Industrial Claim Appeals Office
Law Library

The library contains information on various topics in unemployment law, including relevant statutes and regulations, as well as case law from the Colorado courts. **This is not an exhaustive list of every statute and court decision that involves unemployment insurance, nor is there information on every issue that can arise in this area.** Rather, this document is designed to provide a general overview of the law concerning the most commonly occurring unemployment issues.

For each topic listed, the relevant sections of the Colorado Employment Security Act (from the Colorado Revised Statutes) and the Regulations Concerning Employment Security (from the Code of Colorado Regulations) are listed below. The complete Colorado Employment Security Act and Regulations Concerning Employment Security can be accessed by clicking the appropriate link in the Reference Library.

Please Note: If a topic listed in this library includes references to statutes outside the Colorado Employment Security Act, those statutes are available online through the following website: **Complete Colorado Revised Statutes**. Select Colorado Revised Statutes, and Title 8 - Labor and Industry.

You may also look up individual court cases directly in our **Table of Cases**, which is an alphabetical list of every case in this library.

This website was created for general information purposes only, and is not an official publication. Although every effort has been made to ensure the accuracy of the information provided, we do not guarantee that there are no errors or omissions.

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City and County of Denver v. Industrial Commission, 756 P.2d 373 (Colo. 1988)
Once the employer establishes a prima facie case for disqualification, it is the claimant's burden to establish that his or her conduct was not volitional.

Collins v. Industrial Claim Appeals Office, 813 P.2d 804 (Colo. App. 1991)
To be at fault for the separation, the claimant need only have acted volitionally, or exercised control in the circumstances that led to the separation.

Gonzales v. Industrial Commission, 740 P.2d 999 (Colo. 1987)
Whether a claimant was discharged according to the employer's disciplinary guidelines is a separate issue from whether the claimant's conduct was disqualifying. That assessment requires consideration of the totality of the circumstances which caused the separation, including whether the claimant acted volitionally in the circumstances that caused the separation.

Keil v. Industrial Claim Appeals Office, 847 P.2d 235 (Colo. App. 1993)
The employer's failure to follow its established disciplinary procedures prior to terminating a claimant is a factor to be considered, but is not dispositive of whether the claimant acted volitionally in the circumstances that caused the discharge.

Pabst v. Industrial Claim Appeals Office, 833 P.2d 64 (Colo. App. 1992)
A warning is not a prerequisite to an individual's ability to engage in volitional conduct. All that is necessary is the claimant knew what was expected and failed to comply.

Richards v. Winter Park Recreational Association, 919 P.2d 933 (Colo. App. 1996)
The concept of "fault" does not require culpability or an intentional act, but does requires volitional conduct on the part of the claimant. The claimant acts volitionally if he or she exercises some control or choice in the circumstances leading to the separation such that the claimant can be said to be responsible for the separation.

Santa Fe Energy Co. v. Baca, 673 P.2d 374 (Colo. App. 1983)
An award warranted under § 8-73-108(4), even if no specific award section is applicable, where claimant is not "at fault" in the circumstances.

Zelingers v. Industrial Commission, 679 P.2d 608 (Colo. App. 1984)

A claimant who was terminated for missing work did not act volitionally to cause her separation when she was given at least tacit permission to miss work and was not told her job would be in jeopardy if she was absent.

Lack of work

Statute

§ 8-73-108(4)(a)

Cases

Intermountain Jewish News, Inc. v. Industrial Commission, 39 Colo. App. 258, 564 P.2d 132 (1977)
An agreement that a claimant's employment would end on a certain date did not preclude the claimant from receiving unemployment benefits, and the evidence supported an award of benefits under § 8-73-108(4)(a).

Health

Statute

§ 8-73-108(4)(b)(I)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

Andersen v. Industrial Commission, 167 Colo. 281, 447 P.2d 221 (1968)
There is no requirement that a claimant be advised to quit by a physician in order to be entitled to unemployment benefits; rather, a medical statement is only required if the employer requires or requests one according to the terms of the statute.

