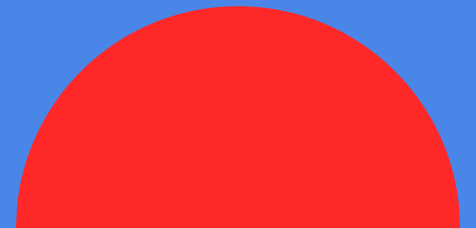
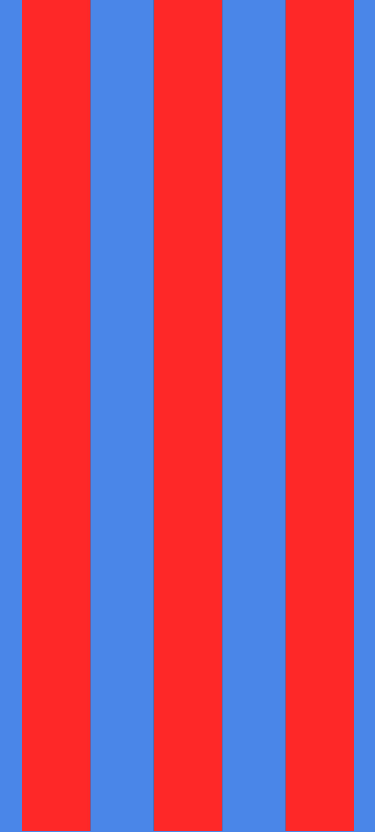


Unemployment Insurance

Poverty Law II, Spring 2024

Prof. Brianna Boone



Purpose of the Unemployment Insurance Program



- ✓ Minnesota's Unemployment Insurance (UI) program is administered by the MN Department of Employment and Economic Development (DEED)
- ✓ Goal is to provide "workers who are unemployed through no fault of their own a temporary partial wage replacement to assist the unemployed worker to become reemployed" Minn. Stat. § 268.03, subd. 1
- ✓ Workers are only covered when they have worked in "covered employment" (i.e., W2 employment). Independent contractors are not eligible. Minn. Stat. § 268.035, subd. 15

MN UI Law

- Chapter 268 – Everything you need to know can be found here
- DEED frequently amends Chapter 268 to incorporate or overrule appellate court decisions
- There are many nonprecedential MN COA UI opinions – can be helpful to review different fact situations and how the statute gets applied, but you likely will not be citing to cases

Applying for UI

- ❖ Apply online or over the phone (no in person option anymore)
- ❖ Applicant provides information about their employment history for last 18 months, separations, any current employment/income
- ❖ DEED then sends a Determination of Benefit Account which shows how much the weekly benefit amount will be
 - ❖ Based on W2 income from the last 18 months (base period)
- ❖ DEED then sends a questionnaire about the most recent separation to the applicant and employer asking questions about the circumstances leading to separation
 - ❖ Different questions for a quit, discharge, or leave of absence
- ❖ After receiving the questionnaires back DEED makes an Initial Eligibility Determination re: whether the applicant is eligible to draw UI
- ❖ All communication from DEED is via mail

Eligibility Basics



Requirements

- ✓ Unemployed
- ✓ Eligible separation from last employment
- ✓ Available for work
- ✓ Actively seeking suitable employment
- ✓ Request benefits every week



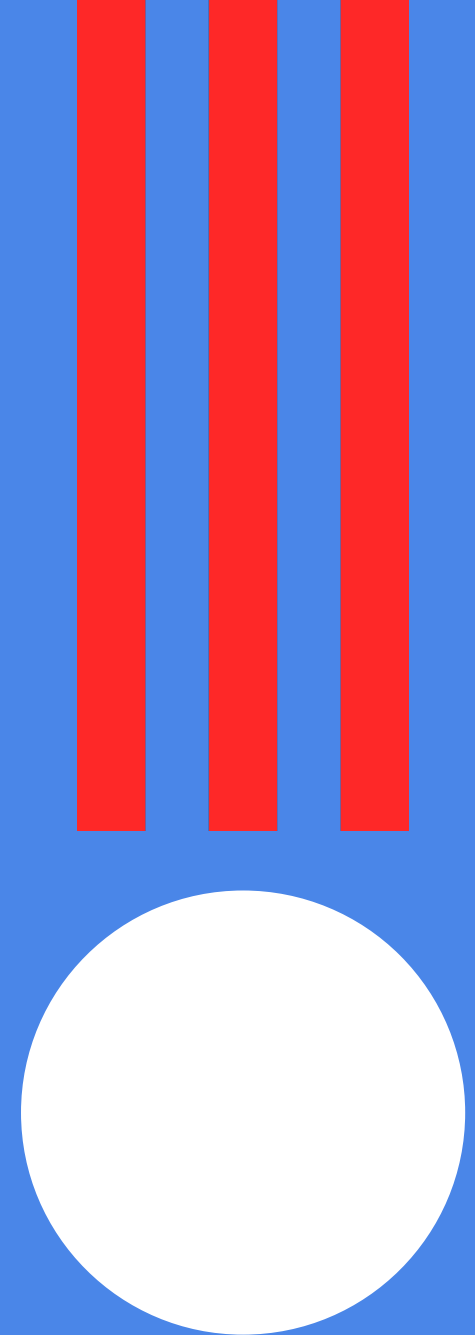
A. Unemployed

The applicant must be “unemployed”

An applicant is unemployed when:

- The applicant performs less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work; AND
- Any earnings with respect to that week are less than the applicant’s weekly unemployment benefit amount

Minn. Stat. § 268.035, Subd. 26.



