SECTION 3:
VOLUNTARY LEAVING

If you voluntarily quit or voluntarily retire, you may be disqualified from receiving benefits. However, even if the Determination you receive from UIA says "Voluntary Leaving" as a reason for disqualification, you may be able to show that you did not leave the job voluntarily or that there was "good cause" for quitting.

In cases where a worker may be disqualified from UI benefits due to voluntary leaving, both the worker and the employer have the burden of proof at different times in the process—the responsibility to bring evidence for their version of the facts. In voluntary leaving cases, the burden of proof begins as the responsibility of the employer. First, the employer must provide evidence that the worker left his or her job voluntarily. Once the employer has done so, the burden of proof shifts to the worker to show:

- That leaving the job was ***involuntary***—that is, the employee had no other option but to quit or retire and did so out of necessity; or
- That the employee quit for ***"good cause attributable to the employer"***—a condition or event within the employer's control that a reasonable person would find intolerable or unmanageable.

A. WAS IT TRULY VOLUNTARY?

Many people whose employment ends are surprised when they learn that the employer described their departure as voluntary. A worker may have felt forced into resigning or that they were terminated. Sometimes, the worker does something that the employer interprets as resignation, but the worker did not intend to resign. It is very important to loo at the entire context surrounding the separation and not just how the employer chooses to characterize it.

A company eliminated day shifts for its security guards. When offered a choice between the afternoon or night shift, one guard said he wanted time to think about it. The employer interpreted this as resignation, but the UI ruling found that it was not voluntary and that the company "opted unreasonably to deprive the employee of any work." The decision restored the worker's UI benefits.

A worker became angry when her supervisor denied her request for a leave of absence. She left work for the rest of the day, and the employer said this meant she had quit. The court did not consider this voluntary leaving, however, because she never expressed an intention to quit.

A teacher received a negative evaluation. The school principal said if she resigned, the evaluation could be removed from her record, which would increase her chances of finding employment. The court found that this was not a voluntary quit, because the teacher did not initiate the discussion of resigning.

If you receive a Determination or Redetermination from the UIA that says you are disqualified for voluntary leaving, consider whether you intended to voluntarily resign or whether the employer demanded or strongly suggested that you resign in a way that made you feel like you had no reasonable alternative.

A type of "voluntary leaving" that many workers would not consider voluntary is failure to maintain some credential or license required by the job. Examples include failure to keep a current driver's license, professional license, work authorization, or if a job had a residency requirement to live in the community where you work. In these cases, the worker is disqualified from UI due to "voluntary leaving" when: 1) the particular requirement is clearly documented ahead of time by the employer and linked to that particular job; and 2) the failure to comply with the requirement was within the control of the worker.

Most workers who no longer meet requirements of their job are disqualified from UI for voluntary leaving, but there are exceptions.

A Canadian nurse who had to leave her job because of changes in U.S. immigration law was not disqualified because the reason was beyond her control.

Following their graduation from nursing school, nurses obtained temporary state nursing licenses that allowed them to work as graduate nurses. But to get a permanent nursing license, they were later required to pass a state licensing exam. When the nurses did not pass, and therefore lost their jobs, their unemployment benefits were challenged. There was no evidence that the nurses were negligent in preparing for or taking their exams. The court held that this was not a voluntary leaving.

Besides the question of who initiated the separation—whether it actually was voluntary—there may also be a question of whether the worker had "good cause" to quit. The judge will examine whether the worker was compelled to leave by a workplace situation or treatment that was so intolerable, it would have made any reasonable person resign.

B. WHAT COUNTS AS GOOD CAUSE?

In cases where the issue is voluntary leaving, "good cause" is defined as a demand or action by the employer that would make a reasonable, average worker in similar circumstances feel compelled to quit.

Here are some examples of circumstances that have been ruled "good cause" for voluntary quitting, meaning the worker would not be disqualified from UI benefits.

- Harassment in the workplace and an employer's failure to address the issue; being subject to abusive language accompanied by other mistreatment; suffering from discrimination on the job.

  A teacher resigned after another teacher confronted her in a threatening manner. She complained to the school administration, but the school did not discipline the other teacher. This situation was ruled "good cause" when she sought unemployment benefits.