Frontier Airlines v. Industrial Commission, 734 P.2d 142 (Colo. App. 1986)
Claimants who were on mandatory leave from their jobs as flight attendants due to pregnancy were "separated" from employment, even if the separation was only partial, and the employer's continuation of "employee benefits" to the claimants did not preclude a determination that the claimants were separated from employment. Further, § 8-73-108(4)(b)(I) is an exception to the general rule in Sec. 8-73-108(1)(a) that claimants must be unemployed through no fault of their own, and thus the claimants did not have to show they became pregnant through no fault of their own.

Hodges v. Canon Lodge Medical Investors, Ltd., 879 P.2d 476 (Colo. App. 1994)
Where the claimant has informed the employer of his or her health condition, it is not required that the claimant specifically inform the employer that the health condition is the cause of the claimant's resignation.

Nelson v. Industrial Claim Appeals Office, 826 P.2d 436 (Colo. App. 1992)

The claimant and his wife both had significant medical problems, and both were covered under the wife's insurance plan. The wife's employer required her to transfer to California, and the claimant quit his job in Colorado to move with her so that they could maintain their insurance coverage. As there was no evidence the couple's medical problems were work-related or that anything in the vicinity of their jobs in Colorado contributed to their medical conditions, and there was no indication that the medical treatment in Colorado was inadequate, the court held that the claimant quit for financial rather than health reasons and denied unemployment benefits.

Public Service Company of Colorado v. Ingle, 794 P.2d 1374 (Colo. App. 1990)

In order to be entitled to unemployment benefits for having to seek a new occupation because of health reasons under § 8-73-108(4)(b)(I), a claimant must be required to seek a new line of work, not simply another job. Also, if the employer fails to ask for medical documentation to substantiate the cause of the claimant's resignation, the claimant is not precluded from being awarded unemployment benefits for failing to provide that information.

Savio House v. Dennis, 665 P.2d 141 (Colo. App. 1983)

Evidence of causation in a workers' compensation case was not limited to medical testimony or evidence; the claimant's testimony as to her condition was sufficient to support an award of benefits.

Addiction

Statute

§ 8-73-108(4)(b)(IV)

Cases

City and County of Denver v. Industrial Commission, 756 P.2d 373 (Colo. 1988)

Alcoholism or is not inherently non-volitional, and that conduct induced by alcoholism may or may not be voluntary, depending on whether the claimant had the ability to exercise control over his or her actions. Moreover, the claimant is required to make a prima facie showing that his or her behavior directly resulted from alcoholism that was for the claimant non-volitional.

Fowler v. Carder, Inc., 849 P.2d 917 (Colo. App. 1993)

A declaration by the claimant that he was addicted to alcohol was one of the requirements of § 8-73-108(4)(b)(IV), but was not enough to satisfy part (B) of the statute, the substantiation requirement. Further, as the claimant did not provide substantiation of his claim of being an alcoholic, and denied that he was being treated for his alcoholism, he did not have four weeks within which to present proof of a treatment plan under part (C).

Unsatisfactory working conditions

Statute

§ 8-73-108(4)(c)

Cases

Campbell v. Industrial Claim Appeals Office, 97 P.3d 204 (Colo. App. 2003)
A claimant's failure to provide evidence of the working conditions for workers performing the same or similar work for the same or other employers does not bar an award for unsatisfactory working conditions if sufficient evidence was shown to satisfy the statute. However, if such evidence is presented, it must be considered along with the other relevant factors in the statute.

Gatewood v. Russell, 29 Colo. App. 11, 478 P.2d 679 (1970)
"[T]he reason for voluntary termination of employment must be for objective rather than personal reasons." In this case, although the claimant asserted he quit because of harassment, those circumstances were found to be a personality conflict with his supervisor. Therefore, because the claimant quit for subjective personal reasons, the claimant was disqualified from the receipt of unemployment benefits.