B. Type of Separation

Quit

Ineligible unless fit into one of the exceptions listed in Minn. Stat. § 268.095, Subd. 1

Discharge (“Fired”)

Eligible unless discharged for “employment misconduct” Minn. Stat. § 268.095, Subd. 4

Leave of Absence

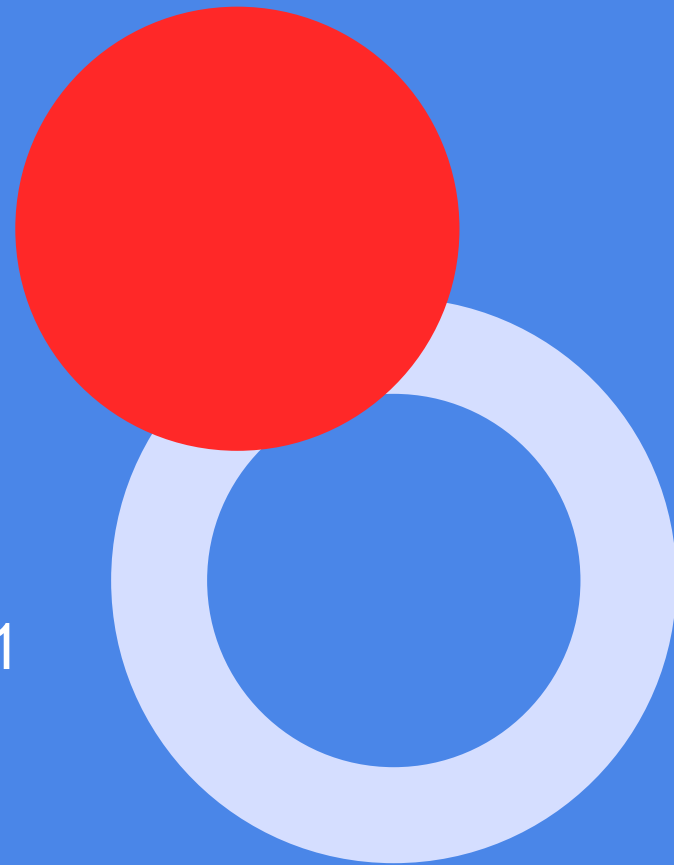
Voluntary LOA – ineligible

Involuntary LOA – eligible

Minn. Stat. § 268.085, Subd. 13a

Quit

- A quit “occurs when the decision to end the employment was, at the time the employment ended, the employee’s” Minn. Stat. § 268.095, Subd. 2(a)
- Applicant who quit is ineligible for UI unless they quit for one of the reasons listed in Minn. Stat. § 268.095, Subd. 1



Good Reason Caused By the Employer

- Minn. Stat. §268.095 subd. 3
- Good reason occurs when:
 - Reason is directly related to employment;
 - Employer is responsible for the reason;
 - Reason is adverse to the worker;
 - Reason would compel an average, reasonable worker to quit and become unemployed rather than remain in the employment
- Must complain to the employer AND give the employer a reasonable opportunity to correct the adverse condition
- Quitting because of sexual harassment the employer was or should have been aware of is good cause Minn. Stat. §268.095, Subd. 3(f)

Trial Period

- The applicant quit the employment within 30 calendar days of beginning the employment and the employment was “unsuitable” Minn. Stat. § 268.095, Subd. 1(6)
 - Minn. Stat. § 268.035, Subd. 23a - Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications
 - Degree of risk to health and safety
 - Physical fitness
 - Prior training and experience
 - Distance from residence
 - Pay compared to previous jobs

Medical Necessity

- Minn. Stat. § 268.095, Subd. 1(7)
- Applicant's serious illness or injury made it medically necessary that applicant quit; or applicant quit to provide necessary care to immediate family member with illness, injury, or disability
- Exception is only available if applicant informed the employer of the medical problem AND requested an accommodation AND no accommodation was made available

Loss of Childcare

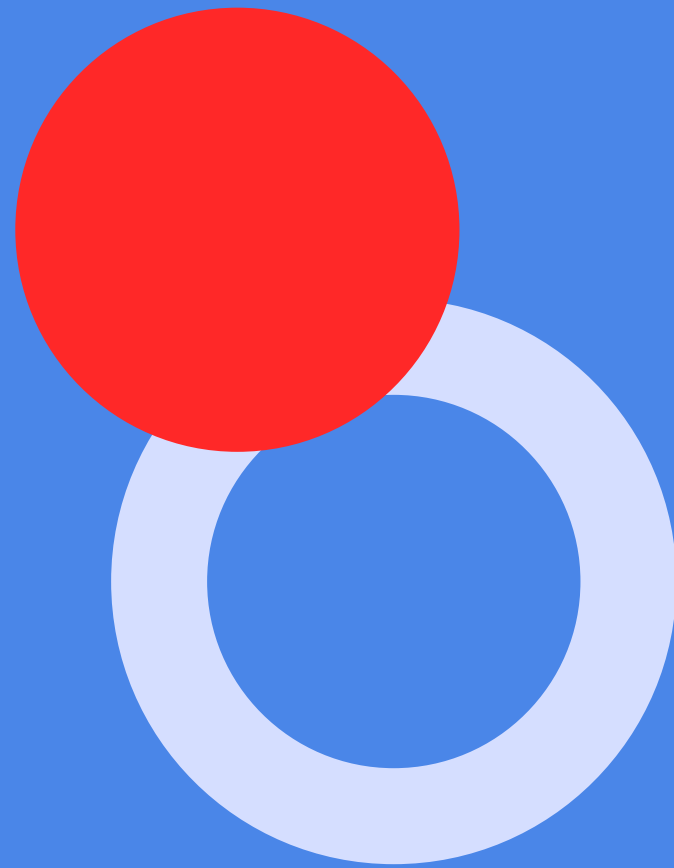
- Minn. Stat. § 268.095, Subd. 1(8)
- (1) Loss of childcare caused the quit; (2) Applicant made a reasonable effort to obtain other care; and (3) Applicant informed employer and requested an accommodation

