

The Obligation to Make Reports to DCF and Unemployment Compensation: Another Penalty For Failing to Notify DCF

Education Law Notes

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By Mark Sommaruga

Our state has a comprehensive requirement for certain employees (particularly in the medical and educational spheres) to make reports to the Department of Children and Families (“DCF”) of suspected child abuse and neglect. *Connecticut General Statutes §17a-101a*. a recent case, the Connecticut Superior Court affirmed prior administrative decisions and concluded that termination from employment for failure to make such a mandated report could affect one’s eligibility for unemployment compensation benefits.

In *Colden v. Administrator, Unemployment Compensation Act*, 2014 WL 3584966 (Conn. Super. 2014), a child care director was discharged due to her failure to report suspected abuse at the daycare center as required by state law and the center’s policy. Specifically, the director was informed by a parent of a child enrolled at the daycare center that she suspected that a teacher within the program inappropriately touched a child. Upon learning of the parent's concern, the director questioned the child. Although aware of the employer's policy requiring her to report any suspected abuse within twenty-four hours, and despite having received yearly trainings conducted by a DCF representative on mandated reporting as required under Connecticut law, the director instead left for her holiday vacation without notifying DCF (or the center’s executive director). By the time the director finally reported the incident five days after first being informed of the allegation, the child's physician had already reported the allegations and, as a result, the police had already begun an investigation.

The center received negative media attention and was issued a citation from the DCF for its failure to report the suspected abuse. Due to her failure to report the suspected abuse as mandated by law, the director was also arrested and charged with “Failure of a Mandated Reporter to Report Abuse.”

The director’s claim for unemployment compensation benefits was denied by the unemployment compensation administrator, who determined that the director was not entitled to benefits due to being discharged for “wilful misconduct.” Both the appeals referee and the Board of Review affirmed the administrator’s decision to deny benefits.

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On appeal, the Superior Court found that the Board of Review correctly determined that the director engaged in “wilful misconduct,” thus disqualifying her from receiving unemployment compensation benefits. In affirming the prior decisions, and in relying upon prior case law governing the “wilful misconduct” exclusion to unemployment compensation benefits; see *Resso v. Administrator, Unemployment Compensation Act*, 147 Conn.App. 661, 666 (2014) the Court found to be dispositive the following facts: 1) the employer maintained a policy that requires its employees to report any suspected abuse that the employee believes occurred, 2) the director was aware of both the employer's policy and the state's mandated reporting requirements regarding any suspected abuse, and 3) despite being aware of her obligation to report any suspected abuse, which was effectively communicated to her, the director failed to take any action to notify DCF or her employer of the suspected abuse. Furthermore, in affirming the prior decisions, the Court noted that the employer had a legitimate interest in protecting its students from child abuse and that the director's conduct was harmful to such interest. In addition, the employer discharged two teachers who also failed to comply with the child abuse and neglect policy; thus, the employer uniformly enforced its policy. Finally, since the director received yearly training on the mandated reporting requirement, the misconduct was found not to be a result of “mere” incompetence.

WHAT WE CAN LEARN FROM THIS CASE

The *Colden* decision reflects the seriousness for everyone involved in the obligation for “mandated reporters” to notify DCF of suspected child abuse. Besides the effect upon employees who are mandated reporters, employers such as school districts should learn that having clear policies serves not only to provide appropriate direction for employees, but also can extinguish liability for unemployment compensation where individuals knowingly (and not due to simple “incompetence”) violate important and “reasonable” rules that are uniformly enforced. In addition to 1) preventing the harms that lead to such rules, 2) complying with statutory mandates, and 3) avoiding employer liability, training and other means of inculcating such rules may serve to extinguish claims by former employees seeking unemployment compensation benefits that their misdeeds were the result of “mere” ignorance as opposed to “willful misconduct.”

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