Hellen v. Industrial Commission, 738 P.2d 64 (Colo. App. 1987)
There is no requirement that the claimant must show he or she was singled out for unsatisfactory treatment by a supervisor. Rather, "the only relevant consideration is whether the nature of such supervision was 'reasonably to be expected,'" and thus the claimant is entitled to an award even if the unreasonable supervision was applied to all employees.

Musgrave v. Eben Ezer Lutheran Institute, 731 P.2d 142 (Colo. App. 1986)
A claimant is not required to notify the employer of his or her dissatisfaction with the working conditions in order to be entitled to an award of unemployment benefits.

Substantial changes in working conditions

Statute

§ 8-73-108(4)(d)

Cases

Arias v. Industrial Claim Appeals Office, 850 P.2d 161 (Colo. App. 1993)
If the claimant's separation from employment was caused by a substantial change in working conditions, or unsatisfactory working conditions, the claimant is entitled to an award only if the conditions were less favorable to the claimant than conditions prevailing among similar workers in that locality, either by the same or similar employers.

Chris the Crazy Trader, Inc. v. Industrial Claim Appeals Office, 81 P.3d 1148 (Colo. App. 2003)

The Division and the hearing officer do not have a duty to seek or obtain evidence concerning working conditions for employees doing similar work for other employers in the locality. Rather, it is the responsibility of the parties to present their own evidence.

Gray Moving and Storage, Inc. v. Industrial Commission, 38 Colo. App. 419, 560 P.2d 482 (Colo. App. 1976)

"Overt acts or conduct by the employer directed at one employee . . . is sufficient to support a full award. It is not required that working conditions become impossible, only that there be a substantial change." Here, a supervisor's derogatory treatment and ostracism of the claimant constituted a substantial and less favorable change in working conditions for the claimant.

Larsen-Oldaker v. Industrial Commission, 735 P.2d 209 (Colo. App. 1987)

When the claimant quits as the result of a substantial change in working conditions, such as after being demoted, if the reason for the change is because of disqualifying conduct on the part of the claimant, then the claimant shall be disqualified from receiving unemployment benefits.

Martinez v. Industrial Commission, 657 P.2d 457 (Colo. App. 1982)

A disqualification for quitting due to dissatisfaction with standard working conditions is improper where a claimant quit because of a job change he interpreted as a demotion. Further, the claimant's loss of supervisory or managerial duties was a substantial change in working conditions.

Musgrave v. Eben Ezer Lutheran Institute, 731 P.2d 142 (Colo. App. 1986)

If a claimant acquiesces to a substantial change in working conditions, those conditions become the claimant's standard working conditions, and may disqualify the claimant from receiving unemployment benefits if he or she subsequently quits because of dissatisfaction with the new standard working conditions. However, a claimant's failure to notify the employer of his or her dissatisfaction with the working conditions does not bar an award of benefits.

Nimmo v. Town of Monument, 736 P.2d 435 (Colo. App. 1987)

A claimant was in a probationary period as an assistant maintenance supervisor, but the position was eliminated and the claimant was given a position as a permanent maintenance worker at the same pay grade. The court held that even though the claimant did not quit until six months after the change in working conditions, he did not acquiesce to the change as he had filed a grievance and a lawsuit during that time.

Warburton v. Industrial Commission, 678 P.2d 1076 (Colo. App. 1984)

A claimant who quit after being told her supervisory duties would be shared with another employee, and whose supervisory duties would be decreased because of a staff reduction was entitled to unemployment benefits because of a substantial change in working conditions.

Wargon v. Industrial Claim Appeals Office, 787 P.2d 668 (Colo. App. 1990)

Determination of whether any change in the working conditions was substantially less favorable, or there was "good cause" for refusing the transfer, must be made using an objective standard, and is not based on the claimant's subjective view or preferences.

Unreasonable reduction in rate of pay

Statute

§ 8-73-108(4)(e)

Cases

Rulon v. Industrial Commission, 728 P.2d 739 (Colo. App. 1986)
A claimant's pay reduction was unreasonable when the reduction was due to deficiencies in the claimant's performance, but she was not informed that she was failing to meet expectations and given an opportunity to improve.

