**COVID 19 Mandatory Workplace Masks**

***Can an employee declare his/her civil right NOT to wear a mask at work?***

***LNI DOSH and ESD Respond on 6/19/20:***

L&I can cite an employer for employee’s not wearing a masks. ESD sent us this answering pertaining to unemployment:

“I would point to our UI handbook for workers (start at pg. 7) and our misconduct statute RCW 50.04.294.

If your job ended because you were fired, the separation is reviewed to see if it was for misconduct, gross misconduct or no misconduct at all. Misconduct is doing something deliberately or carelessly when you knew or should have known it could cause harm to the employer’s business.

Examples of misconduct are:

1. Repeated tardiness when you had been previously warned.

2. Insubordination.

3. Dishonesty related to employment.

4. Repeated and inexcusable absences.

5. Violations of law or deliberate acts that could provoke violence or illegal actions.

6. Violation of a company policy or rule.

7. Deliberate violation standards of behavior an employer has the right to expect from its employees.

8. Carelessness or negligence that causes or would likely cause serious bodily harm.

9. Carelessness or negligence of such a degree or frequency that it shows an intentional or substantial disregard for your employer’s interest.

Examples of gross misconduct include:

1. A criminal act in connection with your work for which you have been convicted in a criminal court or have admitted to committing.

2. Conduct connected with your work that demonstrates a flagrant and wanton disregard for your employer or a fellow employee.

There are a few instances where this may be considered misconduct. Under UI law the Employer has burden of proof for establishing misconduct or gross misconduct.

I would also qualify this with a “it depends” on all the facts of the situation. Ultimately, the claimant has a right to apply and the employer has a right to respond. If a determination is made either way both parties have the right to appeal and a decision could be made to affirm or reverse our determination. Since this is a new issue area this could get appealed up to the point of a precedential decision.”

Pam Cant, IH, MS

Division of Occupational Safety and Health

Consultation Operations Manager