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## 5 GENERAL

The provisions of [AS 23.20.379\(a\)\(1\)](#) apply only in relation to the worker's **last work**. It is necessary to determine:

- Did the worker voluntarily **leave work**?
- Was the work **suitable**? And
- Did the worker have **good cause** for leaving?

**Note that an A&A issue may be present whenever a claimant voluntarily leaves employment, whether or not the claimant had good cause for leaving.**

### A. Last Work

A worker's last work under [AS 23.20.379\(a\)\(1\)](#) is the worker's most recent work in which there was an employer-employee relationship before the filing of the claim for benefits.

The duration of the last work is irrelevant. Even if the job was less than a day, it is the last work if there was no other work between the work and the filing of the claim. However, sham employment, taken solely to avoid a disqualification is not considered last work

### B. Nature of Separation

A claimant may separate from an employer because the claimant quit, was discharged for misconduct, or was laid off.

- If the claimant separated from the employer because the employer discharged the claimant, see the [MC section](#) of the BPM.
- If the claimant was laid off for lack of work, there is no issue under this statute.
- If there is a question as to whether the claimant quit or was discharged, see [VL 135 Discharge or Voluntary Leaving](#).
- If there is a question as to whether the claimant quit or refused an offer of additional work, see [VL 315 Voluntary Leaving vs Refusal of New Work](#).

#### 1. Voluntary leaving

Voluntary leaving under [AS 23.20.379\(a\)\(1\)](#) occurs whenever:

- The worker chooses to cease performing services for the employer;  
or

- The worker severs an ongoing employer-employee relationship, regardless of whether the worker is performing services at that time.

2. Change from full-time to part-time work

A worker may request and be given a change from full-time hours to part-time hours. If the worker does not file for benefits until after beginning the part-time work, this is not a voluntary quit, because no separation has occurred. **However, there is an availability issue because of the worker's inability or unwillingness to work full-time.** On the other hand, there is usually no issue if the employer instigated the change from full-time to part-time hours.

If there is a question as to whether the claimant quit or was laid off, see [VL 135.45 Layoff Imminent](#).

C. Suitable Work

There is no disqualification if a worker leaves unsuitable work. A worker needs good cause only to quit suitable work.

Suitable work is defined as work in the worker's usual occupation or an occupation for which the worker is reasonably fitted by training, experience, and physical condition.

If the worker has accepted the conditions of employment, by remaining on the job a significant period of time, and not attempting to change the objectionable circumstance, the work is suitable. However, in cases where the work is detrimental to the claimant's health, even though the claimant is capable of performing a particular job, the work may be deemed unsuitable.

If there is a question as to whether the work was suitable, see [VL 425 Suitability of Work](#).

D. Date of Separation

The date of separation is the date:

- on which the claimant last performed services for the employer, or
- on which the employer/employee relationship is severed.

If the employer/employee relationship is ongoing, as in the case of a definite layoff, there may be two dates of separation -- one when the employee stops performing services and a second one when the employee/employer relationship is ended.

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If there is a question as to what should be the date of separation, see [VL 440 Separation Date](#).

E. Good Cause

1. Definition

If the work is determined to be suitable, then good cause for leaving must be established to prevent a disqualification.

There is no disqualification if a worker leaves suitable work with good cause. To be good cause:

- The underlying reason for leaving work must be compelling; and,
- The worker must exhaust all reasonable alternatives before leaving the work.

To determine the cause of the worker's leaving, see [VL 385 Relation of Alleged Cause to Leaving](#).

If the worker left for compelling reasons, see [VL 160 Effort to Retain Employment](#).

If there is a question as to whether the worker left for good cause, see [VL 210 Good Cause](#).

2. Burden of proof

The Commissioner stated, "Once having voluntarily quit, it is the burden of the claimant to establish good cause." (8822584, February 28, 1989)

## 40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

## A. General

In most cases voluntarily leaving suitable work to enter or to return to school is not for good cause.

Even if the employer has agreed that the worker will leave when school begins, the worker does not have good cause for leaving, unless the leaving coincides with the end of the employer's need for a worker's services.

## B. Exceptions

## 1. Legal requirement to attend school

If a worker is required by law to attend school that conflicts with hours of work, that work is not suitable. The worker has good cause to leave work.

Alaska law ([AS 14.30.010](#)) requires a person between seven and sixteen years old to attend school.

## 2. Approved vocational training course

Regulation: 8 AAC 85.095(c)(5)

8AAC85.095(c)

*To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:*

*(5) leaving unskilled work to attend a vocational training or retraining course approved by the director under AS 23.20.382, only if the claimant enters the course immediately upon separating from work;*

A worker has good cause to voluntarily leave suitable work to attend vocational training if:

- The work is unskilled;
- The worker is attending approved vocational or retraining program; and
- The training begins immediately upon separation.

## a. Unskilled work

To be allowed under the regulation, the worker must voluntarily leave unskilled work. If the worker voluntarily leaves skilled work, then the worker leaves suitable work without good cause.

See [AA 40.2 Approved Vocational Training Program](#), for a discussion of unskilled work in this context (including union apprentice workers).

b. Approved training program

The worker must enter an approved vocational training or retraining program. A worker who leaves work to enter a training program not approved by the Director has voluntarily left suitable work without good cause. For a discussion regarding an approved training program, see [AA 40.2 Approved Vocational Training Program](#).

c. Immediately upon separating from work

To be allowed under the regulation, the worker must enter the training program immediately upon separating from work. The time frame is undefined in regulation but must be reasonable in view of all facts. If the time lapse is more than a few days, extenuating circumstances need to be established to show good cause. When the worker must relocate to attend school, more time will be required than the worker who is attending school locally.

Example: A claimant (, 97 2248, October 29, 1997) left work on August 16 to attend an approved training program. She failed the entrance test for that program and entered another school in September. The Tribunal held that she had good cause to quit work at the time she did. Even though she did not attend school immediately, the reason she did not begin school was beyond her control.

Claimants traveling to attend Director approved training, do not need to meet availability requirements while traveling. See [AA150.1.K Travel in Connection with Approved Vocational Training](#).

## 90 VIOLATION OF CONSCIENCE OR LAW

## A. General

In the absence of a violation of law, health or safety regulation, contract, or collective bargaining agreement, a worker's disapproval of the employer's method of conducting business is not a compelling reason for leaving work. Violations of law, health and safety codes, make the work unsuitable giving the claimant good cause to quit. See [VL 425 Suitability of Work](#).

## B. Violation of Law, Contract, or Collective Bargaining Agreement

## 1. Violation of law

Illegal working conditions are inherently unsuitable. Working conditions that violate health or safety regulations require the workers to engage in illegal activities, or be a party to illegal activities, are not suitable.

A worker need not request adjustment of illegal activities prior to quitting.

Example: A claimant quit his job as a nonunion apprentice electrician trainee because he was not given the wage he was promised. After he quit, he learned that the employer had been working him illegally by not having a journey level electrician directly supervising his work. The employer corroborated that a certified electrician was not always on the same job site as the employee as required by 8 AAC 90.165. In allowing benefits, the Tribunal held that the claimant need not complain about illegal working conditions before quitting. Illegal working conditions are inherently unsuitable. ([99 1072](#), June 9, 1999)

Example: An administrative assistant for the Chief of Police quit her job because she was being asked to run criminal histories on the police network for reasons that were against regulations. She also allowed new employees to use her password until they received their own, although she knew this to be illegal. The conflict between what she was asked to do and what she knew was correct legally caused her stress. She began a grievance but did not follow through on it. Because it was not established that the work was illegal and because she had not followed through on her grievance, the Tribunal held that she did not have good cause to quit. ([99 0159](#), February 24, 1999)

## 2. Violation of contract or collective bargaining agreement

The terms of a collective bargaining agreement, when accepted by both union and employer, become part of the contract of hire. Both sides are expected to fulfill the terms of the collective bargaining agreement. Just as the worker generally has compelling reasons for leaving when there is

a substantial and unreasonable breach of the contract of hire, so there are compelling reasons for leaving when there is a breach of a collective bargaining agreement.

Most collective bargaining agreements have an orderly process for the adjustment of grievances, including alleged violations of the collective bargaining agreement. The worker who leaves work without use of the grievance procedure has forfeited good cause.

C. Personal, Philosophical and Religious Objections

In the absence of a violation, mere disapproval of the employer's method of conducting business is not a compelling reason for leaving work.

Example: An accountant quit work because she was required to produce professionally substandard work for which she might be blamed in an internal review audit. She brought her concerns to the employer, who took some corrective action, but not enough to satisfy her. In denying benefits, the Commissioner held, "[It is clear that the employer's practice was not 'highly questionable,' illegal, or unethical. [The claimant] simply had misgivings about the ethical propriety of the work and was not satisfied with the corrective action taken by her employer. As such, [the claimant] acted as a uniquely motivated individual rather than as any average, reasonable person might. Accordingly, [the claimant] left [without 'good cause.'] (81H-184, April 9, 1982)

A claimant who has well-defined reasons to believe that the employment practices violate ethical standards of the claimant's profession leaves with good cause if the unethical practices render the work unsuitable. Examples include business practices that would jeopardize a claimant's professional license, credentials, or subject them to possible criminal action or civil litigation.

Example: A claimant, who was a lawyer, was required by the employer to write to ADEC stating that the company was complying with environmental regulations. The claimant in fact did not know this to be the case. She quit because she believed that writing this violated the ethical standards of the legal profession. The Tribunal held that she quit with good cause.

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135 DISCHARGE OR VOLUNTARY LEAVING

135.05 General

Law: [AS 23.20.379\(a\)](#)

A. Importance of Distinguishing between Voluntary Leaving and Discharge for Misconduct

Although the voluntary leaving and the discharge for misconduct provisions of the law carry the same penalty, it is important to distinguish between these separation issues. Failure to select the proper issue may cause an incorrect determination.

Example: A worker who leaves a job voluntarily, because the worker cannot do the job to the employer's satisfaction, would probably be disqualified. In the same circumstances, if the employer required the worker to quit, the result would probably be a finding that the discharge was not misconduct in connection with the work.

The burden of proof varies with each issue.

Even if the employer and the worker both give the same answer as to the type of separation, the adjudication may be done as another type of separation.

Example: A claimant chose to sign a letter of resignation rather than be discharged. He had no choice of remaining in that job, so the Tribunal held the separation to be a discharge. (97 2254, October 31, 1997)

B. Involuntary Separation

1. Legal requirement

If a federal, state, or local law forces a worker to resign because the worker is **unable** to meet the requirement through no fault of the worker, then neither the worker nor the employer has the option to continue the employment relationship. Such a separation is a discharge for reasons other than misconduct in connection with the work.

2. Compulsory retirement

A worker may be forced to retire because of age under a compulsory retirement provision of a pension, retirement or collective bargaining contract, or under an employer's policy. This is not a voluntary leaving because the worker has no freedom of choice concerning the separation.

3. Health or injury

A worker who is forced to leave employment due to reasons of health has quit; but if the employer discharges the worker for reasons connected with the worker's health and the worker has no option of continuing employment, the separation is a discharge for reasons other than misconduct.

Example: A claimant (97 0955, May 21, 1997) injured his back and was placed on medical leave. Although his physician released him for light duty, the employer would not allow his return to work while he still had lifting restrictions due to his injury. The employer terminated him at the end of December when he still was unable to return to work. The Tribunal held that he was discharged by the employer for reasons other than misconduct.

