

Performance News

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Termination for Justified Cause - VA Legislation

A claimant may be terminated for various reasons. In the world of workers' compensation, there are two classifications of termination, based on those reasons: termination for "cause" or termination for "justified cause." These two distinctions carry with them very important ramifications of which we should all be aware.

Termination for cause involves the typical employee termination: tardiness, failure to show up, laziness, etc. Termination for justified cause, however, involves: lying, cheating, stealing, fraud, etc. In circumstances of termination for justified cause, that employee has done something so egregious that the Commission considers him/her unemployable by any standard.

This distinction is hugely important. Because the Commission finds the employee to be unemployable, the employer is not responsible for any wage loss while the employee is on light duty. Based on the employee's behavior, the argument is that no other employer would hire him/her, and therefore it is inappropriate to force the pre-injury employer to pay wage loss to the employee while he/she can work, but cannot find employment within his/her restrictions. (It is important to note that if the employee is totally out of work, the employer is responsible for total wage loss even if he/she was terminated for justified cause).

An example may better demonstrate this rule:

Suppose an employee injured his knee in a compensable ladder fall at the employer, an electronics store. His claim was accepted, and he was out of work for a period of time. Later, his treating physician returned him to work in a light duty capacity with various restrictions. When he returned to work, the employee attempted to steal a flat screen TV. When surveillance was reviewed, he was summarily fired. Months later, the treating physician determined that the employee needs surgery on his knee, and removes him completely from work following the surgery.

Does the employer have to pay the employee's wage loss immediately after he is fired but is on light duty? No. If the claimant is on light duty, the employer has no obligation to pay where he/she has been fired for justified cause.

Does the employer have to pay the employee's wage loss while he is totally out of work due to surgery? Yes. Even when a claimant is fired for justified cause, the employer is responsible for wage loss during the period he/she is completely removed from work.

Obviously, this rule has serious ramifications. We must be aware of the facts surrounding the employee's termination.

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