Domestic Violence

- Minn. Stat. § 268.095, Subd. 1(9)
- Quit because “domestic abuse, sexual assault, harassment or stalking” of the applicant or an immediate family member of the applicant necessitated the applicant’s quitting the employment

Discharge (“Fired”)

- A discharge occurs when “any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.” Minn. Stat. § 268.095, Subd. 5(a)
- An applicant who was discharged from employment is eligible for unemployment benefits unless the worker committed “employment misconduct” Minn. Stat. § 268.095, Subd. 4



Misconduct

- “Any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Minn. Stat. § 268.095, Subd. 6(a)
- Not misconduct:
 - Conduct that is simply unsatisfactory, a good faith error in judgment, or a consequence of the applicant’s inefficiency or inadvertence is not employment misconduct. Minn. Stat. § 268.095, Subds. 6(a)(3), 6(a)(2), and 6(a)(5)
 - Conduct that is a consequence of the applicant’s mental illness or impairment is not misconduct. Minn. Stat. § 268.095, Subd. 6(a)(1)
 - Conduct an average reasonable employee would have engaged in under the circumstances is not misconduct. Minn. Stat. § 268.095, Subd. 6(a)(4)

Misconduct

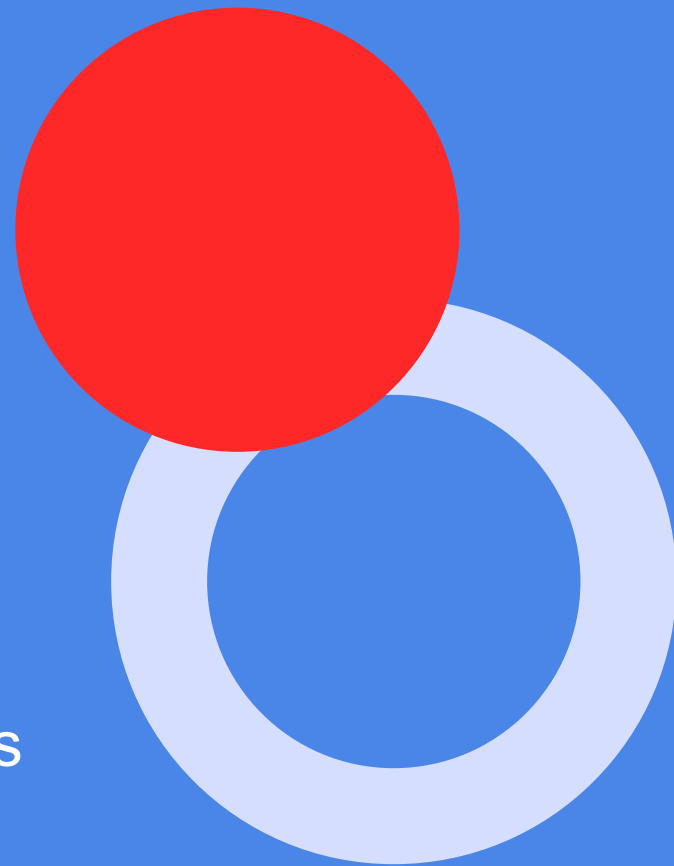
- Conduct that is a consequence of the applicant, or an immediate family member of the applicant, being a victim of domestic abuse, sexual assault, harassment or stalking, is not employment misconduct. Minn. Stat. 268.095, Subd. 6(a)10
- Absence, with proper notice to the employer, because of illness or injury of applicant OR in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant is not misconduct. Minn. Stat. 268.095, Subd. 6(a)7-8

Misconduct

- An employee does not commit misconduct when they fail for financial reasons to meet an employment standard.
 - *Moore v. Minnesota Lung Center*, 1, 6 unpublished A10-1868 (Minn. Ct. App. 2011), citing *Cherry v. Am. Nat'l Ins. Co.*, 426 N.W.2d 475, 477 (Minn. App. 1988) (applying earlier version of misconduct statute). See also *Work Connection Inc. v. Bui*, 749 N.W.2d 63, 68, 70, 71 (Minn. App. 2008) (rejecting contention that employee reliant on bus for transportation was not “available” for work), review granted (Minn. June 18, 2008), review dismissed (Minn. July 6, 2009)