C. Working on Call

1. General

If a claimant is working on call, each separate call/work is a separate assignment. There is a separation issue only if the claimant leaves the work before the completion of the assignment. If, at the end of an assignment, the claimant was laid off, with no definite return-to-work date, there is no separation or suitable work issue between assignments, even if the claimant does not call in for another assignment. However, there may be an availability issue.

Example: A claimant ([98 0244](#), March 6, 1998) was working on call for her employer. The employer informed her that there was no more work. Although she contacted the employer after that, there was still no work. The Tribunal held that she had been laid off.

2. Worker requests on call status

A worker who is working regularly and requests to be placed on call has changed the conditions of employment. The on-call position is new work. Examine the worker's reasons for requesting the change to determine whether they were compelling.

Example: A claimant ([98 0218](#), May 20, 1998) asked her employer to change her from fulltime to on-call work. The Commissioner upheld the Tribunal in holding that the change was a change to new work. Since she voluntarily made the change with no reason other than that she preferred on-call work, the Commissioner held that she quit work without good cause.

Compare this situation with [VL 5.B.2 Change from Full-Time to Part-Time Work](#) in which the worker was employed at the time of filing, and therefore there was no separation. The worker who requests on-call work and files during a period of no work has separated from the employer.

D. The "Moving Party"

1. Regulation: [8 AAC 85.010\(20\)](#)
2. Choice to continue relationship

Whether a worker's separation is a discharge or a voluntary leaving depends on whether the employer or the worker was the **moving party** in causing the separation. The moving party is not necessarily the party who initiated the chain of events leading to the separation. **The moving party is the party who, having a choice to continue the relationship, acts to end it.** (87H-UI-265, September 29, 1987)

A party who has no choice in continuing the relationship cannot be the moving party.

Example: A claimant stated that she intended to resign from her job, but without setting a date. The employer accepted the claimant's statement as an immediate offer to resign and did not allow her to rescind the resignation. The employer was the moving party and the separation was a discharge. (96 3050, January 13, 1997)

The party who has the **last opportunity** to continue the relationship is the moving party.

Example: A claimant left a message on the manager's answering machine that she wanted to close the restaurant for the evening because they were out of prepared food and did not have enough help. When the manager called her back, she used inappropriate language to him, and he told her that she should not speak to him that way and that she was fired. She said, "I'm out of here." When he came to the restaurant, she handed him her time card without speaking to him further. In holding that she had been fired, the Tribunal stated, "In any case [the employer] did not confirm with [the claimant] if she was quitting. His act later of accepting her time card without even an explanation convinces me that [the claimant] was discharged from her employment. [The employer] had the last opportunity to continue the relationship . . ." (97 1821, September 11, 1997)

3. Factors to consider

Factors to consider in identifying the point at which one party forfeited or lost the right to continue the employer/employee relationship are:

- Who initiated the discussion;

Example: A claimant was having health problems due to her pregnancy and was frequently absent. The employer advised her to take a leave of absence, which she did. The Tribunal held that the employer initiated the action, and that therefore the separation was a discharge but not for misconduct. ([98 1379](#), August 21, 1998)

- The reason for initiating the discussion; and
- Whether one person could have continued the employment relationship without a negative effect. (9225516, June 18, 1992)

4. One party unwilling

If it is clear that only one party was unwilling to continue the employment relationship, then that party is the moving party.

Example: A claimant had written a letter of resignation prior to a discussion with his employer expressing his dissatisfaction with his conditions of employment. In the course of the discussion, which also included considering other positions for the claimant, the employer stated that the claimant was fired. Since the employer would not have considered other positions if he had intended to fire the claimant, the Commissioner held that the claimant was the moving party and the separation was a quit. ([96 2913](#), April 8, 1997)

If work was available to the worker, no matter how unsatisfactory, but the worker chose not to work, the worker is the moving party and the separation is a voluntary leaving. The separation is a discharge only if the worker has no choice in continuing the employment relationship. If the employer would have allowed the worker to continue working under the original contract of hire, the separation is not a discharge but a quit.

5. Both parties unwilling

If both parties are unwilling to continue the employer/employee relationship, **the one who moves first to sever the relationship is the moving party**. Where a worker's separation results from a discussion between the worker and the employer, the moving party is the party who

during the discussion, through words or actions, severed the employer/employee relationship.

Example: A claimant was working in a situation that safety procedures required to have a second person assisting. When the foreman sent the assistant away without a replacement, the claimant said he would rather quit than work under those conditions. The foreman told him to pack his bags. The claimant tried to find his immediate supervisor and also to find a safety supervisor, but neither was available. He then told the foreman that he had not intended to quit, but only to make a point. The foreman said it was too late; that his papers were already prepared. The Tribunal held that the claimant had been discharged, as his actions showed that he had not intended to quit; he had said he would "rather quit," not that he would quit; and the foreman had taken the first action to sever the relationship. (97 1142, June 4, 1997)

E. Determining the Moving Party

1. Time of resignation dependent upon some other circumstance

An employer may ask a worker who has resigned to remain at work for a short time after the effective date of the worker's resignation, usually to train the worker's replacement or to complete some urgently needed work; or the worker may resign, setting the time contingent upon a circumstance in the control of the employer. In either case, **the delay does not change the fact that the worker has resigned.**

2. Refusal to accept changed working conditions

See [VL 315 Voluntary Leaving vs Refusal of New Work](#) for cases involving a change in working conditions.

3. Refusal to accept a directive of the employer

An ultimatum or directive from the employer is not in itself a discharge, unless the employer's ultimatum is in effect "leave or be discharged." In this case the employer has discharged the worker because the worker has no choice in the matter. The nature of a separation resulting from other ultimatums depends on the worker's response. A worker's refusal to follow a directive of the employer is a discharge if the employer has the power to rescind the directive. If the employer does not have the power to rescind the directive, the refusal is a voluntary quit.

Example: An employer may discharge a worker at a union's request. **If the separation is the result of the worker's failure to join the union or to continue membership, and the employer has a closed shop agreement or maintenance of membership**

**agreement with the union, the separation is a voluntary leaving.** The worker's unemployment is the result of the worker's act or failure to act; the worker was aware that the action or omission would result in the worker's unemployment; and the employer had no choice other than to discharge the worker.

However, a worker's dismissal because of union pressure, without a contract provision requiring dismissal, is not a voluntary leaving. Because the contract did not require the employer to discharge the worker, the employer had the option of retaining the worker.

If the worker refuses an order but takes no action to leave, the resulting separation is a discharge.

Example: A claimant was ordered to take a drug test to show if the claimant had used drugs while off the job. The claimant notified the employer that he would not do so. A company representative gave him the option of "quitting or taking a leave of absence" which he refused. The Tribunal held that the claimant had been discharged. Although the claimant was no doubt aware that his refusal to take the exam would result in his separation, he took no action to separate, and the employer was not required to discharge the claimant. Therefore, the employer was the moving party in the separation. (82UI-3176)

On the other hand, if the worker leaves rather than comply with the employer's request, the separation is termed a voluntary leaving.

Example: A claimant complained of discriminatory behavior by her employer, in that the employer allowed others to make jokes but not her. The employer said, "If you don't like it, there's the door," and returned to her office. The claimant's leaving was held by the Tribunal to be a voluntary quit. (97 0907, May 20, 1997)

4. Change of ownership of business

A change in ownership of a business does not necessarily end a worker's contract of employment. If the worker voluntarily leaves work without any indication that the new owner will terminate the worker's contract, the separation is a voluntary leaving.

5. Suspension from work

A worker's indefinite suspension from work is a discharge.

Example: A claimant was indefinitely suspended from her job while a theft of the employer's property was being investigated. While on

suspension, she quit. The Tribunal held that she was discharged from work, as the suspension was indefinite. (97 1261, June 18, 1997)

However, if a worker fails to return to work following a definite suspension, then the worker has voluntarily left work on the worker's return-to-work date.

6. Incarceration

When absence from work is due to incarceration, the moving party must be examined (88H-UI-140, March 6, 1989). The moving party is not necessarily the party who initiates the chain of events leading to the separation, it is the party who having a choice to continue the relationship, acts to end it.

If the worker takes steps to remain employed, the separation cannot be considered a quit because the worker is attempting to continue the working relationship.

Steps a worker can take that indicate a desire to remain employed:

- Notify or attempt to notify the employer of the absence;
- Request leave for the absence;
- Attempt to return to work after incarceration, if the incarceration was of short term.

However if the worker fails to make any effort to remain employed, a finding of job abandonment, a voluntary quit, may be appropriate.

Despite actions by the claimant to preserve their employment, the employer may terminate anyway. In these cases the employer is the moving party who has ended the relationship and the separation is a discharge.

Example: A worker was absent from work because he was incarcerated. He attempted to retain his employment by requesting a leave of absence. The employer refused to grant the leave and because the employee could not return to work at the appointed time, he was terminated. The Commissioner stated "It is the holding of this department, therefore, that [the worker] was discharged from his employment." (88H-UI-140, March 6, 1989).

Absence due to incarceration is not good cause to leave employment. In a discharge even though the absence is due to events that occurred off the job, the discharge is considered misconduct in connection with work. Absence in itself has an adverse affect on the employer because the

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employee is unable to perform job duties. Absence due to incarceration disregards the standards of behavior which an employer has a right to expect (88H-UI-140, March 6, 1989).

In the case cited above, the Commissioner concluded:

“[I]t is the holding and policy of this department that, when a person has been incarcerated and his employment is terminated for absenteeism as a result of incarceration, the termination is to be considered a discharge from employment . . . [In accordance with this policy, it is the decision of this department that [the claimant] was discharged for misconduct in connection with his work.” (88H-UI-140, March 6, 1989)

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135.1 ABSENCE FROM WORK

A. Leave of Absence

Any time a worker leaves employment, whether temporarily or permanently, there is a separation issue. If a leave of absence is at the employer's request, the issue is a layoff or a discharge, depending upon the circumstances. **If the leave of absence is at the worker's request, there is a voluntary leaving issue.**

To preserve the employment relationship, a leave of absence must include the employer's promise that the employee will be returned to the job when the period of absence ends. A leave of absence that merely promises rehire **if there is a job opening at the end of the absence** does not preserve the employment relationship. In this situation the separation occurs on the date the worker ceases working, not at the end of the so-called leave.

If a worker files a claim at the **beginning** of a leave of absence, with no intervening work, adjudicate the separation according to the facts at that time.

- If the worker then fails to return at the end of the leave, or resigns during the leave or at its end, adjudicate this separation as a voluntary leaving.
- If the employer has no work for the claimant at the end of the leave, adjudicate that separation as a layoff.

If a worker does not file a claim until the **end** of the leave of absence, adjudicate only the situation at that time.

Example: A claimant (97 0812, April 24, 1997) was given a leave of absence to attend his daughter's wedding. At the close of the leave of absence, he was laid off for lack of work. He filed for benefits at that time. The Tribunal held that layoff was the only action to be considered.

B. Intent to Leave

Absence from work, resulting in the worker's discharge, is considered voluntary leaving if the worker's actions indicate no intention of returning to work or if that is the only reasonable interpretation that can be placed on the actions. The voluntary leaving is effective the first day of the absence, regardless of the employer's later action to discharge the employee.

The worker's intent to leave is shown by:

1. Absence without notification for more than a few days.

Example 98 0750 deleted.

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**A short absence with a later attempt to resume employment does not show intent to leave employment.** If the employer refuses to allow the worker to continue in employment, the worker is considered discharged.

