



# Hospital Services Corporation Unemployment Compensation Program

Attendance Misconduct - Best Practices for  
Better Determinations

# Attendance Misconduct Analysis

In 2019, misconduct cases for attendance issues represented 30% of all misconduct claims filed. The Department of Workforce Solutions (DWS) determined 28% of those claims to be unfavorable for the employer.



# 2020 Attendance Misconduct Goal

Decrease the unfavorable determinations whereby increasing the favorable determinations by 3%.



# Attendance Misconduct

**What went wrong**





# Attendance Misconduct Analysis: There Were Not Adequate Warnings

Persistent absenteeism and/or tardiness is not misconduct **unless** it continues after adequate warnings. This can be an issue when the employee is discharged in the probationary status. While the employer policy may dictate at-will, the State deems it necessary that discharge for attendance require adequate warnings.

# Attendance Misconduct Analysis: There Were Not Adequate Warnings

**EXAMPLE:** an employer's policies may attempt to define two unexcused absences as excessive sufficient to support a finding of misconduct or a voluntary quit. However, the courts consistently hold that two absences cannot be fairly characterized as "chronic and persistent."

*Staff Absence Policy*



# Attendance Misconduct Analysis: The Claimant Was Not Told Their Job Was In Jeopardy

The employee must be made aware that continued poor attendance has an adverse effect to the employer's legitimate business interest and continued behavior could result in discharge.

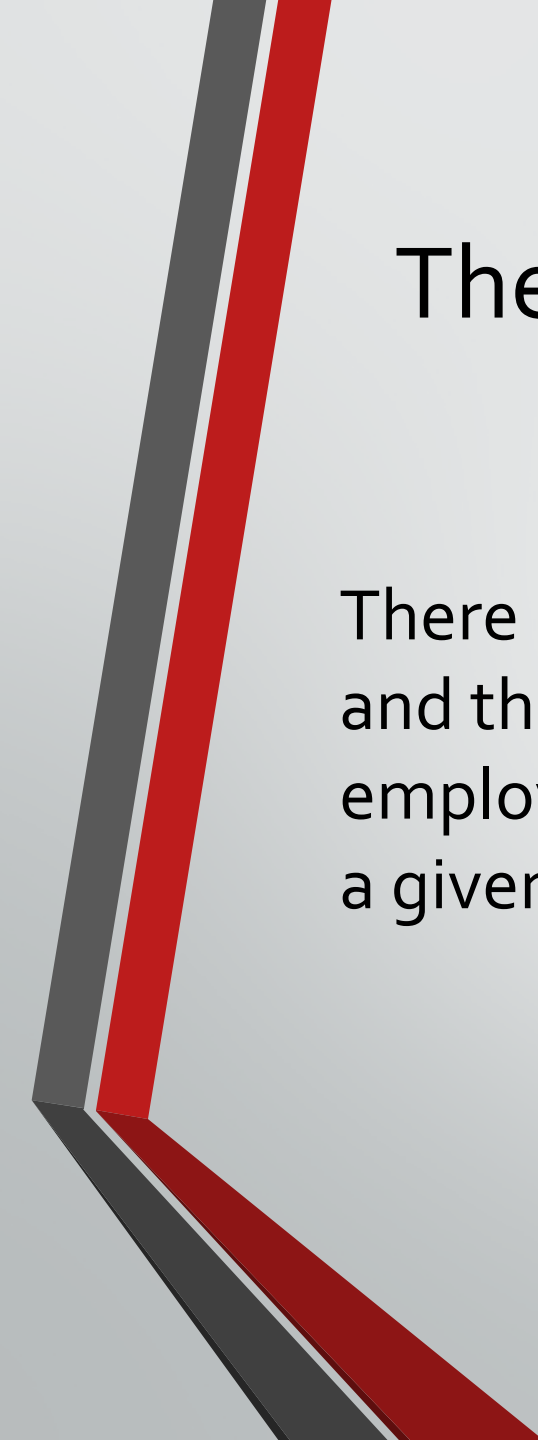


# Attendance Misconduct Analysis: The Claimant Was Not Told Their Job Was In Jeopardy

**EXAMPLE:** the employee receives a letter of discharge. The letter notes incidents of on absence and no-call/no show with one attempt to contact the employee by phone. The employee was discharged on the date of the letter. The letter did not list any prior warning nor did it give the employee a chance to respond by a specific date. The employer called the employee one time.