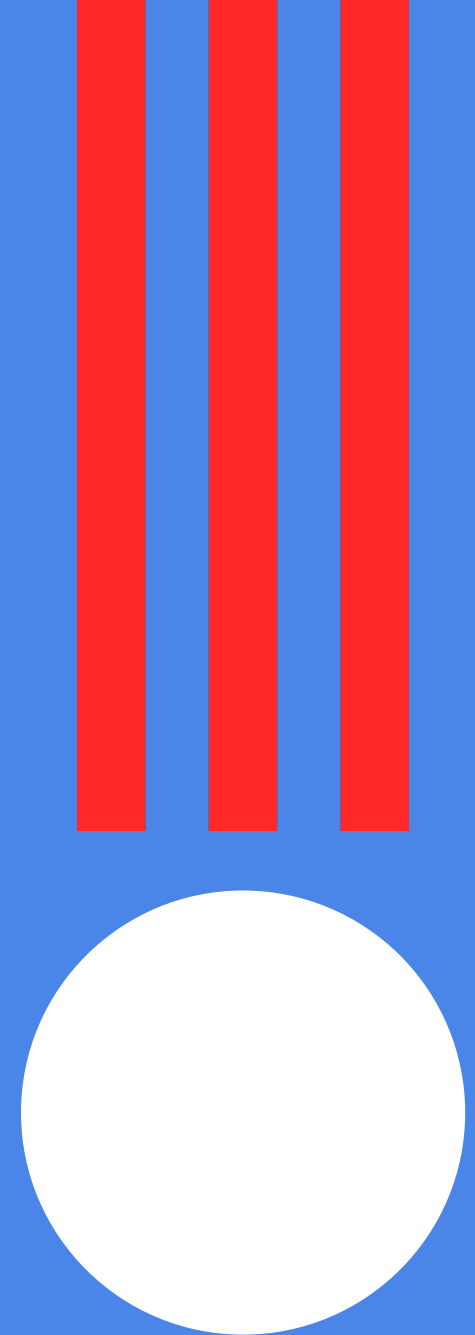
Leave of Absence

- Minn. Stat. § 268.085, Subd. 13a
- An applicant on a voluntary leave of absence is ineligible for unemployment benefits, but an applicant on an involuntary leave is typically eligible for benefits.
- A leave of absence is voluntary when work that the applicant can then perform is available with the applicant's employer but the applicant chooses not to work.
- A medical leave of absence is not presumed to be voluntary
 - Creates availability to work issue though



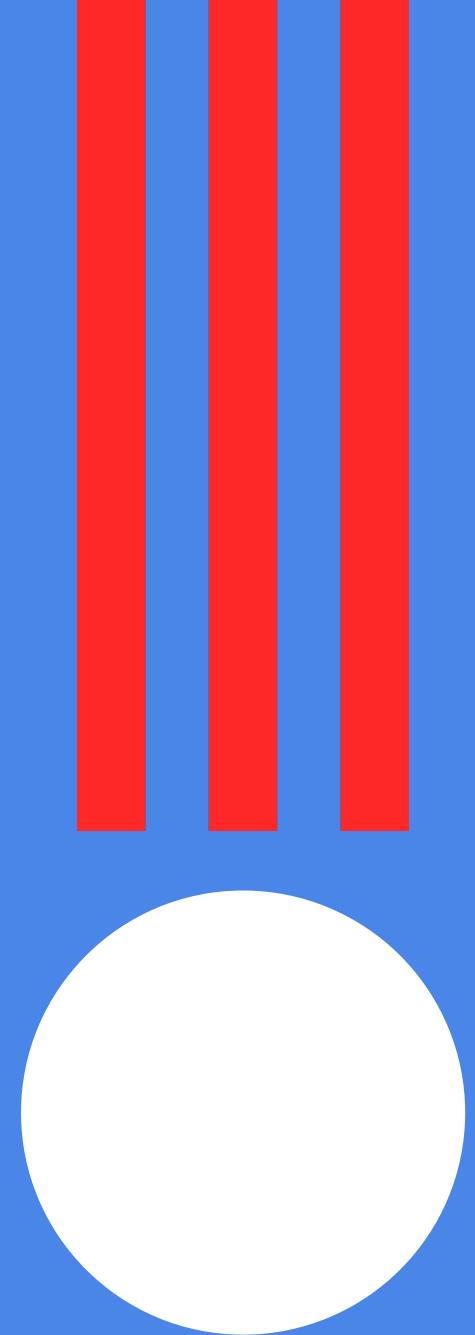
C. Available for Work

- “Applicant is ready, willing, and able to accept suitable employment. The attachment to the work force must be genuine. An applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment” Minn. Stat. § 268.085, subd. 15(a)



D. Actively Seeking

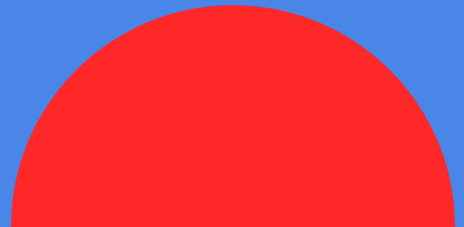
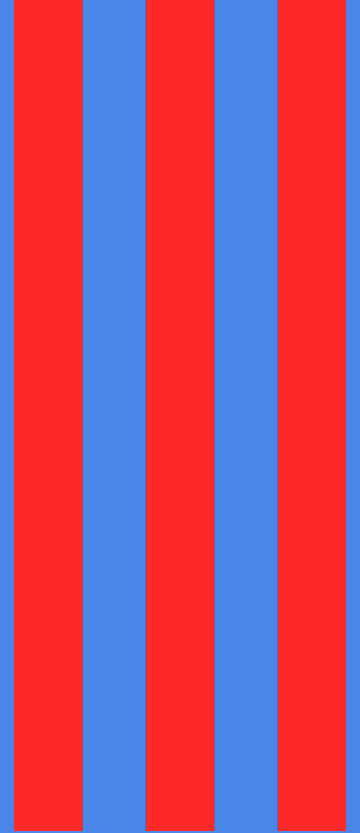
- “Those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not "actively seeking suitable employment” Minn. Stat. § 268.085, subd. 16(a)



E. Request Benefits Every Week

- “A continued request for unemployment benefits is a certification by an applicant, done on a weekly basis, that the applicant is unemployed and meets the ongoing eligibility requirements for unemployment benefits” Minn. Stat. § 268.0865, subd. 1
- Can be done online, via phone, or by mail
- Must be filed within 4 weeks following the week of request payment
- Applicant must report any income from that week (earned or unearned)
 - Benefits will be reduced based on some income types

Eligibility Hypos



Scenario:

On Monday morning Sam's boss tells them that the company needs to cut costs, and as a result Sam will be discharged from their employment in five weeks.