2. Taking leave for which the employer has denied permission

Taking leave of absence for which the employer has denied permission is a voluntary leaving. Whether the worker has left work for good cause depends on if the reason is compelling.

3. Moving away from the locality of the employment

A worker who leaves work and relocates to an area from which it is impossible to commute to the previous employment shows that the worker intended to leave the employment.

4. Argument with employer

If the worker's absence follows an argument with the employer, the circumstances must be explored to determine whether the worker intended to leave permanently or merely until the situation was rectified.

Example: In [Tyrell v. Department of Labor](#), Sup. Ct., 1KE-92-1364 CI, November 4, 1993, Mr. Tyrell left his job following a disagreement with his employer as to whether he was entitled to overtime pay for the work he had done. Mr. Tyrell cleared his belongings from his desk and stated that he did not intend to return to work "unless and until he was paid the overtime." Later the employer, in attempting to resolve the situation with and through Mr. Tyrell's union, offered to pay Mr. Tyrell both severance pay and the disputed overtime if Mr. Tyrell resigned. Mr. Tyrell refused. The employer then discharged Mr. Tyrell for abandonment of his position. The Court held that Mr. Tyrell did not intend to quit, as his demand for overtime was reasonable, and he stated that he would not return until it was paid. The fact that he was offered the opportunity to quit also showed that he had not already done so.

On the other hand, if the worker leaves following an argument without explanation, the employer may consider such leaving to be a quit, especially if the worker leaves in the middle of a shift. Any attempt to resume work may be viewed as a new offer of services that the employer has the option to refuse.

Example: In [80B-1572](#), a cashier became upset when reprimanded by her employer and left the store before the end of her shift. She did not return the following day and did not contact her employer

until the third day after the incident, when she was told that the employer had considered her leaving work to be a resignation. Although the claimant contended that she did not necessarily intend to resign but only wanted to "get the situation rectified," the Tribunal held that her walking off the job without notification was, under the circumstances, a voluntary leaving.

Example: This case may be contrasted with that of a worker (97 0665, April 9, 1997), who left the job in the middle of the shift after a discussion with the employer over his hours and wages, but returned the next day, expecting to work. The employer was held to be the moving party in the discharge.

135.2 COMMUNICATION OR MISCOMMUNICATION OF DISCHARGE

A. Constructive Discharge

A constructive discharge is a discharge by an employer that is not formally communicated to the worker. For example, the employer may remove the worker's time card, ask the worker to turn in keys, tools, or uniforms, or stop scheduling the worker for assignments.

Example: A worker (97 1897, November 18, 1997) while on leave to care for personal problems, asked her employer for additional leave to visit her grandfather who was terminally ill. The employer asked her to turn in her work aprons. The claimant assumed she was discharged and did not return to work. Although the employer did not intend to discharge her, the Tribunal held that the perception of discharge had not been overcome, and the separation was held to be a discharge.

Quitting that is provoked by employer harassment or intimidation is not considered a discharge simply because the worker in some sense was "compelled" to leave.

B. Interpretation of a Remark or Action

A separation is a quit if the worker intended to separate and had the choice of remaining in employment at the time the action was taken. If the action of the worker shows an intention of leaving work, such actions lend weight in deciding that the worker quit.

On the other hand, the employer's actions and remarks may show that the employer intended to dispense with the worker's services. The separation is a discharge if the employer:

- showed the intention of terminating the employment relationship, and
- had the choice of keeping the worker in employment at the time the action was taken.

1. Remarks of employer overheard

An employer's remarks which are not addressed to the worker and which are merely overheard do not show that the worker has been discharged.

Example: A claimant overheard a conversation between the employer and another person to the effect that they did not want to keep a chambermaid who could not read or write. Assuming that she would be terminated, and without discussing the matter with her employer, she completed her assigned duties, left, and did not return. The employer testified that the claimant could have

continued if she had chosen to do so. The Tribunal held that the claimant had voluntarily left her work. A conversation that she chose to interpret as a notice of dismissal did not establish that the employer was the moving party in the separation. (581)

2. Unauthorized communication of discharge

Similarly, a claimant who receives a communication from someone not in a position of authority that the worker will be discharged, voluntarily leaves if the worker leaves before being notified officially.

Example: A claimant's refusal to meet with her employer to settle a dispute with another employee, because she had heard a rumor from a member of her family that she had already been fired, was accepted by the employer as a resignation. The claimant had a disagreement with the stock manager who was the son of the employer. She complained to the employer and was asked to report to him after her shift ended that day. The claimant did not attend the meeting because she did not feel the problem was of her causing. Two days later, she heard a rumor that she had been fired. She called the employer to ask if the rumor was true. The employer asked her why she had not come to the original meeting and set another meeting for the following day. The claimant asked how she could attend the meeting since she was scheduled to work at that time and the employer said that she need not work that shift. At that point the claimant assumed she was going to be fired, although the employer did not state in the conversation that she was discharged and further testified that he did not intend to discharge her at that point. However, he made it clear to her that if she did not report for the meeting he would consider her to have resigned. The claimant's failure to attend the meetings was considered a quit. When she refused to meet with her employer she still retained the option to continue her employment if she so desired. Her assumption that she had been discharged, based upon rumor and her conversation with the employer, was unfounded. (80H-13)

On the other hand, if the worker is told by a person in a position of authority that the worker is or will be discharged, the separation is considered a discharge, even if the employer did not mean it to be so.

Example: A claimant was part of a group of workers demanding a higher wage. The employer wanted all employees to see him at the close of the business day. The claimant's foreman told him that he was fired at the close of the day, and the claimant completed the day's work and left. The Tribunal held that the claimant had been

discharged because he reasonably relied upon the foreman's statement. ([76B-808](#))

3. Misinterpretation

If a claimant waits for an employer to act, while the employer is similarly waiting for the claimant to do so, the resulting separation was not a voluntary quit by the claimant.

Example: A claimant was injured in a snow machine accident. She asked her husband to call the employer and tell them that she was unable to come to work, but the husband failed to do this. When she spoke with the grocery manager later, he told her that he was concerned about her health, but did not want to press her by asking when she was ready to return to work. The claimant waited, expecting him to tell her when to return, but he did not do this. The next day he filled her position, thinking she was not yet ready to return to work. In allowing benefits, the Tribunal held, "The discharge resulted from a misunderstanding. The misunderstanding arose from the good faith reserve and politeness of the parties rather than from negligence or a willful or wanton disregard of the employer's interest by [the claimant.]" ([99 0863](#), May 6, 1999)

If a worker's request for leave or a transfer is misunderstood by the employer, and the employer instead terminates the worker, the worker did not voluntarily quit the job.

Example: At the request of his wife a claimant asked that his employer transfer him back home to San Francisco. He did not realize that he was actually being terminated from employment until he found the termination papers. The Tribunal held that the claimant did not voluntarily leave his employment. His request for a transfer was misinterpreted as a resignation, and his subsequent unemployment was due to causes not within his control. ([76A-913](#))

4. Assumption of discharge not dispelled

If the worker assumes the worker has been discharged and communicates that assumption to the employer, and the employer makes no effort to correct the worker's assumption, the resulting separation is a discharge.

Example: A claimant took the afternoon off without permission from his employer. The employer called the claimant at home and expressed his dissatisfaction. The claimant asked whether he should go back into work that day, and the employer said it was not necessary. The claimant interpreted the employer's reply to mean

he had been fired and told the employer that he would be in the next day to turn in his keys. The employer did nothing to dispel the claimant's assumption that he had been discharged. The separation was held to be a discharge. (75A-255)

On the other hand, if the worker does not attempt to clarify the matter, when it is reasonable for the worker to do this, the separation is a voluntary quit.

Example: An employer agreed to give a claimant three days off, and told the claimant to call when she was able to return to work. Later, the claimant called, and asked if she could come and pick up her check. When she went in, the employer was on the phone and told the claimant to take her check and leave. The claimant did so, assuming she was fired. Because the claimant did this, without verifying her status with the employer, the Tribunal held that she quit without good cause. ([99 2087](#), September 13, 1999)

**C. Leaving when Work Has Been Completed**

An employer may tell a worker that there will no longer be a need for the worker's services when the worker has completed a certain phase of the work, without specifically setting the worker's discharge date. If the worker leaves when the work is completed, the worker's separation is a discharge (82H-UI-192, October 29, 1982.)

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135.3 DISCHARGE BEFORE EFFECTIVE DATE OF RESIGNATION

For a discussion of situations where a worker leaves before the effective date of a discharge, see [VL 135.5 Leaving Before Discharge](#).

A. General

The nature of a worker's separation depends upon whether the employer or the worker made the final move to end the employment relationship. A worker may give notice to quit and then be discharged by the employer. With the exceptions given below, if a worker is discharged **before the date on a resignation notice**, the separation is a discharge. The general principle is that if a new and immediate cause intervenes while there is still a substantial period of notice, the new intervening action is the reason for the worker's separation (93255491, February 22, 1994; [09-2360](#), February 19, 2010 )

B. Exceptions

1. Maintenance of employer/employee relationship

- a. If an employer pays a worker wages, and otherwise maintains the worker's benefits through the effective date of the worker's resignation, the separation remains a voluntary leaving, regardless of an early discharge by the employer (9129502, March 6, 1991.)

Example: A worker ([97 1078](#), August 7, 1997) resigned from her job and was discharged without pay two days before her resignation date because the employer had found a replacement. On appeal to the Commissioner, the employer offered to pay her through her separation date in order to have the case considered as a resignation. In upholding the Tribunal's finding that she had been discharged, the Commissioner stated, "We hold that such manipulation of events, after the fact, is improper and will have no bearing on the outcome of this decision."

- b. A quit or discharge that causes the claimant to miss fewer than two full shifts of the remaining notice period in a calendar week does not change the nature of the work separation because it does not have a significant effect on eligibility for the week ([96 2183](#), December 16, 1996.)

Example: A worker tells the employer that the worker will quit Saturday. Rather than pay overtime for work Saturday, the employer tells the worker to leave at the end of the shift Friday. The worker's separation remains a voluntary leaving. The employer's action in adjusting the worker's separation date does not make the employer the moving party.

2. Termination after threat to resign

When a worker repeatedly threatens to resign for some reason, the worker is the moving party and the resulting separation is a voluntarily leaving.

Example: A worker expressed dissatisfaction with the work. On several occasions, the worker told the employer of plans to seek other employment and intent to resign, but did not set a definite date of resignation. Finally, the worker's threatened resignation appeared so imminent to the employer that the employer told the worker that it was unfair to the company for the worker to stay on and asked the worker to set a resignation date. The worker then resigned. In this case, although the employer had requested the worker to set a resignation date, the worker voluntarily left the work. The employer obviously could not operate the business without knowing from day to day whether the worker would appear for work.

A claimant who intends to quit and communicates this intention need not officially show the letter of resignation to the employer.

Example: In 75B-595, a worker decided to resign because she did not agree with management policy. She typed her resignation to be effective at the close of business the same day and gave the letter to another employee to read. The owner took the letter from him and told the claimant that she could leave, accepting this action to mean that she was resigning. The claimant contended that she was discharged because she was not given a chance to turn in her letter of resignation. The Tribunal held that the claimant had voluntarily left her employment. Her actions established that she intended to quit at the end of that same day. The employer's actions were acceptance of her resignation, not a discharge.

