

**Illinois Legislative Changes and a
State Supreme Court Decision
Substantially Help Employers
Challenge Unemployment Claims**

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Two recent developments substantially affect unemployment benefits in Illinois. First, on January 3, 2016, the Illinois Unemployment Insurance Act (820 ILCS 405/602(A)) (“Act”) was amended to make it much easier for employers to challenge employee claims for unemployment. Second, on February 4, 2016, the Illinois Supreme Court issued a decision, [*Petrovic v. The Department of Employment Security*](#), in which it provided guidance as to what type of evidence an employer must present to challenge successfully a former employee’s claim for unemployment benefits on grounds of misconduct.

The Amended Act

The Act has long established that an individual discharged for work-related “misconduct” is not eligible for unemployment benefits. The Act defines the term “misconduct” as follows:

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.

Following the recent amendment of the Act, that general definition of disqualifying “misconduct” remains. The amended Act now also clarifies, however, that, notwithstanding that basic definition, eight specific types of work-related circumstances constitute disqualifying “misconduct”:

- (1) falsification of an employment application or related documents;
- (2) failure to maintain required licenses, registrations, or certifications;

- (3) a knowing, repeated violation of attendance policies following a written warning;
- (4) damaging employer property through grossly negligent conduct;
- (5) insubordination;
- (6) consuming alcohol or illegal drugs on the premises in violation of the employer's policies;
- (7) reporting to work under the influence of alcohol or illegal drugs; and
- (8) grossly negligent conduct endangering the safety of the individual or co-workers.

By specifically delineating eight categories of employee misbehavior that constitute disqualifying "misconduct," the amended Act makes it significantly easier for an employer to challenge a former employee's claim for unemployment benefits.

The *Petrovic* Case

Meanwhile, in *Petrovic*, the Illinois Supreme Court addressed a situation involving an employee terminated for misconduct that did not fit within one of the eight categories of disqualifying misconduct set forth in the amended Act. Rather, the situation involved whether the alleged misconduct fell within the Act's longstanding definition of "misconduct," as it existed prior to the amendment discussed above. As a threshold matter, the Supreme Court explained that the Act's longstanding definition of disqualifying "misconduct" "is not intended to exclude all employees who have been fired from their jobs." Rather, it "is intended to exclude individuals who intentionally commit conduct which they know is likely to result in their termination." Nevertheless, the Illinois Supreme Court also clarified that if an employee (1) knowingly engages in an express rule violation, (2) engages in illegal conduct, or (3) engages in a prima facie intentional tort, such conduct would disqualify the employee from eligibility for unemployment benefits. These three categories of general disqualifying misconduct are in addition to the eight specific categories of disqualifying misconduct delineated in the amended Act.

In *Petrovic*, the Illinois Supreme Court also provided useful advice on the type of evidentiary showing that employers must make in order to contest successfully an application for unemployment. While not insisting on evidentiary standards as high as those in a court of law, the Supreme Court nevertheless held that "[a]ny factual allegations set forth in the employer's protest must be substantiated with competent evidence in the record." Thus, for example, if the basis of the protest is that the termination was for a knowing violation of an express rule, the employer must identify the express rule or policy at issue and submit evidence of it and of the discharged employee's awareness of it.

The “bottom line” for Illinois employers following *Petrovic* and the amended Act is that it is now much easier for employers to protest applications for unemployment, and the required evidentiary showing to do so is now clearer.

What Illinois Employers Should Do Now

In view of the statutory changes and the recent Illinois Supreme Court case, employers should:

- continue to thoroughly document their termination decisions;
- when they receive notice of unemployment claims, review each termination claim to determine whether a protest might be successful under the new standards; and
- be careful to adhere to all time limits for filing unemployment claim protests and subsequent appeals.

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