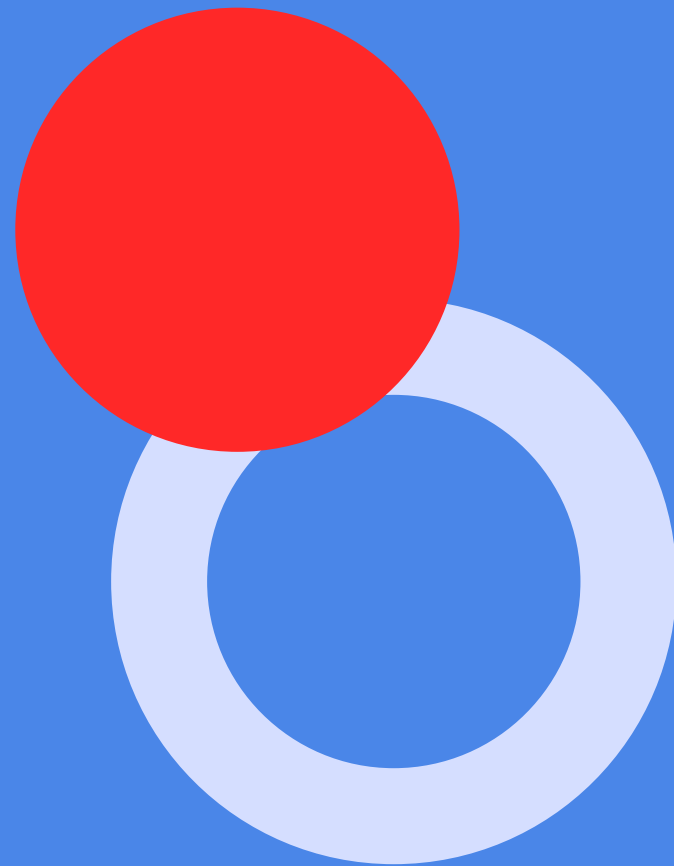
Sam has had a hard time at their job for the last couple months. Sam wants to get a jump start on looking for a new job instead of staying in a job they do not even like.

On Monday afternoon Sam tells their boss that they are done working, effective immediately. Sam does not return to work on Tuesday.

Questions:

Was Sam discharged or did they quit?

Could they be eligible for unemployment?



Was Sam discharged or did they quit?

- Sam quit.
 - “An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, has quit the employment” Minn. Stat. § subd. 2(c)

Could they be eligible for unemployment?

- Probably not based on the information we have. Since Sam quit they will only be eligible if they meet one of the exceptions listed in Minn. Stat. § subd. 1.
- **What questions could you ask Sam to determine if they might fit into one of the quit exceptions?**



Scenario:

For the last six months Sam has had a tough time at work. One of their co-workers used to consistently belittle and call them names. Sam told their boss, and the co-worker was switched to a different shift.

Sam does not share shifts with the co-worker anymore, but occasionally sees her when she is clocking in or out of work. The co-worker does not say anything to Sam, but makes it clear she does not like Sam with her body language.

Sam's mental health has suffered as a result of these interactions with their co-worker. They are now constantly anxious at work.

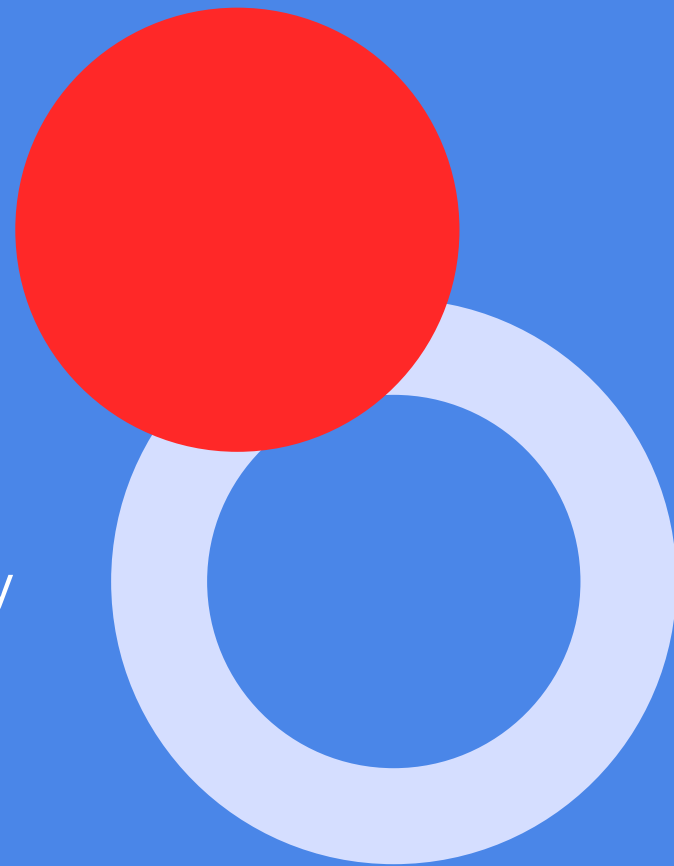
When Sam learns they will be laid off anyway, they quit to get away from this anxiety-induced situation.

Questions:

Is Sam eligible for unemployment benefits?

Did Sam quit for a good reason caused by their employer?

- Minn. Stat. 268.095 § subd. 3
- Maybe!
 - Conflict with a co-worker can be an adverse condition that would cause a reasonable employee to quit their job, especially if it contributed to increased anxiety.
- But, to qualify for UI Sam will need to show they complained to the employer about the situation and the employer did not fix the situation.
 - Although Sam complained about the initial interactions with their co-worker, the employer did try to fix the situation by switching the co-worker to a different schedule. It is not clear what the employer knew about the ongoing conflict between Sam and the co-worker, or its impact on Sam's mental health.



Did Sam quit due to a medical necessity?