Quitting for another job (construction workers only)

Statute

§ 8-73-108(4)(f)

Cases

Baldwin v. Industrial Claim Appeals Office, 813 P.2d 807 (Colo. App. 1991)
Upholds Getts and the determination that § 8-73-108(4)(f) does not violate equal protection guarantees under the constitution.

Getts v. Industrial Claim Appeals Office, 804 P.2d 282 (Colo. App. 1990)
§ 8-73-108(4)(f) does not violate equal protection guarantees under the constitution.

Election to accept termination instead of replacing another worker

Statute

§ 8-73-108(4)(g)

Cases

None

Violation of a written contract

Statute

§ 8-73-108(4)(h)

Cases

None

Discharged without a reason given to claimant or division

Statute

§ 8-73-108(4)(i)

Cases

None

Physically or mentally unable to perform the work or unqualified to perform the work

Statute

§ 8-73-108(4)(j)

Cases

Colorado State Judicial Department v. Industrial Commission, 630 P.2d 102 (Colo. App. 1981)

> "Physical inability to work has been defined as the inability to perform the labor, or equally remunerative work, that an injured person was engaged in at the time of his injury." Here, a claimant who could not get out of bed some days, or could not remain sitting or standing for extended periods of time was physically unable to work.

Electronic Fab Technology Corp. v. Wood, 749 P.2d 470 (Colo. App. 1987)

> When the employer was aware that the claimant was experiencing health problems due to the workload, the evidence supported an award of benefits to the claimant who was mentally and physically unable to perform the work. Also, the claimant can be awarded unemployment benefits if the claimant is either mentally or physically unable to perform the work, or if the claimant is unqualified for the job because of insufficient skills; there is no requirement that both must be shown.

Mountain States Telephone and Telegraph Co. v. Industrial Commission, 637 P.2d 401 (Colo. App. 1981)

> Illness that is not necessarily disabling, and absences resulting from such illness, can constitute a physical inability to perform the work.

Refusal with good cause to work overtime

Statute

§ 8-73-108(4)(k)

Cases

Action Key Punch Service, Inc. v. Industrial Commission, 709 P.2d 970 (Colo. App. 1985)
In order to warrant award of unemployment benefits where claimant refuses to work overtime, circumstances must be so compelling that claimant was deprived of making volitional choice in refusing. Here, a previously planned birthday party was not a compelling personal reason under § 8-73-108(4)(k) for justifying refusal to work overtime.

Instruction to perform illegal act

Statute

§ 8-73-108(4)(l)

Cases

None

Involuntary retirement

Statute

§ 8-73-108(4)(m)

Cases

None

Unsuitable work

Statute

§ 8-73-108(4)(n)

Cases

Bayly Mfg. Co. v. Department of Employment, 395 P.2d 216, 155 Colo. 433 (Colo. 1964)
Claimants are entitled to a reasonable period in which to compete for a permanent job commensurate with their skill level and prior earnings, but jobs which are unsuitable at the inception of the unemployment may become suitable given the length of unemployment and prospects for obtaining customary work at the prior earning level.

Industrial Commission v. Lazar, 111 Colo. 69, 137 P.2d 405 (1943)
The distance of the work from the claimant's residence is a relevant consideration in assessing whether work was "suitable."

Industrial Commission v. Zavatta, 166 Colo. 365, 443 P.2d 982 (1968)
Work at a substantially lower wage should not be deemed suitable unless a claimant has been give a reasonable period in which to compete for such positions. However, in this case, an offered wage that was at most 5% lower was not a substantial difference.

Toston v. Industrial Commission, 160 Colo. 281, 417 P.2d 1 (1966)
A claimant is entitled to a reasonable period in which to compete for a job at a pay rate commensurate with his or her prior earnings.

