vs. **Inability**

Maybe this person is consistently found outside of the working area socializing with other employees.



Maybe this person is working to the best of her ability but not being able to maintain or meet the employer's minimum standard.



Multiple Warnings and Misconduct



The amount of warnings or prior coachings **does not equal misconduct.**

If it cannot be proven that the claimant had previously met the standard, then this will often be seen as an inability to perform the job.

Best Practices



Provide a separation reason that reflects details about the separation

For a performance case, select a separation reason that best describes the case at hand

Do not select Unsatisfactory Work Performance unless it is a true inability to perform



Understanding Attendance Issues

Making a Strong Discharge Case



Show you have a reasonable policy of which the claimant was aware, but disregarded.

Strong cases often have first hand witnesses.

Strong cases often have a signed company policy.

Strong cases often have prior warnings and proof of misconduct.

Quit or Discharge? Job Abandonment/No Call No Show

If the claimant fails to call in and report to work, and never makes contact again, this is often seen as a **quit**.

If the claimant fails to call in and report to work, but later returns to the workplace, this case could be viewed as a **discharge**.

Quit or Discharge?



Mary

Reported absence
due to illness, thus
following
company policy

Texted her
manager due to
another absence
issue arising, thus
following
company policy

Received a
warning about her
absences

Did not call, text,
or email about her
latest absences.
The manager's
communications
were ignored.
Mary was a no
call, no show for 3
days.

Final Incident

For any discharge case,
the employer has to
show misconduct
occurred during the
final incident.

Absences Beyond the Claimant's Control?

Illness

- Of the claimant or family member
- Obtain a doctor's note if possible

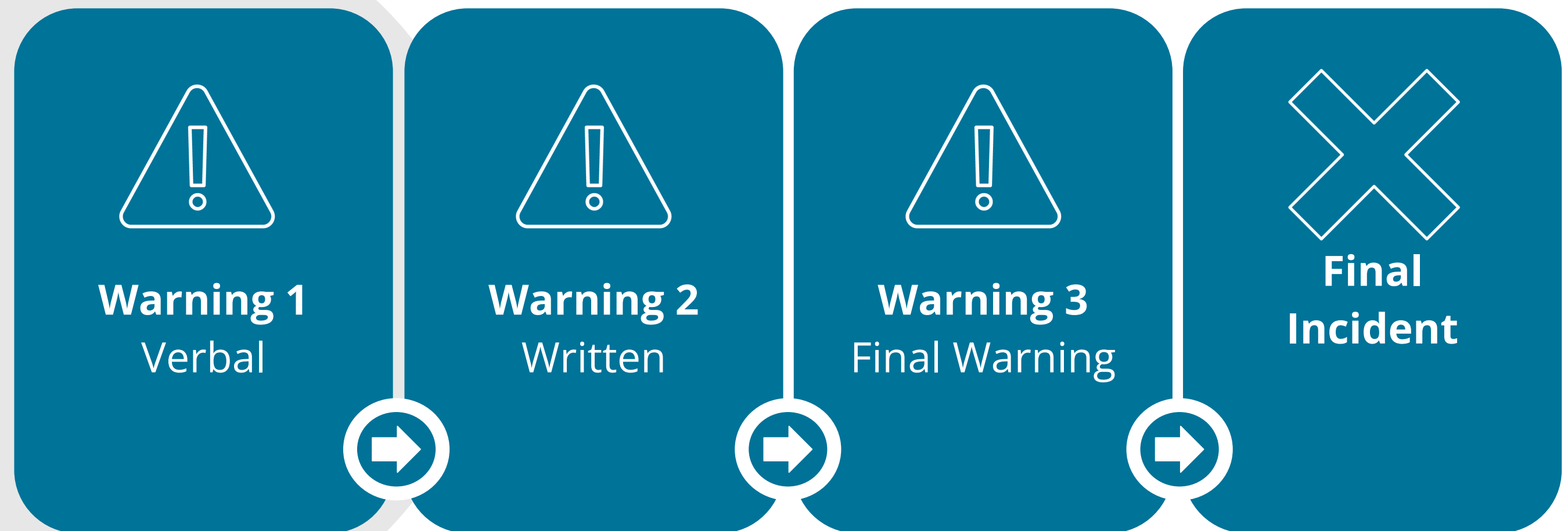
Childcare Issues

Transportation Problems

Prior Warnings for Similar Behavior

Example of Progressive Disciplinary Action

It can help improve your case to **include copies of prior warnings** that focus on similar behaviors only.



Signed Company Policy

In order to meet the burden of proof, you will have to show that you have a uniformly enforced policy of which the worker was aware.

It can be useful to have a signed acknowledgement of the company policy to prove this.

- Show that you followed all progressive disciplinary actions outlined in the policy
- Provide copies of warnings for similar behaviors



Still Working and Filing for Unemployment Benefits

Claimant Requirements

- 1** Able to Work
- 2** Available for Work
- 3** Actively Seeking Work
- 4** Meet State Monetary Requirements
- 5** No Fault of Their Own

- *Claimants must meet all eligibility requirements to collect benefits*
- *Claimants may be temporarily disqualified and can overcome those disqualifications*

Can Someone Still Employed File For Unemployment?

Questions to ask before responding this case type:

- What is the claimant's status?
- How many hours is the claimant currently working?
- Do these hours vary?
- Is the claimant guaranteed a specific amount of hours per week?
- Has there been a time in the past that the claimant was laid off or had a reduction in hours enough though they are currently a full time employee?
- Has the claimant accepted all hours offered to them?

Regular Full or Part Time Employment

As long as you can show that **hours do not change based on the needs of the business**, these types of cases should be pursued.

Three Categories of Part Time Employment

Regular Part Time

Works a less than full time schedule that does not vary

Works All Available Hours

Schedule varies from week to week

On Call or Per Diem

Works as needed

Which claim should be protested?

Nancy works at the local health clinic as a full time Certified Nursing Assistant and always works 40 hours per week without any fluctuation.

Susan also works at the local health clinic as an On Call Nurse, so some weeks she works 40 hours per week and some weeks she is only needed for 20 hours.

NANCY'S CLAIM

Since Nancy works full time 40 hours per week, and the local health clinic can prove this by supplying her pay statement to the state, Nancy should not be eligible to receive unemployment benefits.

The local health clinic receives unemployment claims for both Nancy and Susan.

Unavailable for Work



Claimant must be available and seeking work

Claimant is still employed but not working all available hours
(Calling out, giving away scheduled shifts, etc.)

Respond asking the state to investigate if the claimant is meeting all eligibility requirements

Employee must meet all five requirements to be eligible



Understanding Partial Benefits

Partial Unemployment

Earning less than the weekly benefit amount

- Claimant has a fluctuating schedule and is accepting all available hours
- State calculates a claimant's weekly benefit amount based on their earnings history
- State determines if a claimant is eligible for benefits by determining the weekly benefit amount (WBA) and subtracting the actual earnings.

Employee is responsible for reporting their wages to the state weekly

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Partial Unemployment Example



Janice

Janice works **part time** at a retail store and the hours are based on business needs. Janice works **30 hours** one week. The second week she works **15 hours**.

State sets Weekly Benefit Amount (WBA) at \$200

Week 1 Janice earned \$300 and will not receive any benefit since she earned over the WBA

Week 2 Janice earned \$150 and is eligible to collect \$50 difference to meet the WBA

Recap

- 1 Intentional misconduct vs. those outside claimant's control
- 2 Inability to meet performance expectations
- 3 Absenteeism and tardiness
- 4 Filing when still employed & partial unemployment benefits

Q & A Session

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