- Minn Stat. 268.095 § subd. 1(7)
- Maybe!
 - Increased anxiety could be a serious illness that would make it medically necessary to quit a job.
- Sam will need to prove that their anxiety was bad enough that it made it necessary to quit.
- Sam will also need to show that they informed their employer of their anxiety, requested an accomodation, and no accomodation was made available.
 - It is not clear if Sam ever notified their employer about their anxiety, or the fact that it had worsened due to the conflict with Sam's co-worker.

What other information do we need from Sam to determine if they might be eligible for UI under either the good cause or medical necessity exceptions?



Scenario:

Sue has worked for her employer for two years. She feels that she is a leader at work and is helpful to her co-workers.

About a year ago Sue's boss began receiving complaints from Sue's co-workers stating that Sue is bossy and is always criticizing how they do their jobs. Sue's boss held a general staff meeting to discuss tone, language, and professionalism in the workplace but did not talk to Sue about her co-worker's complaints.

Sue's boss continued to receive complaints about Sue. One employee recently threatened to quit because of Sue's bullying.

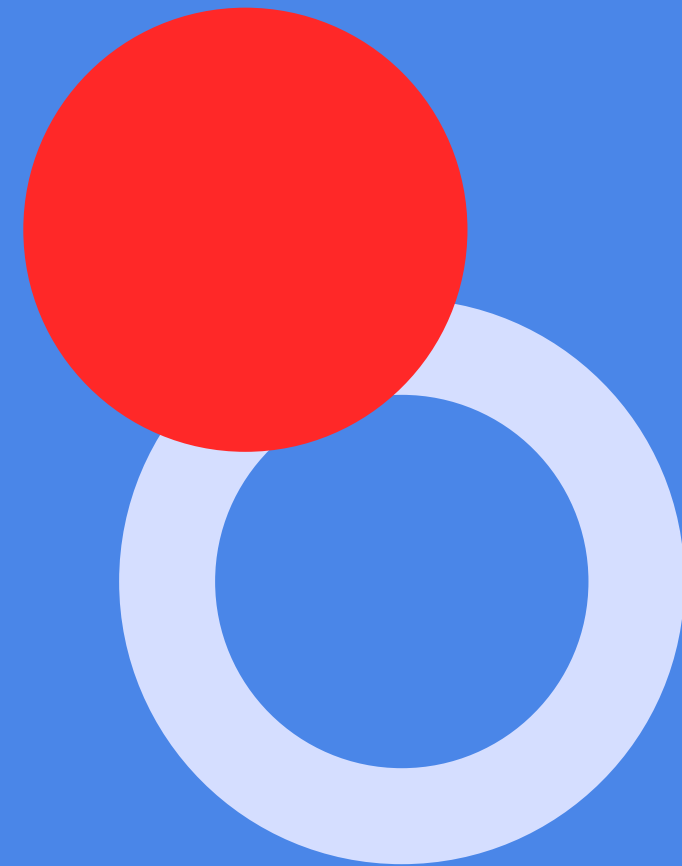
Yesterday, Sue was fired. Her boss said it was because she bullies her co-workers.

Questions:

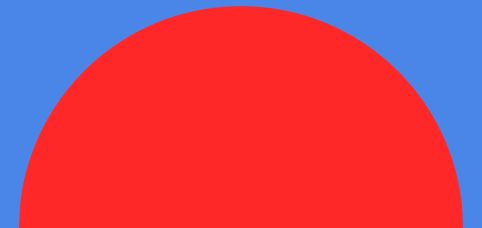
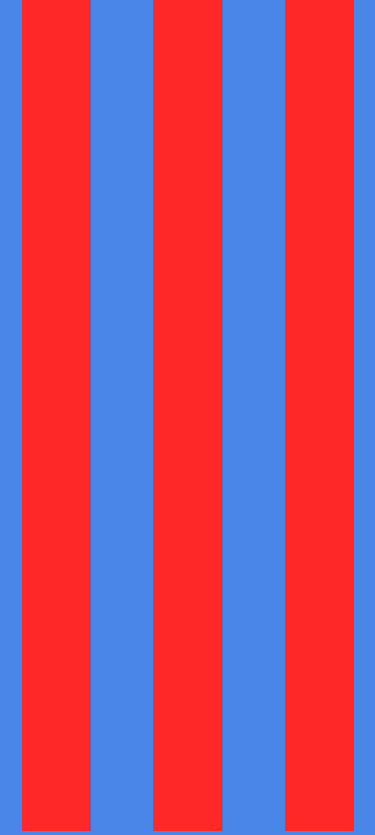
Was Sue discharged for employment misconduct?

Was Sue discharged for employment misconduct?

- Probably not!
 - It seems Sue was simply not a good personality fit for her job. Being a bad personality fit for a job is not employment misconduct.
 - Sue thought she was being helpful to her co-workers, but they obviously felt differently. As far as we know, no one, including Sue's boss, talked to Sue about her co-worker's complaints. Sue had no reason to believe her behavior was problematic, and no opportunity to correct her behavior.
 - Based on the information we have, Sue did not engage in any "intentional, negligent, or indifferent conduct...that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee" Minn Stat. 268.095 § subd. 6(a)
 - **What other information might you want before taking this case?**



Appealing UI Denials



Administrative Appeal Process

- Administrative law regime.
 - Appeals of adverse decisions must work their way through the appeal process set up within DEED before an appeal to a court.
- If applicants are denied benefits in an initial determination, they have 45 days from the date of the determination to file an appeal (after May 5, 2024, 20 days until then). Minn. Stat. §268.105, Subd. 1a
- The next step in the process is a hearing by an Unemployment Law Judge. Minn. Stat. §268.105, Subd. 1

Standard of Proof

- The standard of proof is always a preponderance of the evidence. Minn. Stat. § 268.031, Subd. 1. There are no burdens of proof in the unemployment statute.
- The statute contains very favorable language to applicants about how it is to be interpreted:

“This chapter is remedial in nature and must be applied in favor of awarding unemployment benefits. Any legal conclusion that results in an applicant being ineligible for unemployment benefits must be fully supported by the facts. In determining eligibility or ineligibility for benefits, any statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.” Minn. Stat. § 268.031.