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135.45 LAYOFF IMMINENT

A. General

A worker may be told that a layoff is imminent and decide to leave employment before the effective date of the discharge. Even though the duration of the employment is limited, ordinarily there is not good cause unless the worker has a definite and immediate offer of work elsewhere. However, the worker may quit before the layoff if the circumstances create compelling reasons.

1. Request for volunteers

If the employer asks for volunteers for the pending layoff, the worker who volunteers is still laid off as long as the employer can accept or reject the worker's offer and set the date of the layoff. If the worker volunteers for an earlier date, the worker is the moving party and the separation is a voluntary quit, unless the date of the separation is within the same calendar week and within two days of the actual layoff.

Example: An employer announced that there would be a layoff and asked for workers to volunteer to be laid off. The claimant volunteered, and the employer set the separation date. The employer was the moving party. The Commissioner held that the separation was a discharge but not for misconduct, as the employer determined the date of the layoff and had the choice of accepting or rejecting the worker's request for the layoff. (88H-UI-204, April 5, 1989)

2. Request for layoff before announcement date

A worker who asks to be laid off before the date of the announcement of the layoff, or before the announced date of the layoff has quit the work.

Example: A worker requests a layoff before the employer announces that there is to be a layoff. The worker is the moving party, and the separation is a voluntary leaving (9225014, July 30, 1992.)

Example: An employer announces a layoff for a definite date. A worker asks to be laid off earlier than that date. The worker is the moving party, and the separation is a voluntary leaving, unless the date of the proposed layoff is less than two days earlier in the same calendar week of the date the employee requested.

However, the discussion of a layoff date and a mutual agreement is not itself a request for a layoff.

Example: A worker ([98 0019](#), January 22, 1998) discussed with his employer when he would be laid off from his temporary job and agreed on a mutually convenient time. The Tribunal held that he had been laid off.

3. Refusal to bump another worker

In cases where an employer lays off workers for lack of work under a seniority system, the worker may have the right to displace ("bump") another worker with less seniority. If the worker declines to exercise these bumping rights at the time of the discharge, the discharge from work remains a layoff for lack of work.

B. Resignation at Time of Layoff

If a claimant is placed on a layoff with a definite return to work date, but notifies his employer prior to or on the last day of work that the claimant will not return to work after the layoff period, then the work separation at the point of layoff becomes a voluntary quit.

Example: A couple ([05 1364 & 05 1365](#), October 4, 2005) was employed as dorm parents for the Nenana Public Schools. Each year, the couple signed an employment contract that began on or about August 15 and ended on May 31, the following year. In February 2005, the couple gave their resignation notice effective the last day of their contract, May 31, 2005. The claimants, under this scenario, acted to end the employment relationship, thereby severing the relationship and ending the layoff status.

If a claimant, in layoff status for a definite period of time, resigns after the layoff date, a voluntary quit occurs at that point. If a claimant is laid off for an **indefinite** period of time, the work separation remains a layoff regardless of the claimant's intentions.

C. Acceptance of Other Work

Sometimes a worker who is informed of an imminent layoff accepts another job that then falls through. When a layoff is imminent, the worker is not penalized for quitting to accept almost any available work, regardless of whether it is better than the work the worker is leaving. It is clearly inequitable to require that a worker who is about to be laid off anyway must nevertheless stay at the job unless the worker can find better work.

Example: In [76A-305](#), the claimant left her employment in order to return to California with her children. She expected the job to end soon, as it was only temporary, and she wanted to "register and take a test" for a job in California. The Tribunal held that the claimant did not have good cause for quitting her job, even though the duration of her employment was no doubt limited, because she had no definite offer of other work.

Example: In A-4930, the claimant joined a fishing vessel in Seattle that fished out of Kodiak. The claimant then moved his family to Kodiak and established his home there. When the vessel finished the season in Kodiak and was returning to Seattle, the claimant requested his share and left the vessel. The claimant wished to make Kodiak his home, and he would not have received any pay for taking the vessel to Seattle to be formally terminated. The Tribunal held, in allowing good cause, that remaining on the job under the circumstances served no purpose.

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135.5 LEAVING BEFORE DISCHARGE

A. Discharge Date Established

Leaving before the effective date of a discharge is usually, but not always, without good cause.

Example: The claimant was due to be discharged on January 14. On January 6, she quit to make arrangements to move to the Lower 48. The Commissioner held that the separation was a voluntary quit, not with good cause. ([99 0341](#), May 28, 1999)

B. Resignation to Avoid Discharge

When an employer allows a worker to resign instead of discharging the worker or tells the worker in effect, "Resign or I will discharge you," the employer is the moving party in the worker's separation. In such cases, the worker has no choice about remaining at work. The worker's resignation is meaningless, because the employer is in fact discharging the worker and is simply calling the discharge a resignation.

C. Leaving in Anticipation of a Discharge

**Leaving in anticipation of a discharge is a voluntary leaving, not a discharge.** This is true no matter how well-founded the worker's belief was that the employer would discharge the worker if the worker did not leave (9321473, June 15, 1993.) The Commissioner stated, "We have . . . held . . . that quitting a job in anticipation of a discharge is without good cause." (9324931, Feb 9, 1994)

Example: The claimant, a restaurant chef, voluntarily left work when he learned that the establishment where he worked was sold. During the middle part of December, the new owner introduced his new chef to the claimant. The claimant assumed therefore that he would no longer be employed and informed the current owner that he would resign on December 26. There had been no date or time set by the owner for the claimant's termination. Therefore the Tribunal held, and the Commissioner affirmed, the claimant had voluntarily left work without compelling reasons, and therefore without good cause. (80H-64, May 15, 1980)

A threat of discharge is sometimes used as a means of discipline. In such instances, there is often a question of whether or not the ensuing separation is a discharge or voluntary leaving. If the worker could have stayed at work by conforming to the employer's demands, the separation is a voluntary leaving. Whether the worker has compelling reasons for leaving because of the threatened discharge depends upon whether the conditions under which the worker could remain in employment are reasonable or unreasonable.

A worker may commit some act of misconduct and then leave work before the employer takes any action to discharge the worker. This separation is a voluntary leaving without compelling reasons, not a discharge for misconduct in connection with the work.

Example: A claimant quit her job because she believed that she faced a discharge. The employer had no immediate plans to discharge her. The Tribunal held that she failed to show she was compelled to leave when she did, and so did not have good cause. ([98 0215](#), February 26, 1998)

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135.6 RESIGNATION WITHDRAWN OR NOT MEANT

A. No Resignation Date Set

A worker may announce an intention to resign, without setting a specific date. The worker may later retract this intention to resign and express a willingness to continue working. This may or may not be acceptable to the employer. **If the worker has merely expressed an intention to resign, and has not set a resignation date, the employer's insistence that the worker resign is considered a discharge** (9121535, October 31, 1991.) For a discussion regarding termination after repeated threats to resign, see [VL 135.3 Discharge Before Effective Date of Resignation Exceptions](#).

Example: A claimant (96 3050, January 13, 1997), after several on-the-job problems, stated that she felt as if she had "been through the wringer" and said that she was resigning. The employer took this to mean that she was resigning immediately, and said she would not beg her to return. The claimant, after talking with other employees, called the employer to offer her continued services. The employer refused to allow her to continue work. The Tribunal held that the employer was thus the moving party, and the separation was a discharge.

B. B. Established Resignation Date

1. Resignation withdrawn

**If a worker establishes a resignation date, but later withdraws the resignation, the separation remains a voluntary quit.** The worker's resignation terminates the employment relationship on the effective date of the resignation. The retraction of the resignation is a new offer of services that the employer has the right to accept or reject.

Example: A claimant sent a memorandum to his employer stating that he would not continue in his position past October 1. The employer notified the claimant that he would replace the claimant on that date. On September 9, the claimant told the employer that he would like to continue working after October 1, but the employer told the claimant that he had accepted his resignation as of September 30. The claimant stated that his memo indicated only his intention not to work past October 1; he did not formally resign. Nevertheless, the claimant's memo was in fact a resignation, to be effective September 30. The claimant was the moving party in severing the employment relationship on September 30, and his later attempt to retract his resignation did not alter that fact.

If the worker retracts the resignation because it rests upon a mistake, it may establish compelling reasons for the voluntary quit. But the

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employer's refusal to accept the withdrawal of the resignation does not change the separation to a discharge.

A worker may offer a resignation to an employer intending it as a bluff to induce the employer to take some kind of action. Unless it is clear that the resignation was never meant to be taken seriously, if the employer does accept the resignation, the worker has resigned, and the other considerations regarding resignation come into play.

Example: A claimant offered his resignation to his supervisor as a bluff to help the supervisor get funding for his position. The resignation was taken seriously, and the claimant was held by the Tribunal to have quit his job. (97 2443, December 1, 1997)

2. Withdrawal accepted

On the other hand, if the employer accepts the withdrawal of a worker's resignation, and allows the worker to work past the resignation date, the worker's original resignation becomes irrelevant in determining the nature of the subsequent separation. Whether the separation is a discharge or voluntary leaving depends on the action of the parties immediately before the separation.

Example: A claimant submitted his resignation on November 6, to be effective January 1. On November 20, the claimant informed his employer that he wished to withdraw his resignation. The employer informed the claimant that his resignation would be held in abeyance for 90 days, allowing the claimant time to demonstrate an improvement in various areas. The claimant continued to work until the following March. His evaluations during this period indicated that he had not improved sufficiently. Therefore, on March 3 the employer informed the claimant that "to allow you to withdraw your resignation would not be in the best interest of [the employer]." The Commissioner held that the claimant had been discharged. The employer's decision to hold the claimant's resignation in abeyance was in fact an offer to continue the claimant's services for a probationary period. ([80H-111](#))

C. Request for Change of Position

A claimant who wants to work at a new position, and will not continue at his present position has in fact resigned from the original position. "An employer is not obligated to provide an employee with another position once he/she has resigned from the original position." ([99 0658](#), April 16, 1999)

## 139 DISCRIMINATION

## A. Definition

Discrimination is an act of partiality toward a specific person or group. If a discriminatory practice, either expressed or implied, is due to partiality based on age, sex, race, religious affiliation, or disability, the practice is either unlawful or unjustifiable and makes the work unsuitable.

The Equal Employment Opportunity Act (EEOA) of 1972 and related federal, state and local statutes require that women, minority groups, the aged, and disabled workers be guaranteed the same hiring, promotional and other work-related considerations and advantages as those offered to other workers. Although the term "discrimination" is commonly applied to the EEOA factors mentioned above, discrimination may also exist in circumstances not specifically covered by the EEOA legislation.

Example: A piece-rate worker alleges that a supervisor is personally discriminating against the worker by consistently providing substantially less piece-work than that which is given other piece-rate workers, and that the supervisor's practice is based on a personal dislike of the worker. If such an allegation is substantiated by the facts in the case, then the term "discrimination" properly applies and good cause may be found for voluntarily leaving work.

## B. Factors to Establish

As with other conditions of work, the worker must notify the employer of the objectionable practice and give the employer an opportunity to correct it before voluntarily leaving work.

## 1. Real or imagined

Whenever a worker alleges employer discrimination, it is first necessary to make the distinction between real or imagined partiality. A finding of discrimination can be established only if some action of the employer results in harm or loss to the worker. The worker's "feeling" that the employer is discriminating is not sufficient.