Personal harassment by the employer

Statute

§ 8-73-108(4)(o)

Cases

Colorado Division of Employment and Training v. Hewlett, 777 P.2d 704 (Colo. 1989)
Sexual harassment may be "personal harassment by the employer not related to the performance of the job," as provided in § 8-73-108(4)(o) to warrant an award of benefits.

Marlin Oil Co. v. Industrial Commission, 641 P.2d 312 (Colo. App. 1982)
Harassment does not have to be continuous and substantial; all that is required is that the claimant was harassed and the harassment was not related to the performance of the job.

Survey Solutions, Inc. v. Industrial Claim Appeals Office, 956 P.2d 1275 (Colo. App. 1998)
"Personal harassment" is to be determined using an objective standard, and the issue is whether the conduct was so troubling, vexing, and annoying as to cause a reasonable person to resign.

Business closure because the employer is called to active military duty

Statute

§ 8-73-108(4)(p)

Cases

None

Domestic violence

Statute

§ 8-73-108(4)(r)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

None

Quitting to relocate with military spouse

Statute

§ 8-73-108(4)(s)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

None

Quitting to relocate because spouse killed in combat

Statute

§ 8-73-108(4)(t)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

None

Quitting to relocate with spouse who is transferred in his or her job

Statute

§ 8-73-108(4)(u)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

None

Caring for ill family member

Statute

§ 8-73-108(4)(v)

Senate Bill 13-011 is effective as of April 4, 2013.

Cases

None

Disqualification

Dissatisfaction with standard working conditions

Statute

§ 8-73-108(5)(e)(I)

Cases

Eckart v. Industrial Claim Appeals Office, 775 P.2d 97 (Colo. App. 1989)
There may be more than one proximate cause, but it is the hearing officer's responsibility to determine the cause or causes of a separation from employment.

Gatewood v. Russell, 29 Colo. App. 11, 478 P.2d 679 (1970)
"[T]he reason for voluntary termination of employment must be for objective rather than personal reasons." In this case, although the claimant asserted he quit because of harassment, those circumstances were found to be a personality conflict with his supervisor. Therefore, because the claimant quit for subjective personal reasons, the claimant was disqualified from the receipt of unemployment benefits.

Jennings v. Industrial Commission, 682 P.2d 518 (Colo. App. 1984)
A claimant who continued working for seven months after the workload increased for both caseworkers, and accepted a raise during that time, acquiesced to the change in working conditions, which then became her standard working conditions.

Muhlenkamp v. Industrial Claim Appeals Office, 802 P.2d 1127 (Colo. App. 1990)
There is no substantial change in working conditions where the claimant knew from outset that his normal duties as to each of two components of his job would be compensated differently.

Musgrave v. Eben Ezer Lutheran Institute, 731 P.2d 142 (Colo. App. 1986)
If a claimant acquiesces to a substantial change in working conditions, those conditions become the claimant's standard working conditions, and may disqualify the claimant from receiving unemployment benefits if he or she subsequently quits because of dissatisfaction with the new standard working conditions.

Rotenberg v. Industrial Commission, 42 Colo. App. 161, 590 P.2d 521 (1979)
A claimant who quit because of cigarette smoke in the work environment did not show the working conditions were unsatisfactory or hazardous apart from his subjective assertions of discomfort, and was properly disqualified.

Wargon v. Industrial Claim Appeals Office, 787 P.2d 668 (Colo. App. 1990)

Determination of whether any change in the working conditions was substantially less favorable, or there was "good cause" for refusing the transfer, must be made using an objective standard, and is not based on the claimant's subjective view or preferences.

Dissatisfaction with reasonable supervision

Statute

§ 8-73-108(5)(e)(I)

Cases

Gatewood v. Russell, 29 Colo. App. 11, 478 P.2d 679 (1970)

"[T]he reason for voluntary termination of employment must be for objective rather than personal reasons." In this case, although the claimant asserted he quit because of harassment, those circumstances were found to be a personality conflict with his supervisor. Therefore, because the claimant quit for subjective personal reasons, the claimant was disqualified from the receipt of unemployment benefits.