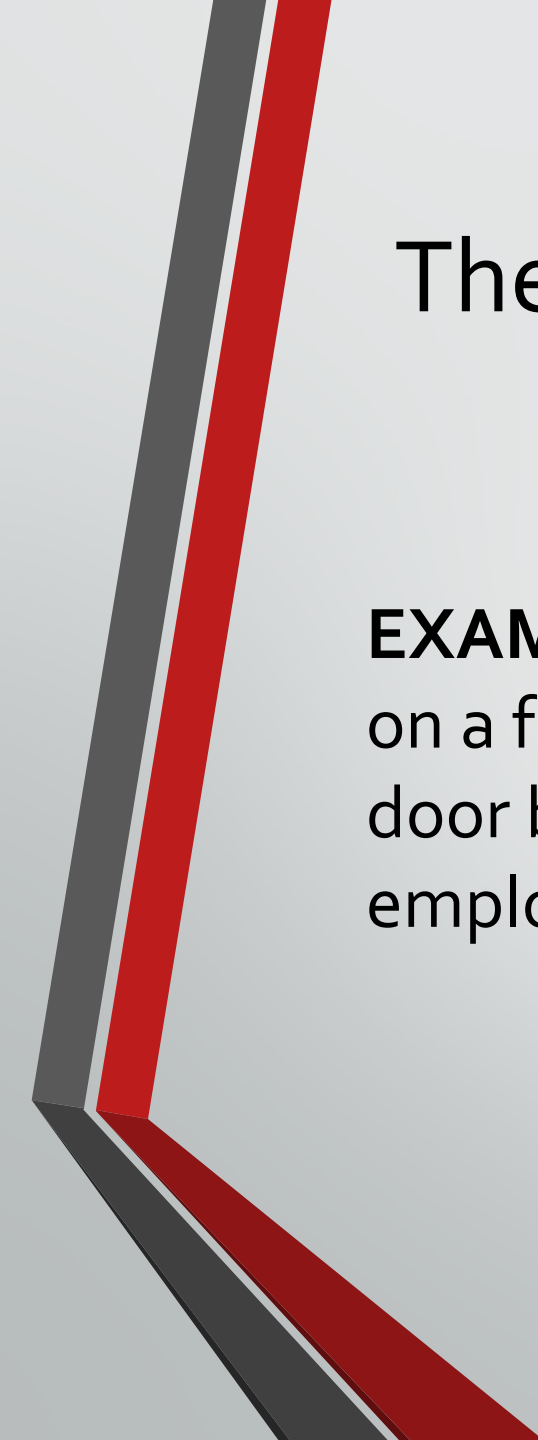






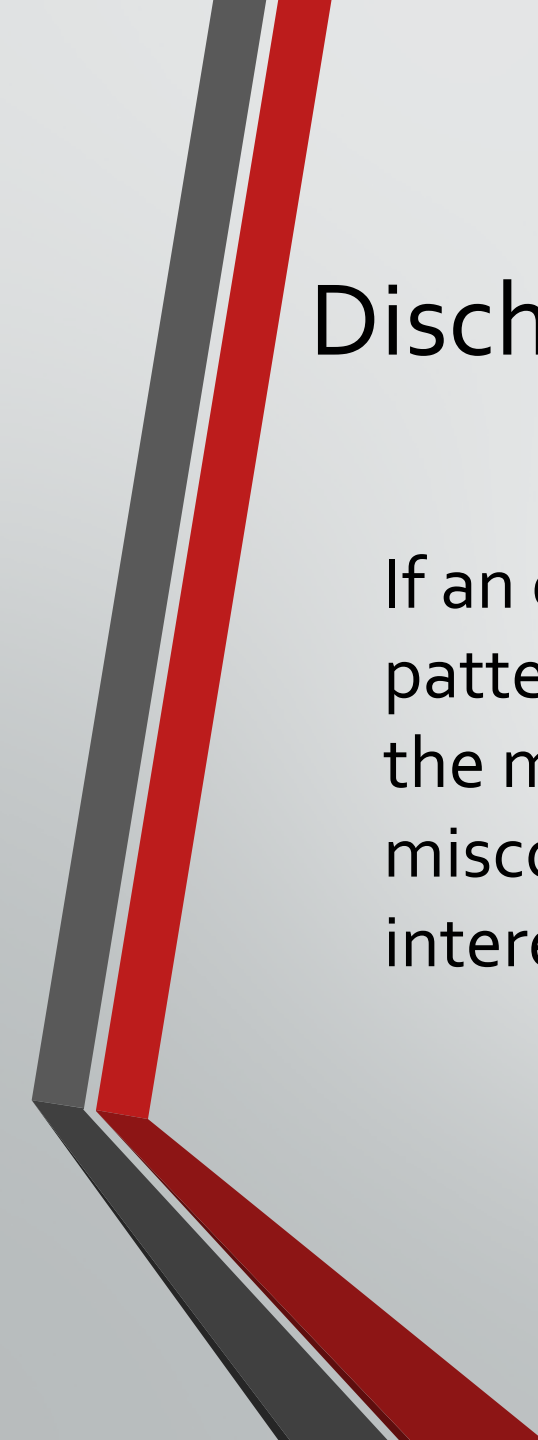
# Attendance Misconduct Analysis: The Final Incident Does Not Reflect the Reason For Discharge

There must be a connection between the attendance misconduct and the discharge. The reason for the employee discharge is that the employee exceeded the number of acceptable absences/tardiness in a given period up to discharge date.



# Attendance Misconduct Analysis: The Final Incident Does Not Reflect the Reason For Discharge

**EXAMPLE:** an employee is on corrective action for attendance and on a final warning. The employee mistakenly forgets to lock the back door before leaving the workplace. The employer discharges the employee for poor attendance.



# Attendance Misconduct Analysis: Discharge Was Not Considered the Final Incident

If an employer waits a long time after an incident or asserted pattern of misconduct to discharge an employee, it is unlikely that the misconduct was the reason for the termination or that the misconduct was a serious disregard for the employer's business interest.

# Attendance Misconduct Analysis: Discharge Was Not Considered the Final Incident

**EXAMPLE:** the employer may decide a certain employee is no longer fitting in or is about to blow the whistle on illegal conduct. To get rid of the individual, the employer might be tempted to dig into the **individual's** personnel file and find bad acts upon which to predicate the termination. If the bad acts are old, then it is less likely that those acts were truly the reason for the discharge.



# Attendance Misconduct Analysis

## Best Practices

- Include prior corrective actions regarding absenteeism and/or tardiness and notify the employee early on of the violations
- Document dates of absenteeism and/or tardiness with all occurrences that violated the policy
- All documents should be signed and dated by the supervisor

# Attendance Misconduct Analysis

## Best Practices

- Supply all supporting documents, i.e. timecards, text messages, emails, supervisor coaching, and employee acknowledgement of the policy
- Document explanations from the employee with date and time of the discussions
- All employer documentation should cite “further violations could lead to discharge”

# Attendance Misconduct Analysis

## Best Practices

- Cite the specific area of the policy that was violated within all the corrective action documentation
- Discharge should occur immediately following the final incident

# Attendance Misconduct Analysis

For any questions please contact:

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