## 2. Is the practice unlawful, unfair, or unjustifiable?

The mere fact that an employer discriminates among workers in such matters as apportionment of duties, pay, or other working conditions is not, by itself, good cause for voluntarily leaving work. It is the right of the employer to assign duties and pay on the basis of skill, physical ability, seniority, and similar considerations. Good cause for voluntarily leaving work can be established only when the discrimination is based on reasons not justifiable from a business standpoint, such as sex or race that are unrelated to the work.

Example: A minority claimant quit her job because she felt her employer had discriminated against her because of:

- The employer's occupational requirement for a college degree for a position that she was interested in obtaining;
- A change in the employer's medical leave policy in which she was unable to be compensated for time off for illness; and
- The higher wage received by the clerk who replaced her after the claimant had left her position.

The claimant was not able to show by substantial evidence that her employer was deliberately discriminating against her. In denying that the voluntary quit was with good cause, the Commissioner held that there was no evidence, other than the claimant's feelings, to substantiate a finding of discrimination. He went on to say, "However, if compulsion had been established, even on the basis of discrimination, [the claimant] would still need to show either that she pursued all reasonable alternatives prior to leaving her position, or that there was no reasonable alternative she could have pursued." (88H-UI-185, January 30, 1989)

Example: A claimant quit her job because she was not given a promised favorable shift because the supervisor hired her (that is, the supervisor's) sister and gave her the more favorable shift. In allowing benefits, the Tribunal stated, "While nepotism occurs in many workplaces, I find this particular favoritism caused Ms. Warren to quit due to [unreasonably] discriminatory treatment." ([98 2024](#), October 2, 1998)

Example: An auto mechanic quit his job as because he worked beside a coworker who routinely screamed at him and made derogatory racial comments. The employer made no effort to correct the offending worker, even though the employer witnessed the behavior. When the claimant complained, the employer told him he (the claimant) would be transferred to the jeep section, which would have required him to purchase some new tools and learn new procedures, thus reducing his earnings. The Tribunal held that the employer had unfairly discriminated against the claimant and allowed benefits. ([98 2437](#), December 10, 1998)

Example: A bartender quit his job after his work schedule was cut from five to three days due to a remodeling project. He was told his work time would be reinstated when the remodeling was complete. The employer leased the restaurant part of the business to another party who filled all the positions in that section with female employees, without restoring the claimant's hours. The claimant was given no explanation and no recourse. The Tribunal held that

both the failure to keep the promise and the discrimination were good cause to quit. ([99 2017](#), September 16, 1999)

3. Union Membership or Activity

A worker who is subjected to unfair discrimination because of union membership or activity has good cause to quit. The worker's allegation of discrimination must be based upon reasonable evidence.

## 150 DISTANCE TO WORK

## A. General

Distance to work may change because a worker's residence changes, or because the employer has moved the employment to a different area. Regardless of the reason, if commuting was practical, the worker does not have good cause for quitting. Whether commuting is practical is based on the objective factors of distance, time, and cost, and the local labor market, not on the worker's belief.

## B. Relocation

## 1. Worker Moves

If the worker moves from the area and commuting is not practical, good cause depends on the worker's reason for moving. The worker's change in residence may be for a variety of reasons, including employment of spouse, health, or to care for a relative who is ill or disabled. The circumstances involved in a worker's voluntarily leaving work must be compelling and must leave the worker with no reasonable alternative. ([95 1003](#), August 7, 1995)

A quit to move because of weather or climate is for compelling reasons only if the worker shows that the weather or climate is injurious to the health of the worker. A mere dislike for the weather or climate does not give good cause for leaving.

Example deleted.

Example: A claimant quit to move to an area with more daylight. She suffered from Seasonal Affective Disorder, and, while her physician did not advise her to quit and move, the physician did feel that she would benefit from living in a milder climate with more light. The Tribunal held that she had good cause to quit, as she had compelling reasons and no adjustment was possible. (97 2320, December 3, 1997)

Consult the appropriate category in this manual to determine whether the reason for the move is compelling.

## 2. Employment Moves

If the employment moves to a place where commuting is not possible or practical the work is usually no longer suitable for the worker, except in those occupations in which it is customary to move with the employment. Under such conditions, a quit merely because the worker does not want to move to a new area is without good cause.

Example: An employer moved his business from Alaska to New Mexico, so that the claimant would have to live and work in New Mexico for several months each year. As this was not customary in the occupation, the Tribunal held that she had good cause for quitting. ([98 1493](#), July 24, 1998)

For cases involving relocation to move with a spouse, domestic partner or children, see [VL 155.2 Home, Spouse or Children in Another Location](#).

### C. Commuting

Under [AS 23.20.385](#), work that is unreasonably distant from a worker's residence is unsuitable, and the worker has good cause for leaving it. (9220252, March 10, 1993)

However, if a worker accepts the work and commutes a given distance for a reasonable period of time, the work is rarely unsuitable on the basis of distance alone, unless there has been a change in the worker's circumstances which makes the distance no longer reasonable.

Example: A maintenance worker on seafood vessels in port quit his job because it required a two-hour commute of 40 miles, due to heavy traffic. The employer offered him flexible hours or the ability to live on another nearby vessel. In denying benefits, the Tribunal held that because the claimant had an established work history of living and working away from home, the work was suitable. ([99 0211](#), February 18, 1999)

The actual mileage from the worker's residence to work is never the determining factor in establishing compelling reasons. It is the **time and expense of commuting** which must be considered. Moreover, if the time and expense of commuting is customary in the worker's occupation and locality, the worker generally does not have good cause.

A temporary increase in the time and expense of travel, even though excessive, is not good cause for voluntarily leaving work, if the worker can correct the problem in the near future. The worker must make a good faith attempt to correct the problem.

#### 1. Time

Although split-shift or part-time work is not inherently unsuitable, if travel time is excessive, good cause can be established. The worker first needs to attempt to adjust the situation.

Example: A waiter working a regular day shift is assigned a split shift from 10:15 a.m. to 2 p.m. and from 5 p.m. to 9:30 p.m., five days a week. Because of the waiter's split shift and the total travel time that it takes to get from his home to his place of employment,

the waiter is required to be away from home about fifteen hours a day. In such a case, the travel time is considered excessive and might give good cause for voluntarily leaving work. However, if the waiter's residence were close enough to the work site that the waiter could easily return home between shifts, there is not good cause.

Example: Under the same principle, a clerk employed in part-time work for four hours per day might have good cause for voluntarily leaving work if the travel time amounted to 1½ hours each way, because the travel time is excessive in relation to the number of hours worked.

2. Cost

The worker's occupation, wage, and working hours must be considered in determining good cause for voluntarily leaving work because of the cost of travel. For example, a construction laborer might be expected to pay more for transportation than a part-time sales clerk. However, if the sales clerk was employed full-time and was paying roughly the same for transportation as other sales clerks in the community, travel cost alone is not good cause for voluntarily leaving work.

D. Transportation Difficulties

Transportation problems do not provide a claimant with good cause to quit work.

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155 PERSONAL CIRCUMSTANCES

155.05 GENERAL

A. General

Personal circumstances are compelling only if they meet the circumstances set out in regulation 8 AAC 85.095.

- Leaving work due to personal health, see [VL 235](#);
- Leaving work to care for ill or disabled family member, see [VL 155.1](#);
- Leaving work to relocate due to spouse's employment, see [VL 155.2](#);
- Leaving work to escape domestic violence, see [VL 155.45](#);
- Leaving unskilled work to attend director approved training, see [VL 40](#);

B. Personal Affairs

Leaving work to attend to personal affairs, such as business or legal matters is without good cause.

Example deleted.

C. Household Duties

The routine duties associated with the running a household are not good cause for leaving employment.

D. Housing Difficulties

A worker who leaves employment because of private housing difficulties leaves without good cause.

For a discussion of employer furnished housing, see [VL 515.35 Location and Employer Furnished Housing](#).

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155.1 CARE OF FAMILY MEMBER

A worker who leaves work to care for an ill or disabled family member leaves work with good cause if the employer would not grant a leave of absence or a leave of absence was not practical in their situation. While the worker does have to make an attempt to preserve their employment by requesting leave, the worker does not have to explore alternative care for the family member prior to quitting.

A worker does not have good cause to leave work to care for a family member who is not ill or disabled.

A. Regulation:

8 AAC 85.095(c)

*To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:*

*(2) leaving work to care for an immediate family member who has a disability or illness;*

8 AAC 85.095(g)

*For purposes of this section*

*(3) "disability or illness" means a disability or illness that necessitates care for the disabled or ill person for a period of time longer than the employer is willing to grant leave, paid or otherwise;*

*(4) "immediate family member" means a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.*

B. Obligation to Provide Care

Leaving work to care for someone who is ill or disabled can establish good cause when:

- The individual is an immediate family member;
- The care requires the individual to leave work;
- The employer does not accommodate the claimant's request for time off; and,
- The illness or disability is verifiable.

Verification does not need to come from a physician, but can come from other qualified professionals such as counselor or health worker. Verification is not

required in all cases, but can be requested when the claimant's credibility is in question.

Example: A claimant quit her job in order to move to Spokane to care for her mother-in-law, who needed 24-hour care. The family had explored other options, and the brother-in-law had been providing the care, but now the claimant's husband felt it was his turn. The Tribunal held that the necessity of the care provided compelling reasons for leaving work. ([98 2666](#), January 12, 1999)

The individual requiring care must be a member of the claimant's immediate family. Immediate family is defined as a person who is related to the claimant by blood, marriage, or adoption as a parent, child, spouse, brother, sister, grandparent, or grandchild.

Example: A claimant quit his job in Prudhoe Bay to provide care for his longtime partner living in Texas. In denying benefits, the Commissioner stated, "For Alaska unemployment insurance purposes, the Alaska legislature has not extended to unmarried partners a common law status equal to marriage." ([10-0914](#), June 9, 2010)

The type of care the claimant provides does not have to be medical in nature. Anything the family member is unable to do on their own, such as bathing, dressing, driving, or household chores, may be considered caring for the family member.

An individual may establish good cause to quit without requesting leave if the situation was an emergency and the claimant did not have time to notify the employer prior to leaving.

**C. Terminal Illness or Death of Immediate Family Member**

Quitting work to be with a terminally ill family member is generally not good cause unless the claimant provides care, as described above. The relationship must be an immediate family member.

The necessity to attend a funeral does not provide good cause for voluntarily leaving work. If bereavement makes it impossible for the claimant to work, see [VL 235 Health](#).

**D. Obligation to Provide Care for a Family Member who is not Ill or Disabled**

Leaving work to provide care for a family member who is not ill or disabled is without good cause. Workers need to arrange for care to be provided by other care-givers.

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155.2 HOME, SPOUSE, OR CHILDREN IN ANOTHER LOCATION

Regulation: 8 AAC 85.095(c)(4)

**8AAC85.095(c)**

*To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:*

*(4) leaving work to accompany or join a spouse at a change of location, if commuting from the new location to the claimant's work is impractical; for purposes of this paragraph, the change of location must be as a result of the spouse's*

- (A) discharge from military service; or-*
- (B) employment;*

A. Employment of Spouse

To establish good cause when quitting work to accompany or join a spouse at a new location, it must be shown:

- **The spouse has accepted new work, been transferred by his employer, or discharged by the military;**
- **It is impractical to commute from the new location;**
- **The move is in a timely manner in relation to leaving work.**

Good cause can be established if the worker's spouse accepts new work, is transferred by a current employer including the military, or is discharged by the military to a new location from which it is impractical to commute. Local commuting patterns should be considered when determining if the move is necessary.