Musgrave v. Industrial Claim Appeals Office, 762 P.2d 686 (Colo. App. 1988)

Although the employer could have acted more reasonably under the circumstances, that did not justify an award for the claimant who quit because of her personal dissatisfaction with the employer's otherwise reasonable actions.

Quitting to marry

Statute

§ 8-73-108(5)(e)(III)

Cases

None

Quitting to move to another area as a matter of personal preference

Statute

§ 8-73-108(5)(e)(IV)

Cases

Mountain States Telephone & Telegraph Co. v. Dept. of Labor & Employment, 197 Colo. 335, 592 P.2d 808 (1979) (Decided under prior law)

The claimant quit her job to move to California with her husband, who had obtained employment there. The claimant was awarded benefits, but the court held that the Industrial Commission was mandated to apply the unemployment statute as intended, and a reduction of benefits could not be avoided on the basis of the claimant's martial obligation.

Nelson v. Industrial Claim Appeals Office, 826 P.2d 436 (Colo. App. 1992) (Decided under prior law)
The claimant and his wife both had significant medical problems, and both were covered under the wife's insurance plan. The wife's employer required her to transfer to California, and the claimant quit his job in Colorado to move with her so that they could maintain their insurance coverage. As there was no evidence the couple's medical problems were work-related or that anything in the vicinity of their jobs in Colorado contributed to their medical conditions, and there was no indication that the medical treatment in Colorado was inadequate, the court held that the claimant quit for financial rather than health reasons and denied unemployment benefits

Quitting to seek or accept other work

Statute

§ 8-73-108(5)(e)(V)

Cases

Baldwin v. Industrial Claim Appeals Office, 813 P.2d 807 (Colo. App. 1991)
Upholds Getts and the determination that § 8-73-108(4)(f) does not violate equal protection guarantees under the constitution.

Collins v. Industrial Claim Appeals Office, 813 P.2d 804 (Colo. App. 1991)
A claimant who quit his job for what he considered to be a better job was not entitled to unemployment benefits, because he did not meet the requirements of § 8-73-108(4)(f).

Getts v. Industrial Claim Appeals Office, 804 P.2d 282 (Colo. App. 1990)
§ 8-73-108(4)(f) does not violate equal protection guarantees under the constitution.

Insubordination

Statute

§ 8-73-108(5)(e)(VI)

Cases

Rose Medical Center Hospital Association v. Industrial Claim Appeals Office, 757 P.2d 1173 (Colo. App. 1988)

Insubordination, such as deliberate disobedience of a reasonable instruction, is to be reviewed using an objective standard; i.e. whether a reasonable person in the claimant's position would have refused to obey the instruction.

Sayers v. American Janitorial Service, Inc., 162 Colo. 292, 425 P.2d 693 (1967)
Willful misconduct or deliberate disobedience does not necessarily require actual intent to wrong the employer; it is enough if there is a conscious indifference to the perpetration of a wrong or a reckless disregard of the claimant's duty to his or her employer.

Violation of a company rule that resulted or could have resulted in serious damage to the employer's interests

Statute

§ 8-73-108(5)(e)(VII)

Cases

Madrid v. Mountain States Telephone and Telegraph Co., 728 P.2d 1299 (Colo. App. 1986)
Even though exact costs of damage to employer could not be determined, the claimant's unauthorized use of equipment in violation of employer's policy was prejudicial to the employer's interests as a public utility, and serious damage could have resulted to the employer's interests.

Nielsen v. AMI Industries, Inc., 759 P.2d 834 (Colo. App. 1988)
The claimant did not act volitionally to cause his separation when he acted contrary to the employer's unwritten policy, because the policy had never been communicated to him.

Off-the-job use of drugs or alcohol that interferes with job performance

Statute

§ 8-73-108(5)(e)(VIII)

Cases

Safeway Stores Inc. v. Industrial Claim Appeals Office, 754 P.2d 773 (Colo. App. 1988)
A claimant's consumption of alcohol off-the-job does not automatically disqualify the claimant from unemployment benefits, and whether the off-the-job consumption of alcohol affected the claimant's job performance is a matter of fact to be determined by the hearing officer. Further, the results of a blood-alcohol test do not create an evidentiary presumption, but is rather only one evidentiary factor to be considered.

