



Employment Insurance Disqualification

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Reasons for Disqualification

There are numerous reasons a claimant can be disqualified from receiving regular EI benefits.

Three of the more common reasons for EI claimants being disqualified are:

- Quitting a job (under the *EI Act* this is referred to as 'Voluntary Leaving');
- Misconduct; and
- Availability.

Voluntary Leaving

EI claimants can be disqualified from receiving benefits if they voluntarily leave their employment without 'just cause'.

Just cause is not defined in the *EI Act*. It is said to exist if there was no reasonable alternative to leaving employment, or taking leave having regard to all of the circumstances.

The *EI Act* lists certain circumstances which will constitute 'just cause' for voluntarily leaving employment.

Just Cause

The *EI Act* lists the following specific circumstances as just cause for voluntarily leaving employment:

- sexual or other harassment;
- obligation to accompany a spouse, common-law partner or dependent child to another residence;
- discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*;
- working conditions that constitute a danger to health or safety;
- obligation to care for a child or a member of the immediate family;
- significant modification of terms and conditions respecting wages or salary;
- excessive overtime work or refusal to pay for overtime work;
- significant changes in work duties;
- antagonism with a supervisor if the claimant is not primarily responsible for the antagonism;
- practices of an employer that are contrary to the law;
- discrimination with regard to employment because of membership in an association, organization or union of workers;
- undue pressure by an employer on the claimant to leave their employment; and
- any other reasonable circumstances that are prescribed.

Misconduct

An EI claimant is disqualified from receiving benefits if they lost their employment by reason of their own misconduct.

The *EI Act* does not define misconduct. However it has been defined by various legal decisions.

Misconduct is **willful** conduct, or conduct that is so **reckless** so as to amount to willfulness, which adversely affects the employment relationship.

Misconduct is often found to exist where a claimant's actions irreparably damage the trust relationship between employer and employee.

To a certain extent the nature of a claimant's employment will determine whether the conduct complained of amounts to misconduct.

Dismissal for cause based on a claimant's conduct is not the same as dismissal for misconduct. For example: incompetence, stupidity, misunderstanding between an employee and employer, momentary carelessness or simple mistakes may be cause for dismissal but are not necessarily equivalent to misconduct.

Misconduct **must** be the reason the claimant lost their job, and the burden of proving misconduct rests with the EI Commission and employer.

Availability

In order to be entitled to benefits, claimants must show that they are seeking employment and are available for work.

Availability is a willingness to work under regular conditions without unduly limiting the chances of obtaining employment.

It is a question of fact, and the burden for proving availability rests upon claimants.

There is a rebuttable presumption that a claimant who is enrolled as a full-time student is not available for work.

Acknowledgement

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Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

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