- When an employee is asked to do something illegal or unethical under the general standards of that particular business.

  A worker in an automotive shop quit because the employer advertised a two-step rustproofing procedure for cars, but told him to provide only the first step of the rustproofing procedure. This was ruled good cause, so the worker received benefits.

- A choice between retirement and questionable recall prospects, or notification of an impending layoff.

  A worker submitted her resignation several days after her employer told her she would be laid off at year-end. This was determined not to be voluntary because she had already effectively lost the job due to the employer's action.

- Income reduction, including a significant loss in income, or non-payment of wages.

  A part-time gas station employee quit when his employer announced his wages would be cut. The 1978 ruling on this case found the planned reduction by approximately 17 percent was a substantial reduction in income and thus good cause for voluntary leaving. However, in a 1989 case involving a pay cut of approximately 15% through the elimination of a worker's overtime, the income reduction was ruled not substantial enough to be counted as good cause for voluntary leaving.

- A significant change in working conditions or terms of employment.

  When a company added a non-compete agreement to its employee handbook, a worker refused to sign the new handbook and quit. The non-compete agreement was found to be good cause, as it materially changed the terms of employment.

- Compensation that does not amount to a living wage.

  A salesman quit his job after a switch from salary and commission to straight commission dropped his income to $21 per month. The ruling said, "Under such circumstance, is there really any choice?" and approved the worker's UI claim.

- Work conditions that have a significant adverse effect on the worker's health have sometimes been considered good cause. (This is not predictable as it depends what is ruled more than a reasonable person would tolerate.)

> Frequent changes in shifts took a heavy toll on a worker's physical and mental health. He asked to transfer to a different position, and when the employer refused, he resigned. This was ruled good cause for voluntary leaving; the worker received benefits.
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> Another ruling found good cause for a worker's quitting her job, because she left when she was diagnosed with breast cancer and the employer refused to allow her a change in responsibilities or a medical leave of absence.

- Scheduling difficulties have also at times been found to be good cause for voluntary quitting, but again this depends on a judgment of what is unreasonable.

> A worker quit because her employer changed her schedule from six days a week to seven days a week, with on-call at nights, and no vacation except Christmas Day. This was ruled good cause for leaving her job.

There are also some reasons for resignation that have consistently been ruled **NOT** to be good cause.

- Retirement and Buyouts: Workers are often disqualified from UI benefits if they accept a retirement package or buyout option. The exception to this is if workers have good reason to believe their employment would not continue even if they declined the retirement or buyout offer—that is, if there is not a true choice.

> A worker was disqualified for "voluntary leaving" when he chose to accept a buyout instead of accepting another position fifty miles away with the employer paying for all relocation expenses.

- Workers generally will not receive benefits if they voluntarily leave for personal or family-related reasons, even if they are compelling.

> A woman quit her job because her long work hours made her husband suspicious that she was having an affair at work. The court disqualified her for UI, saying that "there was no distinct connection between the claimant's personal problems and her work."

- Workers who leave their jobs just because of general conflicts or unpleasant behavior by other employees or even supervisors will usually be disqualified.

> A worker who quit because of her supervisor's constant yelling, and another who left her job after her employer made rude and sarcastic remarks to her, both were disqualified from UI for voluntary leaving; these problems were not considered "good cause."

With any type of "good cause attributable to the employer" case, it is important that, whenever possible, the worker give the employer notice of the issues that are bothering them to give the employer a chance to fix them.

C. LEAVING TO ACCEPT OTHER EMPLOYMENT

Unemployment benefits may be denied if you left your current job for another job. In these cases, to be able to receive benefits you must have (1) left the original job in order to take ***permanent full-time work***, and you must have (2) performed services for that employer.

The amount of time you spent with the new employer will not matter, so long as when you took the new job, you thought that you would have permanent full-time work; you completed some sort of compensable task; and you were separated due to a reason that still qualifies you for benefits. The main purpose of this provision is to stop workers from taking lesser work and then claiming unemployment benefits against their previous employer. The court will look at the hiring procedure, the mindset of the employer when hiring, and your mindset when taking the job.