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# EMPLOYMENT LAW ALERT

Fall 2013 Issue

## MISCONDUCT” EXPANDED FOR UNEMPLOYMENT BENEFITS CASES

Tennessee has recently expanded the definition of “misconduct” disqualifying persons from receiving unemployment benefits. As of July 1, 2013, “misconduct” now includes any conduct constituting a criminal offense for which the claimant has been convicted or charged that:

- involves dishonesty arising out of the claimant’s employment or
- was committed while claimant was acting in the scope of his employment.

Although the previous version of T.C.A. § 50-7-303(b) allowed misconduct for dishonesty arising out of a claimant’s employment, the dishonesty had to be an essential element of a crime for which the claimant was convicted. Under both old and new versions, a claimant discharged for work-related misconduct will be disqualified from unemployment benefits until he has secured new work covered by an unemployment benefits law and has been paid 10 times the weekly benefit amount by the new employment.

## FMLA DEFINITIONS CLARIFIED ON CARE OF DISABLED ADULT CHILDREN

The US Department of Labor has issued a new guidance letter to clarify how the Family Medical Leave Act (FMLA) applies to employees seeking leave to care for a disabled adult son or daughter. The FMLA allows up to 12 weeks of unpaid leave in a 12-month period to care for a son or daughter, age 18 or older if the adult child:

- Has a disability as defined by the Americans with Disabilities Act (ADA);
- Is incapable of self-care due to that disability;
- Has a serious health condition; and
- Needs care due to the serious health condition.

Under the new guidance, the child’s age at the onset of disability is irrelevant to the FMLA’s definition of “son or daughter.” As the legislative history recognized, a disabled child may still need care after age 18, and disabled adults can have the same compelling need for care as disabled minors. ADA amendments have expanded the scope of a qualified disability by broadening activities considered a “major life activity.” Under ADA, a disability is an impairment substantially limiting one or more major life activities, a record of such impairment, or being regarded as having such impairment.

The new guidance also may affect military caregivers. An injured or ill military service member’s parent is entitled to up to 26 weeks of FMLA leave in a 12-month period to care for that son or daughter upon satisfying all other FMLA requirements. The new guidance may allow a service member’s parent to take FMLA leave in subsequent years after the 12-month military caregiver period to care for the adult child if the serious health condition and self-care incapability persist.

**Practice Point:** Be aware of employees with adult children with disabilities and serious health conditions requiring the parent’s care, especially employees with adult children serving or having served in the military. With the expanded definition of a qualifying “disability” and serious health conditions arising even in adult children, more employees may be entitled to FMLA leave.

## AREAS OF PRACTICE

Litigation  
Professional Malpractice Defense  
Tort and Insurance Defense  
Employment and Civil Rights  
Healthcare  
Mediation  
Business and Finance  
Estate Planning, Wills and Trusts

Visit our Website:  
[www.raineykizer.com](http://www.raineykizer.com)

We will soon be using only an e-mail system for our employment law alerts and newsletters.

Please contact Martha Espey ([mespey@raineykizer.com](mailto:mespey@raineykizer.com)) and we will gladly add you to our e-mail list.



# EMPLOYMENT LAW ALERT

## UPCOMING EMPLOYMENT LAW SEMINARS

Our Fall Employment Law seminar, in conjunction with West Tennessee SHRM, is set for November 6, 2013, at Union University in Jackson, Tennessee. The program will begin at 8:00 and run through mid-afternoon. Topics scheduled for discussion include investigation of harassment complaints, workers' compensation reform updates, and recent court decisions on employment issues.

We are also planning a Spring Employment Law seminar with the Volunteer SHRM chapter in Dyersburg, Tennessee, tentatively scheduled for March 18 or 20, 2014. Anticipated topics at this event include the Affordable Care Act and employee engagement issues.

Information packets will be sent closer to both event dates. For more information or to register, contact Martha Espey at 731-423-2414 or [mespey@raineykizer.com](mailto:mespey@raineykizer.com).

### WE'RE GROWING...

The Firm proudly welcomes its newest associate, Brandon Reedy. Brandon practices in the areas of tort and insurance defense and employment law. He joined the Firm in September after serving as a law clerk to Judge David Farmer of the Tennessee Court of Appeals. Originally from Murfreesboro, he earned a Bachelor of Business Administration degree, *summa cum laude*, at Middle Tennessee State University, and his law degree, *cum laude*, at the University of Memphis. Brandon is a member of the Howell Edmunds Jackson chapter, American Inns of Court. He and his wife Courtney live in Jackson, where they teach the First Grade class in their church's Sunday School program. He is an outdoor enthusiast, enjoys hockey, and recently began playing the banjo.

As well, the Firm is growing in our Memphis office. As part of our ongoing commitment to serving clients in Tennessee, Arkansas, and Mississippi, we are expanding our Downtown Memphis office to increase conference facilities, attorney office space, and room for future growth. We look forward to this expanded base of operations to better serve all our clients.

### ...AND WE'RE GOING!

Our attorneys are on the move! We speak to organizations across the region on issues facing employers to equip them to be proactive in business activities. Here are some of our upcoming presentations:

Dale Conder is addressing the Tennessee Chiefs of Police Association on October 4. Dale has also been a featured presenter on legal ethics recently in Jackson.

Latosha Dexter will speak October 11 on the ADA at the Equal Justice University. Latosha will also be a featured presenter at the Memphis Chamber HR Summit on November 4.

Rob Binkley will present on October 16 at an annual conference for the West Tennessee Business Medical Advisory Council. Rob recently also addressed employer issues at a business breakfast event for the Jackson Chamber of Commerce.

Michael Mansfield will discuss legislative updates on industry issues and new workers' compensation laws with the Crockett County Chamber of Commerce on November 4.