On-the-job use of drugs or alcohol

Statute

§ 8-73-108(5)(e)(IX)

Cases

Longmont Turkey Processors, Inc. v. Industrial Claim Appeals Office, 765 P.2d 1073 (Colo. App. 1988)
A claimant who consumed alcohol on a paid rest break was considered to have consumed alcohol "on-the-job," and as such was disqualified from the receipt of unemployment benefits under § 8-73-108(5)(e)(IX).

Presence of alcohol or drugs in a worker's system

Statute

§ 8-73-108(5)(e)(IX.5)

Cases

None

Incarceration after conviction

Statute

§ 8-73-108(5)(e)(X)

Cases

Smith v. Industrial Claim Appeals Office, 817 P.2d 635 (Colo. App. 1991)
When a claimant is incarcerated due to his or her own actions and thus prevented from working, the employer does not have an obligation to participate in a work release program in order to maintain the claimant's employment.

Theft

Statute

§ 8-73-108(5)(e)(XI)

Cases

Jefferson County v. Kiser, 876 P.2d 122 (Colo. App. 1994)

For purposes of this statute, "theft" is the wrongful taking of the property of another. Therefore, the disqualification from unemployment benefits applies to a claimant who is discharged for theft, even if the theft was not from the employer. In this case, the disqualification applied to a sheriff's deputy who was discharged for shoplifting while off duty.

Starr v. Industrial Claim Appeals Office, 224 P.3d 1056 (Colo. App. 2009)

Where a theft is alleged as the basis for disqualification, the employer must establish by a preponderance of the evidence the state of mind required in theft or larceny cases.

Assault

Statute

§ 8-73-108(5)(e)(XII)

Cases

Baca v. Marriott Hotels, Inc., 732 P.2d 1252 (Colo. App. 1986)

"Assaulting" in the statute means harmful or offensive contact similar to common law battery, and "threatening to assault" means apprehension of physical assault or offensive contact similar to common law assault. In regards to battery, where harmful or offensive contact has taken place, it is the mental state of the actor, not the victim, that is determinative as to whether battery has been committed, and thus the victim's mental state need not be determined.

Escamilla v. Industrial Commission, 670 P.2d 815 (Colo. App. 1983)

A claimant who only acted in self defense to a physical attack, and did nothing in retaliation, was not at fault for causing his separation from employment, and thus was entitled to unemployment benefits.

Willful neglect or damage to the employer's property or interests

Statute

§ 8-73-108(5)(e)(XIII)

Cases

none

Rudeness, insolence or offensive behavior not reasonably to be countenanced

Statute

§ 8-73-108(5)(e)(XIV)

Cases

Davis v. Industrial Claim Appeals Office, 903 P.2d 1243 (Colo. App. 1995)
Whether behavior is so rude, insolent or offensive that it should be disqualifying is to be determined using an objective standard. Therefore, it must be determined whether a reasonable person would find the behavior such that it should not have been countenanced.

Olsgard v. Industrial Commission, 548 P.2d 910 (Colo. 1976)
Worker who told employer's owner that he would "puke in owner's face" the next time he was sick was properly disqualified under § 8-73-108(5)(e)(XIV).

Tilley v. Industrial Claim Appeals Office, 924 P.2d 1173 (Colo. App. 1996)
Section 8-73-108(5)(e)(XIV) provides for disqualification for rudeness, insolence or offensive behavior not reasonably to be countenanced. "Fellow workers" as used in the statute is not limited to other employees of the claimant's employer, and includes other workers who work with the claimant.