Example: The discharge of a worker's military spouse or the transfer from one duty station to another under the direction of military orders gives the worker good cause for voluntarily leaving work, as long as the move is timely (9224967, September 4, 1992.)

B. Other Reasons to Move

Under the regulation, other reasons to move do not provide the claimant with good cause to quit. These other reasons may include housing difficulties, to move with a spouse who is attending school, to maintain the family unit, or to improve the family circumstances.

Example: In denying benefits to a claimant who quit to follow his wife to where she was attending school, the Commissioner held, " If the claimant had quit his job to attend academic instruction in another state, it would not be deemed a compelling reason. . . . Likewise, his wife's decision to move to another state on a temporary basis to further her education cannot be considered a compelling reason for the claimant to quit his job." ([96 2132](#), December 12, 1996)

C. Timing of the Move

In addition, **the worker must not leave work before it is necessary to do so.** See [VL 160.F. Time of Leaving](#) for a complete discussion.

D. Possibility of Commuting

If it is impractical to commute from the worker's new residence to the worker's workplace, then the worker has good cause for voluntarily leaving work if the reason for the move was with good cause. (9122720, January 23, 1992.) Local commuting patterns should be considered when determining good cause.

E. Length of Separation Section deleted.

F. Home in Another Location

For cases where the claimant's principal residence is in another location, but rejoining the family is not a factor. See [VL 425.C Determination of Suitability](#),

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155.4 MARRIAGE, DIVORCE, OR RECONCILIATION

A. Marriage

A worker who quits to get married has left employment without good cause, since this can be accomplished without leaving work. However, a worker who quits to get married and accompany or join a spouse who has accepted work in another location has compelling reasons for leaving work; if the worker meets the criteria stated in [VL 155.2 Home, Spouse, or Children In Another Location](#).

Example: A claimant quit her job in order to marry and move with her husband-to-be who was military and transferring out of the state. The Tribunal held that, since she worked up to five days before her move, she quit for good cause. (97 1682, August 20, 1997)

B. Divorce

A worker who quits to get a divorce has left employment without good cause. When a worker quits to move due to domestic violence, see [VL 155.45 Harassment or Violence by Ex-Spouse or Others](#).

C. Reconciliation

Although the policy of this state is to support the marriage relationship, a quit to try to reconcile with an estranged spouse is usually without good cause.

Example: A claimant who had been divorced for two years left his employment in order to move to Washington State to attempt to reconcile with his ex-spouse. The claimant testified that he could neither afford to move his family to Alaska nor to support them in Alaska on the salary that he was receiving. He also testified that he had a problem with alcohol that was aggravated by the separation from his family. Even so, the Tribunal stated that the claimant's reasons were not so compelling as to leave him no other reasonable choice that to quit his employment. The Tribunal held that the claimant voluntarily left his employment without good cause. (80A-238)

155.45 HARASSMENT OR VIOLENCE BY EX-SPOUSE OR OTHERS

8AAC 85.095(c)

*To determine the existence of good cause under AS 23.20.379(a)(1) for voluntarily leaving work determined to be suitable under AS 23.20.385, the department will consider only the following factors:*

*(6) Leaving work in order to protect the claimant or the claimant's immediate family member from harassment or violence;*

Harassment, violence, or the fear of violence by a spouse, an ex-spouse, or another person is sometimes given as the reason for a quit, usually to move from the area.

It is not required that a person in fear of harm seek legal sanctions before leaving work. However, verification of domestic violence can be requested if the claimant's credibility is in question. The verification need not come from law enforcement officials. Any qualified professional from whom the individual sought assistance such as counselor, shelter worker, clergy, attorney, or health worker will suffice. The state must accept any other kind of evidence that reasonably proves domestic violence. Verification is not needed in all situations.

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155.5 CHILD LIVING WITH PARENT

A. Definitions

A minor in Alaska is anyone under the age of 18. Upon reaching the age of 18, a person is no longer under parental control. Emancipation may occur at age 16, either expressly through marriage or court order, or by implication. Emancipation is implied if the minor establishes a separate home, controls the minor's own affairs, and the parents take no action to reestablish their parental authority.

B. Un-emancipated Minor

Un-emancipated minors are obliged by law to obey their parents (or guardians.) If they leave work at the command of their parents, they leave with good cause. This often occurs when parents move and do not allow the minor to remain alone in the former locality.

C. Adults

Adults may choose to live with their parents. However, the adult does not ordinarily have good cause to quit work to live or move with the parents.

Example: A claimant (97 1428, July 16, 1997) worked while at school in California. He quit work in order to live with his parents in Alaska between terms. He was 20 years old. The Tribunal held that there was no showing that he was unable to support himself in California and the mere desire to live with his parents between terms was not good cause, for leaving work.

An exception may be a disabled adult who is a legal dependent of the parent and unable to live independently; or an adult who is required to be in the home to provide care for ill or disabled parents.

## 160 EFFORT TO RETAIN EMPLOYMENT

## A. General

A worker has good cause to leave suitable work only if the reason for the separation is compelling and the person has made an effort to retain the job, unless such an effort would be a futile gesture. The Commissioner stated, "The 'good cause' test only requires a worker to exhaust all reasonable alternatives. An alternative is reasonable only if it has some assurance of being successful. An alternative which is merely an alternative for its own sake is not reasonable. Therefore, there must be a foundation laid that the alternative does have some chance of producing that which the employee desires." (88H-UI-011, March 15, 1988)

The worker has the burden of showing the steps taken to retain employment. What is a reasonable action in any given case depends on the circumstances. Such attempts may be either job-connected or personal in nature. In general, the required actions include:

1. Notifying the employer of the objectionable working condition, requesting adjustment, and allowing time for the adjustment to take place;
2. Requesting a leave of absence or transfer, where appropriate;
3. A good faith effort to arrange personal circumstances so as to retain employment, including working as close as possible to the date of separation.

Example: The claimant was working in Prudhoe Bay on a schedule of four-weeks-on and two-weeks-off rotation. She was depressed and under medication and treatment, and, after taking leave for her condition, asked to be changed to a two-weeks-on and two-weeks-off rotation. The employer could not accommodate her request, and she quit. The Court upheld the Commissioner in denying benefits, finding that the claimant had not exhausted all possibilities of requesting additional leave, nor of transferring to Anchorage before quitting. (Bailey vs. State of Alaska, 4FA-95-997, Superior Ct., June 4, 1996)

NOTE: The worker need only show good cause to leave work if the work is suitable. If the work is determined to be unsuitable, good cause need not be established. Also, if the underlying reason for the quit is not compelling, it makes no difference what efforts the worker made to retain employment, the worker is still denied benefits. Attempts to adjust are irrelevant in this situation.

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**B. Requesting Adjustment from the Employer****1. Reasonable request**

A worker's request for adjustment from the employer is considered reasonable if:

- The worker brought the problem to a representative of the employer who was in a position of authority to bring about an adjustment; and
- The worker stated the problem in good faith and in sufficient detail so that the employer could take action; and
- The worker gave the employer sufficient time to correct the problem.

**2. Problem brought to person in authority**

If the worker has a problem, the worker must bring it to a representative of the employer who has the authority to remedy the situation.

Example: A claimant quit his job at Mile 104 on the Glenn Highway because he had been told by his supervisor that there was no housing furnished. He had brought his own camper, but it had frozen up and was no longer habitable. Because he did not bring the problem to the attention of the company owner, who would have furnished housing, as had been done in the past, the Tribunal held that he did not have good cause to leave. (97 2541, December 19, 1997)

**3. Worker explained problem in detail**

The worker's efforts to adjust must include, if necessary, telling the employer that the employment situation is causing problems, not merely asking for a transfer or leave.

Example: A claimant quit her job because of stress, which was shown by a physician's statement, although she did not consult the physician until after she had quit. However, although she had asked for a transfer, she had not advised her employer of the medical necessity for it. Therefore the Tribunal held that good cause for leaving work was not shown. (97 1080, June 5, 1997)

**4. Employer given time to correct**

No matter how valid the worker's need, the employer must be given a reasonable amount of time to correct the situation.

5. Employer has made previous accommodations

If the employer has previously made similar accommodations to the worker, or others, the obligation of the worker to bring the current problem to the employer deepens.

Example: A claimant quit his job because he had problems with the management style and behavior of their son, who was the on-site manager. He gave the employer an ultimatum that either the son was fired or he would quit. The manager had several work sites and offered to arrange things so that the two men were kept apart. In denying benefits, the Tribunal held that because the employer had worked things out between the two men by in the past meant that the claimant had failed to allow the employer to do this in the present instance. ([99 1998](#), September 2, 1999)

6. Employer's action unreasonable

Only where the employer's action makes continuation of the employment relationship unreasonable does the claimant have good cause for leaving without adjusting the matter.

Example: An employer makes an extremely insulting or derogatory remark to the worker in the presence of co-workers, which deeply offends or embarrasses the worker. Because it is not possible to satisfactorily adjust such a matter and because the single action was of such magnitude as to be a course of conduct of "abuse, hostility, or unreasonable discrimination," the worker has good cause to leave.

C. Adjustment by employer

The worker is expected to make only reasonable attempts to adjust the matter with the employer. If the employer has already made it known that the matter will not be adjusted to the worker's satisfaction, or if the matter is one which is beyond the power of the employer to adjust, then the worker is not expected to perform a futile act.

Example: A claimant quit her job because her employer, the owner, screamed at her from time to time. She did not mention to the employer that this was a problem. However, she had brought other similar matters to the employer's attention and the employer had adjusted them to her satisfaction. In denying benefits, the Tribunal held that she should have made an effort to adjust the matter with the employer. ([98 0321](#), March 13, 1998)

Example: A claimant quit her job because of the general manager's behavior, which the Tribunal found abusive and hostile. In over-ruling the Tribunal, who held that she should first have gone to the Board of Directors, the Commissioner held that a worker for a corporation, not part of the management team, need not take a complaint to that level before quitting. ([98 0585](#), July 31, 1998)

On the other hand, the employer need only offer the worker reasonable accommodations, and the worker who quits suitable work after having received such accommodations quits without good cause.

#### 1. Grievance

If there is a standard grievance procedure available to the worker, and the worker's complaint might be adjusted through a grievance procedure, the worker must utilize this procedure before quitting. A worker who quits before the grievance is resolved has quit without good cause, unless the situation is clearly intolerable.

Example: A claimant quit her job when her wages were not adjusted to reflect the work she was doing, in contrast to fellow workers who were doing the same work at a higher rate of pay. Her union did not file a grievance for her. The Tribunal found that she was improperly paid, but held that she was by the contract required to file a written grievance. The Commissioner, in over-ruling and allowing benefits, held that the union was the party required to file the written grievance, and therefore the claimant had good cause to quit, having done everything possible for her to rectify the situation. ([97 1823](#), November 24, 1997)

Example: A claimant quit his job because he felt that his supervisor was discriminating against him due to his disability. He did not take advantage of the company's grievance procedures, which the Tribunal held negated good cause for his quitting. ([97 2503](#), December 24, 1997)

#### 2. Legal action against employer

If the worker quits because of an illegal act of the employer that directly affected the worker, it is not necessary for the worker to take legal action against the employer, or file a complaint through another governmental agency, in order to show good cause for leaving. Such actions often have the effect of ending the employment relationship.

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3. Time to adjust

a. Time for employer

The worker must give the employer time to adjust the conditions before quitting.

