

MOONLIGHTING/SECONDARY EMPLOYMENT/OFF-DUTY CONDUCT

Whenever an employee's secondary employment or outside work or off-duty conduct has a negative effect on the employee's primary job performance obligation, responsible, prudent supervisors are justified to take effective steps to protect the employer's legitimate interests. Such action should be taken without interfering with the personal rights of the employees.

- ___ Supervisors should know their employees well enough to be aware of which employees are engaged in outside employment.
- ___ Observant supervisors who detect early signs of conflict between the outside job or off-duty conduct and the employee's regular job should call such effects to the attention of the employee and provide the employee an opportunity to take steps to correct the problem.
- ___ Most "moonlighters" are good performers, for they do not usually dislike work.
- ___ When the work of a formerly effective employee has deteriorated, moonlighting may be the cause, especially if there are no other clearly detectable causes for the deterioration.
- ___ Some of the most common detrimental effects of secondary employment include absences, tardiness, refusals to work overtime, difficulty in reaching the employee for call-outs.
- ___ Certain types of outside employment, truck farming for instance, produce seasonal interferences or regularly re-occurring conflicts with the employee's primary job. Attendance charts will often illustrate such a seasonal pattern.
- ___ Other effects which may be apparent include poor quality of work or the use of company facilities, tools, or material to assist the employee in the secondary job.
- ___ The mere fact that an employee has an outside job is not sufficient cause for disciplinary action. The supervisor should be able to identify specific competitive effects or direct interference upon the employee's job performance before taking formal corrective action.
- ___ Any corrective action taken by the company and the immediate supervisor should be aimed simply at the problem caused on the primary job or on the specific job performance deficiency produced at the primary job. (For instance, if the problem is unavailability for overtime assignments, as required of all employees equitably, the employee subjects himself/herself to the necessary job performance counseling and disciplinary action to correct the problem. If the problem is one of poor quality of work due to tiredness, failure to concentrate, etc., then the supervisor should implement the necessary job performance counseling and disciplinary action to correct the problem.)
- ___ If the outside employment prevents the employee from fulfilling attendance and job performance obligations, including the normal overtime requirements of a regular primary job, the primary employer should take necessary steps aimed at encouraging the employee to satisfy the primary job obligations.
- ___ Many companies require employees to notify their supervisor of their intentions to obtain outside employment and stipulate that employees should obtain supervisory approval before engaging in outside employment, where such employment may interfere with the employee's primary job performance obligation.
- ___ The supervisor has the right to inquire about the general nature of the outside job including an estimate of the hours the employee will be working on the outside and the nature of the work schedule.
- ___ Employers, likewise, have the right to ascertain from moonlighting employees the nature and extent of insurance coverage and workmen's compensation insurance carried by the secondary employer.
- ___ The supervisor should clarify the employer's policy in the event the employee is injured or disabled while engaged in the secondary employment.
- ___ Supervisors should not condone or encourage employees to falsify attendance records or to stretch the intent of Agreement clauses and rules to cover absences caused by moonlighting, such as farming. The supervisor, by doing so, encourages abuse of sick pay or sick leave privileges, abuse of leave-of-absence privileges, etc., and abuse of the rights of both parties to the Collective Bargaining Agreement.
- ___ If an employee claims that illness prevents regular work attendance, but the employee still performs secondary employment jobs, arbitrators are likely to uphold disciplinary action for disciplining employees for absence when the employee was working on an outside job, based on the inference that the employee could have worked at the primary job had the employee wished to do so. This is especially true if the rigors and physical demands of the two employment situations are similar.

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- ___ Where the secondary job is of such a nature that the employee feels able to perform it but not the primary job, the company is justified to request that the employee honestly report and discuss the secondary job with the primary employer.
- ___ The mere performance of work for pay in a secondary job is not in itself sufficient cause for disciplinary action. The supervisor and the company should be able to show that the corrective disciplinary action is consistent with the degree of impaired job performance or interference on the primary job. (For example, in a case where an employee was found to have performed work for pay while not at his/her primary job and drawing sickness and accident pay benefits, the arbitrator ruled termination of employment too severe a penalty and instead reduced the penalty to forfeiture of benefits.)
- ___ There are some instances where severe disciplinary action is justified as regards outside employment, secondary employment, or moonlighting. In these situations, however, the principle of "just cause" still prevails. It should be shown that the severity of performance impairment at the primary job justifies the severity of disciplinary action, and the employer will have the burden of proof in such cases.
- ___ In summary, the two results of moonlighting which most often justify primary employer action are:
 - 1) impaired job performance of the employee on the primary job,
 - 2) competition or interference with the interests of the primary employer.
- ___ Among the most common job performance impairment effects for which primary employer action is taken include:
 - ... absence, tardiness
 - ... job performance quality and/or quantity decline
 - ... unfit condition, inability to perform, tiredness
 - ... neglect of overtime duties, inability to reach the employee for call-out
 - ... abuse of leave provisions (falsifications are often involved)
 - ... competitive conflicting interests
 - ... use of primary employer tools or supplies to support secondary job

COMPETITIVE OUTSIDE EMPLOYMENT

- ___ When the outside employment is with a competitor of the primary employer or when there is any kind of conflict of interests, there is generally justification for some form of disciplinary action. Although some form of discipline is in order, termination of employment may be too severe. At other times, however, termination of employment may be justified, such as where the primary employer has lost business as a result of the employee's secondary job.
- ___ Where the employee may be conducting a business of the same specific nature as that of the primary employer, or where the employee may be using the company's facilities, tools, raw materials, or sales contacts to facilitate the outside employment activity, accelerated or severe discipline and termination of employment will likely be appropriate.
- ___ Where trade secrets are involved or where privileged information obtained from the primary employer is instrumental in the outside employment, severe discipline is likewise more justified. (Employers should have specific rules or policies to address such situations.)

OFF-DUTY CONDUCT

Whenever an employee's off-duty conduct interferes with the employee's job performance, the employer is justified in investigating the off-duty conduct and in taking appropriate action. The rationale involved is similar to that utilized in secondary employment situations.

The employer has the right (and obligation) to take action when an employee's off-duty conduct is harmful to the company's business needs or any of its legitimate interests, which can generally be indicated by affirmative answers to any of the following questions:

- 1) Does the conduct reduce the employee's ability to perform regular job assignments?
- 2) Does the conduct interfere with the job performance of other employees?
- 3) Does the conduct affect the reputation credibility and trust of the company with:
 - A) customers?
 - B) employees or prospective employees?
 - C) suppliers/service personnel?

Other specific considerations include the following areas whenever off-duty misconduct is involved:

Are competitive effects, trade secrets, or conflicts of interest involved?

Are company parts, supplies, or equipment involved?

Did the misconduct relate to activities at work?

Is the misconduct moral turpitude in nature or is it generally socially unacceptable?