

## Guidance on Attendance-Related Separations

The Division of Unemployment Insurance uses several factors to determine if a claimant is entitled to benefits when that claimant was discharged for violating an employer's attendance policy. The information below specifically and only applies to potential disqualifications as a result of attendance-related reasons as defined in section [8-73-108 \(5\)\(e\)\(XX\)](#), Colorado Revised Statutes (C.R.S.).

Remember, every separation from employment is treated as unique, and the circumstances differ from case to case. The Division does not rely solely on any single factor in making the determination, but considers the totality of the circumstances and all relevant factors in accordance with applicable statutes and cases.

### The Most Important Factor

Per the [Colorado Employment Security Act](#) (CESA), the determining factor as to whether a claimant is entitled to unemployment insurance benefits is **whether the claimant is at fault for the separation as defined by Section 8-73-108 (4), C.R.S.**

“Fault” is generally defined as the claimant's exercise of **control or choice** over the circumstances that cause the separation. The claimant can be disqualified from benefits if it is determined that he or she exercised control or choice over the circumstances that caused the separation **and** if the conduct falls under one of the categories in CESA that would result in a disqualification from receiving benefits.

### Many Other Factors Are Also Considered

Just because a claimant was fired for being absent from or tardy to work after being warned does not end the inquiry as to whether the claimant is entitled to benefits. The Division must investigate the **causes** of those tardies and/or absences.

Usually, a claimant can be entitled to unemployment insurance benefits if he or she is terminated from employment for circumstances that are **outside of his or her control**. This means that even if an employer has an attendance policy in place, and the claimant is aware of the policy and knows he or she risks getting fired as a result of poor attendance, there is still more to be considered, including whether or not the employer consistently applied the policy in relation to all employees.

It is important to note that if it is found that the claimant did **not** exercise control or choice over the events that caused him or her to be late to work or be absent from work, he or she may be entitled to receive benefits.

CESA states that a claimant is disqualified from receiving unemployment insurance benefits due to **excessive** absenteeism or tardiness. “Excessive” is not only defined by how many times a claimant was absent or tardy in a specific time period. Other factors considered when deciding if the absences or tardies were excessive include:

- The **reason** for the absence or lateness.
  - Whether or not the claimant had control or choice over the circumstances that caused him or her to be absent or late, each time this occurs.

- Whether the attendance occurrences were **reasonably justified** under the circumstances.
- Conditions that were outside of the claimant's control, (for example, unexpected traffic due to a car accident, or an illness that prevents the claimant from being able to work.)
- The existence of an attendance policy of which the claimant was aware.
- The employer's consistency in applying the attendance policy.
- Prior warnings for attendance.
- The frequency of infractions.
- The reasonableness of the claimant's actions in attempting to prevent any attendance occurrences.

Keep in mind that a claimant may sometimes have exercised control over being tardy or late, and sometimes not. For the times when the claimant could have controlled the situation, the Division looks at the additional factors listed above **and** also considers the total number of attendance occurrences for which the claimant was at fault versus those for which he or she was not at fault. As noted in the last bullet point above, also examined are any actions the claimant may have taken to try and prevent the infraction from happening again. For example, the claimant might leave home earlier in order to prevent ongoing tardiness as a result of heavy traffic, or decide to use two alarm clocks instead of just one if he or she has a tendency to oversleep.