Example: We have previously held that an employee, who has problems with a co-worker or has complaints about pay, must bring those complaints to the management's attention and give the employer an opportunity to adjust the situation before quitting. If the worker fails to do so, any good cause is negated. ([03 0257](#), April 22, 2003).

b. Time for worker

If the job situation is new, the worker must also take time to try the new situation before quitting. The worker's taking time to adjust can be distinguished from the worker's acceptance of the situation in that, when the worker is trying the new situation, the worker shows immediate dissatisfaction, and if the worker has accepted the new situation, the worker's displeasure is only manifested later.

Example: A claimant quit his job because of his dissatisfaction with his supervisor and with the attitude of co-workers who regarded his position, which was a new one, as unnecessary. In denying benefits, the Tribunal held, among other reasons, that, since it was a new position, he should have allowed time for both himself and the employer to establish the boundaries of the position. ([98 0794](#), May 7, 1998).

Example: A claimant was hired as a nurse, but was uncomfortable with his ability to handle the fast-paced high-level situation in which he found himself. When he offered his resignation, the supervisor offered him the opportunity for additional training. Because of this, the Tribunal held that he quit without good cause. ([98 1380](#), July 8, 1998)

c. Notice

Leaving without notice has no affect whatever on the worker's eligibility except as it indicates that the worker left without attempting to adjust the problem with the employer.

On the other hand, leaving with an excessive notice may indicate that the reason for the leaving is not compelling.

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D. Worker's Attempts to Adjust

1. General

The worker must make an effort to adjust whenever it is reasonable. It is not necessary that the worker exhaust every avenue, but this effort must be such that a reasonable and prudent person who sincerely wanted to remain employed would come to the conclusion, under the same circumstances, that there was no adequate arrangement possible.

Example deleted.

Example: A claimant quit her job because she believed harassment by her supervisor at work was causing her to have health problems. Because she could have filed a grievance and because she was shortly to get a new supervisor, the Tribunal held that she did not have good cause. ([99 1332](#), August 5, 1999)

2. Temporary difficulty

If the difficulty is temporary the worker is expected to take measures that might be too expensive or inconvenient on a permanent basis.

Example: A married couple sold their home in preparation for a later relocation. They applied for six weeks' vacation as their new home was not yet habitable. When the vacation was not approved at the time they expected, they quit, rather than move temporarily into an expensive hotel. In denying benefits, the Tribunal held that the cause of the housing difficulty was their own doing; they did not take the actions of a reasonable and prudent person in pursuing the approval of the vacation; and, as a temporary measure, they could have lived in the hotel rather than quit. (97 0711 and 97 0832, April 10, 1997)

E. Leave of Absence to Preserve Employment

1. General

Although a worker may be compelled to stop working temporarily, the worker does not always need to sever the employer-employee relationship. A leave of absence preserves the employment relationship so long as the employer leaves the worker's job open, and the worker intends to return to work when the purposes of the leave have been accomplished.

Therefore, a reasonable and prudent person who is compelled to stop working temporarily and who genuinely wants to stay employed would try to assure a continuing job by requesting a leave of absence. When a

worker fails to take advantage of an available leave, the worker may be denied benefits even though compelled to cease working temporarily. In such cases good cause is nullified by the worker's failure to take reasonable steps to preserve the employment relationship.

Example: A claimant quit her job as an assistant station manager because her employer wanted to transfer her to Saudi Arabia for one year. The claimant requested a medical deferment based upon the advice of her physician because the shots required for an overseas transfer contained mercury and she was allergic to mercury. The claimant had no other options, did not obtain the medical deferment, and could not accept the assignment to Saudi Arabia because of her allergy to mercury. The Commissioner held that the claimant left her last suitable work for good cause. (9223757, April 29, 1992)

Example: A claimant quit his job at a seafood processing plant because he was injured the first day on the job. He worked for a few days and then was told to take ten days off. He would have been able to take the time off with the employer paying for his board and room while he recuperated, but he chose to quit and return to Seattle. Because he could have recovered from his injury at the employer's expense and without the necessity of quitting, the Tribunal held that he did not have good cause for the quit. (97 1819, September 10, 1997).

## 2. Employer's leave policy

Where the employer has an established leave of absence policy, and the worker knows this policy, it is reasonable to expect the worker to request a leave. An employer's leave policy does not have to be in writing. A leave policy can be established by custom and continued practice.

When it is clear that a request for leave would in all likelihood not be granted, the worker is not penalized for failure to request it.

Example: A claimant was no longer able to work due to illness. She did not request leave because there were only three employees and all were needed daily. The Tribunal held that under the circumstances she had good cause to quit without attempting to ask for leave. ([99 2180](#), September 24, 1999)

The worker is expected to know of the employer's leave policy if:

- The worker had previously been given leave by this employer;
- The leave policy is part of a collective bargaining agreement; or

- The leave policy is in an employee handbook made available to the employee.

3. Failure to request leave of absence

Good cause is negated by a failure to request a leave of absence if:

- The employer had an established leave of absence policy under which, in all probability, a leave would have been granted;
- The worker knew of the employer's leave policy, or should have known of it; and
- The leave would have preserved the employment relationship and an effort to maintain the relationship was reasonable under the circumstances.

Example: If a worker has a medical condition that does not permit a return to work, it is an idle gesture for the worker to request a leave of absence. A worker who is unable to anticipate when, if ever, it will be possible to return to work for the employer is not required to request a leave of absence.

4. Viability of leave section deleted.

F. Request for Transfer

A worker is expected to ask for a transfer if so doing would alleviate any objectionable conditions. This includes such methods as:

- Transferring to another shift to correct transportation problems or other problems involving hours of work;
- Transferring to another work-site to correct distance or other transportation problems;
- Transferring to other types of work to correct inability to perform the tasks; or
- Transferring to another work section to avoid supervisor or co-worker problems.

Example: A claimant voluntarily left work as a sales clerk for a national retail chain to accompany her spouse to New York following his retirement. Although a transfer to other stores of the employer in New York was possible, the claimant did not request a

transfer because she thought that she and her spouse could support themselves on the spouse's retirement pay. The Tribunal, in denying benefits, held, "[G]ood cause is negated by her failure to ask for a transfer, a reasonable alternative to quitting that she could have pursued." ([83UI-1075](#))

Example: A claimant quit her job following the birth of her child because she was on a schedule that required her to work Saturdays. This schedule required that she have multiple child care-givers. The employer could not give her part-time work or a Monday through Friday position. A transfer was possible, but it was to a different and less desirable type of work. The Commissioner held that in not accepting the transfer, she had not taken a reasonable alternative, and therefore did not have good cause for leaving work. ([97 2480](#), April 9, 1998)

As with any other adjustment, the worker is not expected to make a futile effort. If no transfer is available, or a transfer would not alleviate the problem, the worker need not ask for one.

#### G. Time of Leaving

Good cause for leaving is negated if the worker leaves work sooner than necessary. The worker is expected to remain working for the employer as long as possible.

##### 1. Leaving without relocating

Ordinarily a worker who leaves more than one or two days in advance of any anticipated change, such as a new job, negates any compelling reasons for the quit. However, exceptional circumstances may allow additional time.

Example: A claimant quit her job with one airline in order to take a job with another. She had to attend a month-long school for the second airline, and quit the job five days, including a weekend, before the start of the school. The Commissioner, in over-ruling the Tribunal, held that she was virtually assured of passing the training and thus of securing the job. Therefore, since the start of the job was delayed due to circumstances beyond her control, she had good cause for quitting when she did. ([97 1130](#), August 12, 1997)

Example: A claimant quit her job when the employer sold the company and announced that there would be a reduction in pay. Because she quit three days before the reduction was to begin, the Tribunal held that she quit without good cause. ([99 0821](#), May 3, 1999)

## 2. Leaving and relocating

Commonly, a worker who plans to relocate quits work earlier than the departure date in order to prepare for moving. These tasks are seldom a compelling reason for voluntarily leaving work early because the worker can accomplish these tasks outside working hours. Of course, a worker does not need to work until the date that the worker leaves. In the absence of exceptional circumstances, a worker who quits work no more than a few days prior to the worker's departure date has voluntarily left work for good cause (9122720, January 23, 1992.) **Quitting ten calendar days in advance of a move does not negate compelling reasons, and up to 23 days may be allowed if the circumstance warrants the need for additional time.**

Example deleted.

Example: A claimant quit her job in order to move from Kodiak to Anchorage for her husband to participate in a necessary medical study/treatment program. She left the job August 11, and arrived in Anchorage August 16. However, because the claimant did not know when the program was due to begin, except that it would be in early September, the Tribunal denied benefits, holding that she had left too far in advance of the program's start date. ([98 1963](#), October 1, 1998)

Example: A claimant quit her job in order to rejoin her husband, who had left the military four months previously and relocated to Vermont where he had a job. The claimant wanted to wait to move until her children had finished their current school year. She then took a two-week vacation to run out her leave, which she thought she would otherwise have lost. She used the time to prepare to move. Because she had time to prepare for the move, the Tribunal, in denying benefits, held that she had quit too far in advance of moving. ([99 1716](#), July 28, 1999)

In the case of a transfer of a worker's military spouse under military orders, a worker who quits work within ten days of the orders to clear post has voluntarily left work for good cause.

Example: A claimant voluntarily left work to accompany her military spouse who was ordered to transfer to a new duty station. Although the claimant knew for over a year of her spouse's transfer, the claimant quit 21 days ahead of the move. The Commissioner held that the period of 21 days between the date that the claimant left work and the date that the claimant planned to depart for the new duty station was excessive, and therefore, the claimant voluntarily left work without good cause. ([94 9543](#), March 17, 1995)

What the worker does while in transit from one duty station to another does not negate good cause for the worker's quit. **However, there is a question of the worker's availability for work during the period between the worker's leaving work and the worker's arrival at the new duty station.**

3. Resignation while on leave

The timing of the move or departure does not affect good cause if the worker is on leave, or occurs during a period in which no work is available.

Example: A claimant resigned from her job as a teacher to relocate in order to care for her elderly and partially incapacitated parents. She timed her resignation date to coincide with the last day of school, but did not move until August. In allowing benefits, the Tribunal held that she had compelling reasons to care for her parents, and that there would have been no work for her with the school district at whatever time she had tendered her resignation. ([98 1462](#), July 23, 1998)

## 180 EQUIPMENT

## A. Necessary Equipment Not Furnished by Employer

A quit because of a lack of equipment necessary to do the job is for good cause if:

- The worker has complained to the employer about the lack of equipment and the employer has taken no steps to remedy the situation; and
- It was the employer's responsibility, not the worker's, to furnish the equipment.

## B. Inadequate, Improper or Defective Equipment Furnished by the Employer

If the employer refuses to replace or repair defective, inadequate, or improper equipment, and the worker attempts to remedy the situation, a quit for this reason is for good cause if:

- the equipment is hazardous;
- the worker cannot properly perform the work, and the worker is reprimanded or criticized; or
- a worker who is on piece rate has reduced earnings.

## C. Employer's Requirement That the Worker Furnish Equipment

In some occupations and industries, it is customary for workers to furnish their own tools or equipment. In such cases, the employer's requirement that the worker furnish equipment necessary to perform the job is usually a condition of hire, and a worker's refusal to furnish such equipment generally happens when the job is offered.

However, a worker may sometimes quit because the worker is unwilling, or unable, to replace equipment furnished by the worker that has worn out or has been stolen or damaged. In other cases, the employer's requirement that the worker furnish certain equipment may occur after the worker is hired, and the worker may quit rather than comply with the requirement. If the worker is **unwilling** to furnish the necessary equipment, the reasonableness of the employer's requirement determines whether or not good cause exists. The employer's requirement is reasonable if:

- It is customary in the occupation or industry for workers to furnish such equipment; or
- The employer's requirement is the result of a collective bargaining agreement with a union.