Careless or shoddy work

Statute

§ 8-73-108(5)(e)(XV)

Cases

none

Failure to safeguard, maintain, or account for the employer's property

Statute

§ 8-73-108(5)(e)(XVI)

Cases

Short v. Steves Holiday Liquors, 727 P.2d 415 (Colo. App. 1986)
A claimant who falsified a daily cash register total to hide an overage was not disqualified under § 8-73-108(5)(e)(VII), as the difference was only $15.00, and there was no evidence that such an amount resulted in serious damage to the employer. However, the claimant failed to properly account for the employer's property, which was part of his job, and so was disqualified under § 8-73-108(5)(e)(XVI).

Taking unauthorized vacations or failure to return from an authorized leave

Statute

§ 8-73-108(5)(e)(XVII)

Cases

Sands v. Industrial Claim Appeals Office, 801 P.2d 12, (Colo. App. 1990)
The court upheld a disqualification for a claimant who was discharged for failing to return to work after an authorized vacation. The claimant contended that a specific illness prevented her from returning to work as scheduled, but she had not mentioned that reason prior to the hearing, and the court held that the hearing officer properly excluded evidence relating to the illness.

Refusal without good cause to work a different shift

Statute

§ 8-73-108(5)(e)(XVIII)

Cases

None

Refusal without good cause to transfer to another department

Statute

§ 8-73-108(5)(e)(XIX)

Cases

none

Other reasons, including excessive tardiness or absenteeism or failure to meet established job performance or other defined standards

Statute

§ 8-73-108(5)(e)(XX)

Cases

Board of Water Commissioners v. Industrial Claim Appeals Office, 881 P.2d 476, (Colo. App. 1994)
Although the claimant was not found to have violated a rule that resulted or could have resulted in serious damage to the employer's interests under § 8-73-108(5)(e)(VII), the claimant failed to

meet established job performance standards under § 8-73-108(5)(e)(XX) when he was aware that a drug test was required by the employer to maintain his employment, yet willfully used cocaine prior to the test.

Pabst v. Industrial Claim Appeals Office, 833 P.2d 64 (Colo. App. 1992)
A warning that the claimant's job is in jeopardy is not necessary; all that is required for a disqualification under § 8-73-108(5)(e)(XX) is that the claimant did not do the job for which he or she was hired, and was aware of what was expected.

Richards v. Winter Park Recreational Association, 919 P.2d 933 (Colo. App. 1996)
Willful intent is not required to support a disqualification under the statute. Rather, all that is required is that the claimant did not do the job for which he or she had been hired, and knew what was expected.

Lack of transportation

Statute

§ 8-73-108(5)(e)(XXI)

Cases

None

Quitting for personal reasons that do not support an award

Statute

§ 8-73-108(5)(e)(XXII)

Cases

Cole v. Industrial Claim Appeals Office, 964 P.2d 617 (Colo. App. 1998)
Although the claimant's health problems and those of her children contributed to her decision to quit, the claimant was not prevented from working due to those circumstances, and thus the claimant's resignation was a volitional act that disqualified her under § 8-73-108(5)(e)(XXII).

Colorado Division of Employment and Training v. Hewlett, 777 P.2d 704 (Colo. 1989)
§ 8-73-108(5)(e)(XXII) is not applicable where the claimant's "personal reasons" for quitting would support an award under any of the qualifying provision of § 8-73-108(4), C.R.S. 2004.

Musgrave v. Industrial Claim Appeals Office, 762 P.2d 686 (Colo. App. 1988)
Although the employer could have acted more reasonably under the circumstances, that did not justify an award for the claimant who quit because of her personal dissatisfaction with the employer's otherwise reasonable actions.

Rotenberg v. Industrial Commission, 42 Colo. App. 161, 590 P.2d 521 (1979)

A claimant who quit because of cigarette smoke in the work environment did not show the working conditions were unsatisfactory or hazardous apart from his subjective assertions of discomfort, and was properly disqualified.

Voluntary retirement

Statute

§ 8-73-108(5)(e)(XXIII)

Cases

None

Failure to complete approved treatment program

Statue

§ 8-73-108(5)(e)(XIV)

Cases

None