Hearing Procedure

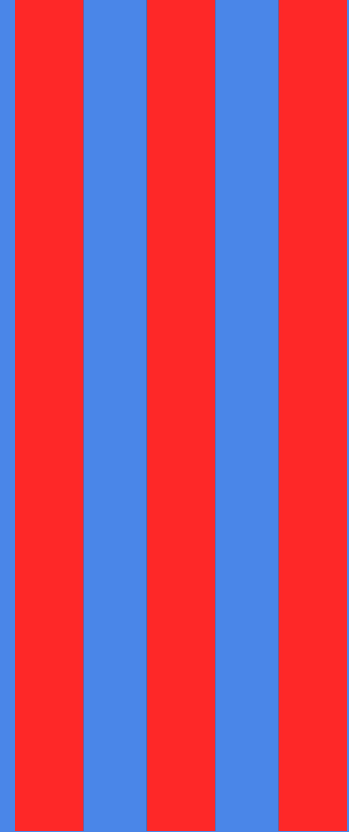
- Non-adversarial process. ULJs are heavily involved in the questioning. Supposed to help pro se parties with development of the record.
- Hearings held over the phone
 - Makes hearing with interpreter very difficult
- Hearings typically last about an hour
 - Some can be much (much) longer or have multiple hearings
- ULJ will start with introductions, opening boilerplate remarks, and identifying/admitting exhibits
- ULJ will then swear in anyone who will be providing testimony

Hearing Procedure

- Questioning
 - ULJs typically start with the employer in a discharge, and with the applicant in a quit. Different judges have different preferences and will order the testimony as they see fit.
 - ULJs question first. They will question witnesses in the order they choose.
 - “Is there anything else you want to tell me?” – Talk to client about this before the hearing so they don’t go off the rails
 - After ULJ is done with questions, they will allow a direct examination, followed by a cross-examination.
 - Don’t be duplicative!
 - Applicant has the right to cross examine all the employer’s witnesses, and vice-versa.
- The ULJ will allow parties to make a closing statement. Keep it brief and focus on what part of the statute you believe shows your client is eligible for UI benefits and explain how the facts of the case fit the statute.

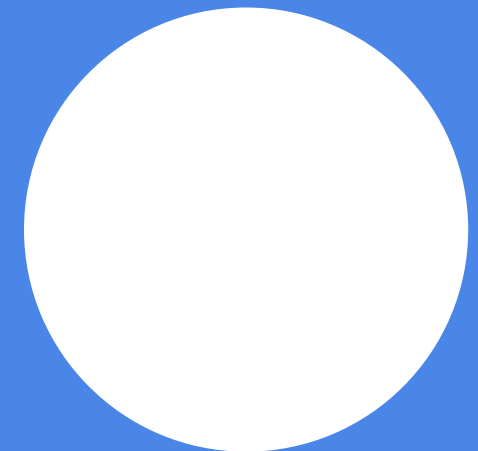
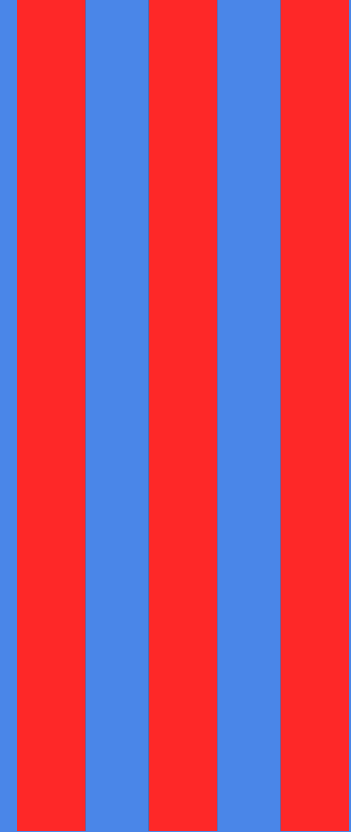
Evidentiary Rules

- Rules of evidence do not apply. Anything that is relevant with probative value will be admitted and considered.
- Parties submit proposed exhibits to the Judge by faxing them to DEED with a case coversheet (which comes in the mail). This helps DEED get the exhibits in the correct file.
- DEED then mails out all the exhibits to all the parties prior to the hearing.
- Prior to testimony at hearing, judge will identify each exhibit and admit to record.



“Discovery”

- Requesting an employee’s file
 - When there is a separation from employment, employees have a right to request their personnel file. Minn. Stat. § 181.961.
 - Good idea to request where disciplinary issues are involved.
- Requesting Subpoenas
 - You can technically request that the Unemployment Law Judge subpoena a witness or evidence. Minn. R. 3310.2914.
 - ULJs are typically hesitant to issue subpoenas and will wait until after a hearing has been conducted to decide the question of whether to issue a subpoena. Very rare.



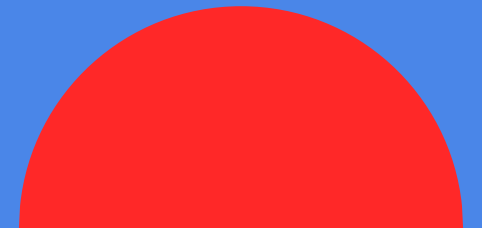
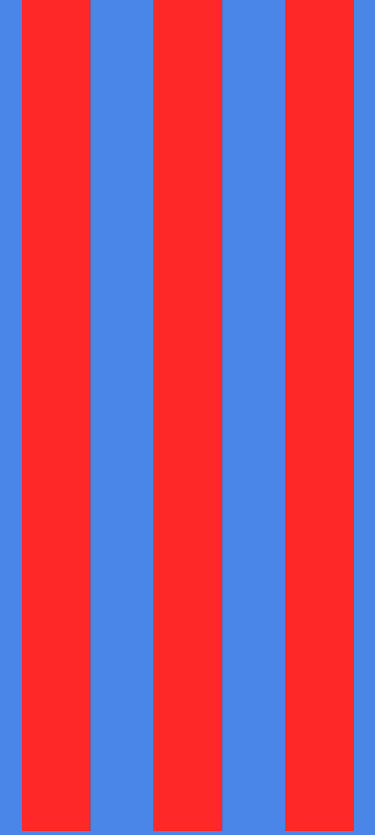
Requesting Reconsideration

- Once an eligibility determination is issued by a ULJ, any party to the hearing may request reconsideration of the decision within 45 days (after May 5, 2024, 20 days until then). Minn. Stat. § 268.105, Subd. 2.
- Once a party requests reconsideration, DEED will give all parties a new deadline to submit a written argument. The process is all in writing at this point.
- All parties have a right to review the recording of the hearing to assist with reconsideration arguments. Will come on a CD.
- New evidence will only be considered as it relates to whether a new hearing should be ordered.
- The request for reconsideration will typically be reviewed by the same ULJ who presided over the hearing.
- Requesting reconsideration is a necessary step to bring the case to the Court of Appeals for review.

Judicial Review

- Any party can appeal the ULJ's reconsideration decision by serving a writ of certiorari on the Commissioner of DEED and any other party within 45 days of the mailing of the ULJ's reconsideration decision (after May 5, 2024, 30 days until then) and by filing the writ in the Court of Appeals.
- Courts will treat decisions made by DEED with deference. Minn. Stat. §268.105, Subd. 7(d). Factual determinations are rarely reversed.

Overpayments



Standard Overpayments

- Minn Stat § 268.18
- What is an overpayment?
 - When applicant received more UI than they were entitled to.
 - Could be due to DEED's error or applicant's error.
- Applicant must to pay it back, regardless of who caused the overpayment.
- Until repaid, DEED will offset the overpayment from applicant's future UI benefits.
 - Recoupment cannot exceed 50% of benefit amount

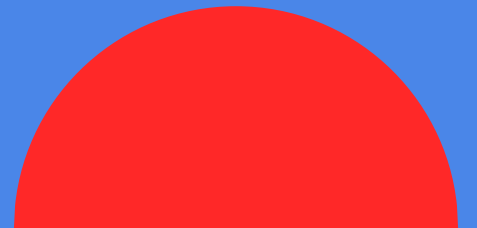
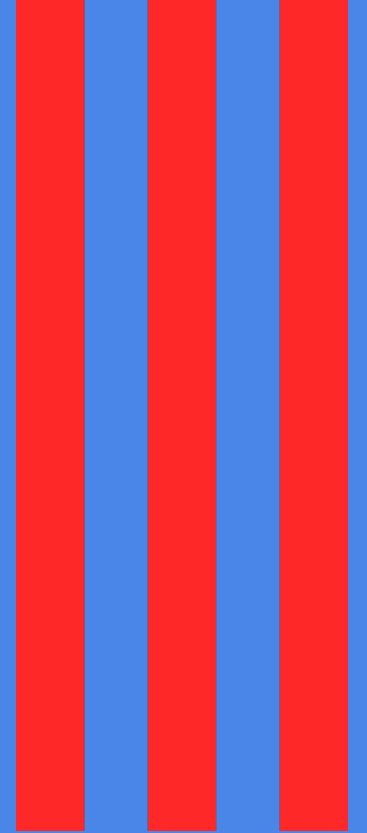
Misrepresentation Overpayments

- A misrepresentation overpayment occurs when an applicant is “overpaid unemployment benefits by making a false statement or representation without a good faith belief as to the correctness of the statement or representation.” Minn. Stat. §268.18, Subd. 2.
 - AKA - Fraud
- This typically occurs when an applicant requests benefits while working and fails to report the work.
- Comes with a 40% penalty and interest – more than doubles total OP
- Misrepresentation overpayments are a total bar to eligibility until repaid. Minn. Stat. §§ 268.085, 268.18, Subd. 3(a).
- This means applicant cannot repay via offset, have to pay via other means and cannot get UI until it is paid off

UI Overpayment Appeals

- Right to appeal standard and misrepresentation overpayments
- Subject to same deadlines and procedures as eligibility appeals

Common UI Issues for Low-Income Persons



- No Internet Access
 - No ability to create and maintain an online account
- Checking Mail is Difficult – DEED sends everything by mail
 - Homeless
 - Non-secure mailbox
 - Not on top of checking and opening mail (mental illness)
- Cannot Read Notices
 - LEP clients
 - Learning Disability
- Forgetting to Keep Requesting Benefits
 - LEP – didn't know/understand this requirement
 - No access to technology
 - Not proficient in using technology
 - Mental impairment makes them forgetful

- Missed Appeal Deadlines
 - Strict deadline – DEED has no good cause exception
 - Possible workaround – disability accommodation request or Title VI complaint
- Missed Hearings
 - Phone issues
 - Can try to make good cause argument for why hearing was missed on reconsideration and new hearing may be held
- Childcare and/or Transportation Issues Leading to Separation
- Mental Illness Leading to Separation
 - These issues are often hidden and come out with interviewing and getting to know the client
- Not Understanding the Rules and Not Reporting Income
 - Expected to know what is in the Handbook.

Client Interview