A worker who is **unable** to furnish the customary equipment has good cause for leaving, if the worker makes an attempt where reasonable to remain employed by requesting work which does not require the use of the equipment or by other

appropriate means, such as requesting that the employer give a payroll advance to buy it, or the like.

## 195 EXPERIENCE OR TRAINING

## A. Utilization of Skills

Quitting work merely because the work does not utilize the worker's acquired skills is without good cause. When a person knows the duties of the job at the time that the worker accepts it, quitting afterwards solely because of dissatisfaction over these conditions is without good cause.

## B. Lack of Opportunity to Acquire Skills or Training

Leaving employment because of a lack of opportunity to acquire experience or training is without good cause. A desire for self-improvement, while understandable and commendable, is not a compelling reason for leaving work.

## C. Lack of Opportunity for Job Advancement

Lack of **opportunity** for job advancement is not, by itself, good cause for leaving. For cases involving lack of advancement, see [VL 500.05 Wages Promotion](#)

## D. Lack of Qualifications

A worker who leaves work because of the worker's belief that the worker is not qualified for the position does not leave for a compelling reason. Even if the employer has indicated that the worker's performance is not satisfactory and the worker assumes that the worker may be discharged, the quitting is not for good cause. It is up to the employer to decide whether the worker's performance warrants a continuance of the employment relationship.

Example: A claimant quit her job because she was not able to get the help she needed in learning word processing. She had been hired as a telephone receptionist, but was offered the opportunity by the employer to learn word processing, as the telephones did not ring often. The next day she was given a letter to type. When she needed help, no one was available, and she felt under pressure to get the letter done. She was performing satisfactorily the duties for which she had been hired, and the employer was satisfied with her work. The Tribunal held that she quit without good cause. ([98 0467](#), April 16, 1998)

Example: On the other hand, a claimant quit her job less than a month after she was hired as office manager when she could not grasp the job duties and the person who was training her left. She discussed this with the owner, who said if she felt she could not grasp the job she should let him know as soon as possible. In allowing benefits, the Tribunal held that she had given the job a fair try and her lack of qualifications made the job unsuitable. ([99 1177](#), June 18, 1999)

If the worker's lack of qualifications cause a threat to the claimant's own health or safety, or to the health or safety of others, this would be good cause.

Example: A claimant quit a job as a pharmacy technician trainee after two weeks because he could not handle the stress of the position. He had to memorize 200 to 400 names for medications and know the forms in which they could be dispensed. He has been diagnosed with Post Traumatic Stress Disorder and also suffers from dyslexia. In view of the safety issues concerned in dispensing medication, the Tribunal held that the claimant's quit, after giving the job a fair trial, was for good cause. ([99 1755](#), July 30, 1999)

## 210 GOOD CAUSE

Regulation: 8 AAC 85.095(c)

## A. General

A worker who leaves suitable work with **good cause** is allowed benefits under the statute.

The definition of "good cause" contains two elements:

- The underlying reason for leaving work must be compelling; and,
- The worker must exhaust all reasonable alternatives before leaving the work.

## B. Compulsion

## 1. Definition

Compulsion is one essential element of the definition of good cause. A compelling reason is one that causes a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, to leave employment. The reason must be of such gravity that the worker has no reasonable alternative but to leave employment.

No matter how substantial a reason for quitting is to the worker as an individual, the reason must be measured on "an objective standard, based on what an average, reasonable man might do in the fact circumstances presented, is to be used in determining whether there was good cause for a voluntary termination. The importance or merit of the cause subjectively to the individual involved . . . is not the measure by which the adequacy of the cause is to be found." (Roderick v. ESD, Superior Court, 1st J.D. No. 77-782)

## 2. Work-connected or personal factors

There is no requirement that the worker's reasons for leaving work be connected with the work. Either work-connected or personal factors may present sufficiently compelling reasons. Compelling is not limited to those circumstances in which the worker is forced to leave employment because of an inability to continue working, such as an illness or disability. It also applies to situations in which the circumstances exerted such pressure on the worker that it is unreasonable to expect the worker to continue working. Such pressures may be physical, moral, legal, domestic, or economic.

"When therefore the pressure of real not imaginary, substantial not trifling, reasonable not whimsical, circumstances compel the decision to leave employment, the decision is voluntary in the sense that the worker has

willed it, but involuntary because outward pressures have compelled it. . . . [I]f a worker leaves his employment when he is compelled to do so by necessitous circumstances or because of legal or family obligations, his leaving is voluntary with good cause." (Biley Electric Company v. Bd. of Rev., 45 A.2d 898 Pa. 1946; cited in Sturdevant.)

### 3. Leaving at the particular time

An important element of compulsion is the necessity for the worker to leave at the particular time, as opposed to earlier or later. A worker who alleges one reason for leaving, but actually leaves only when another set of circumstances become operative has left **at the particular time** due to the second factor.

Example: A claimant ([98 2140](#), November 27, 1998) left his job in Barrow because of various health conditions that needed monitoring by specialists not available there. However, he waited to leave until he became eligible for early retirement. Therefore the Tribunal, in denying benefits, held that the immediate reason for his leaving was due to his desire to take early retirement.

### C. Reasonable Alternatives

The other essential element of the definition of good cause is the requirement that the worker exhaust all reasonable alternatives before leaving work. A reasonable and prudent worker sincerely interested in remaining at work attempts to correct any condition or circumstance that interferes with continued employment. However, a worker is not expected to do something futile or useless in order to establish good cause for leaving employment.

Example: The Commissioner stated, "The 'good cause' test only requires a worker to exhaust all **reasonable** alternatives. An alternative is reasonable only if it has some assurance of being successful. An alternative that is merely an alternative for its own sake is not reasonable. Therefore, there must be a foundation laid that the alternative does have some chance of producing that which the employee desires." (88H-UI-011, March 15, 1988)

It is clear that if a worker resigns and then attempts to rescind the resignation, either directly or through a grievance procedure, the worker has by that action shown that all reasonable alternatives were not exhausted before the worker quit (9427683, August 5, 1994.)

Example: A claimant resigned from his job due to personality conflicts with his co-workers that, he felt, exacerbated a medical condition he had. He later attempted to delay his termination for six months, but the employer refused to do so. In upholding the Tribunal's denial of benefits, the Commissioner held, "Had the working conditions been so onerous as to

leave the claimant no alternative but to quit, we do not believe he would have attempted to stay working under those same conditions an additional six months." ([98 2633](#), March 8, 1999)

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235 HEALTH OR PHYSICAL CONDITION

235.05 General

See the specific headings, "[Health](#)," "[Physical Condition](#)," and "[Stress](#)," in this category for matters not covered in the General section. For a discussion of cases where the worker quits in order to relocate for health reasons, see VL [150.15 RELOCATION](#).

A. Suitable Work

Law: [AS 23.20.385\(b\)](#)

A worker only needs good cause to quit suitable work. A worker is always free to quit unsuitable work without disqualification.

Work is considered unsuitable if:

- the work is detrimental to the worker's health; or
- the worker's health or physical condition prevent the claimant from performing the work.

Example: A claimant ([Wescott v. State of Alaska, Dept. of Labor 996 P.2d 723, \(Alaska 2000\)](#)) worked as an oilfield roustabout. Performance of his job duties aggravated his congenital club feet. In allowing benefits, the Supreme Court held that the work was not suitable. "A claimant may be capable of performing a particular job and yet be unsuited for it. To find suitability the hearing officer is required to consider not only Wescott's physical fitness for the job, that is, whether he was capable of performing roustabout work, but also any detriment that the work might cause to Wescott's undisputed physical impairment, club feet."

Example: A claimant ([98 0767](#), June 8, 1998) left her job because the modifications to her work station that were done to accommodate her disability were not retained when her work station was moved. She was in constant pain. Her doctor had released her to return to work without restriction, but this release was based on the modifications that were no longer in place. She complained several times, but nothing was done. In allowing benefits, the Tribunal held, "A worker is not expected to continue working at a job which is injurious to the worker's health and well-being."

B. Adverse Affect on Worker

To be considered detrimental to the worker's health, conditions of work must materially and adversely affect the physical condition of the worker. There must be a connection between the conditions of work and the worker's health.

Example: A claimant ([07 0430](#), April 10, 2007) left his job due to problems with air quality. The claimant has allergies to dust, mold and perfumes. The claimant's worksite had air quality issues that exacerbated his on-going medical problems. In [Wescott v. State of Alaska, Dept. of Labor](#) 996 P.2d 723, (Alaska 2000), the Alaska Supreme Court stated, in part,

P]hysical ability does not necessarily establish work-suitability in the case of a worker with an existing health problem since -- according to the department's policy manual -- '[i]f accepting work is detrimental to the claimant's health, or if the claimant's health or physical condition prevent the claimant's performing the work, there is no issue under [the waiting-week disqualification] statute.' 'Suitability' is thus an inquiry that encompasses more than short-term physical capability. A claimant may be 'capable' of performing a particular job and yet be 'unsuited' for it.

Citing [Wescott](#), the Tribunal held "The job was considered unsuitable and the claimant not subject to disqualification.

A claimant may have a well-documented illness or disability, if it is not affected by the conditions of the work or does not prevent the claimant from performing the work, then it cannot be said that the work is detrimental to the workers health and the work is considered suitable.

Example: A claimant worked in an auto body shop; he became ill with pneumonia which he believed was caused by his work environment. He did not seek medical advice prior to quitting. The Commissioner ruled that competent medical evidence had not been presented to show that the auto body work was detrimental to the workers health; the worker did not establish good cause to quit suitable work. ([02 1589](#), October 24, 2002).

C. Long term v Short term Health Problems

In [Wescott v. Dept. of Labor, 996 P.2d 723,729](#) the court made the distinction between long term and short term health problems. If the claimant is unable to work in their current occupation due to a short term illness or injury, it is appropriate for the claimant to request a leave of absence or transfer to light duty prior to quitting work.

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Only when the health problems are on-going, exacerbated by working conditions, and the working conditions not likely to change should the work be determined unsuitable and adjustments not required.

**D. Advice of Physician**

A physician's statement is normally the best evidence of the claimant's physical condition. If a worker quits work on the advice of a physician, this is considered to be compelling in most cases.

A claimant's concern about their health or physical condition does not in itself cause the work to be unsuitable. The effect of continued employment on the workers health must be established, usual this is by the advice of a medical professional (83H-UI-06, March 21, 1983,).

One exception where medical documentation is deemed unnecessary is workplace exposure to cigarette smoke. Cigarette smoke has been established as a public health hazard. In Commissioner decision [9426768](#), (May 25, 1994), and again [01 1963](#), (December 14, 2001), the Commissioner ruled that it is well established that cigarette smoke is harmful and a statement from a claimant's doctor is not necessary to show a claimant is harmed by cigarette smoke

Example deleted.

**E. Failure to Seek Medical Attention**

In most cases, a worker's failure to seek medical attention weakens the allegations that the worker's illness or disability compelled the worker to quit work.

Example: A claimant quit work as a dining room attendant because she disliked working at night and she felt that she was not getting enough sleep. As a result, she began having emotional problems on the job. She did not see a physician prior to quitting. However, she did see a physician after she had quit. The Commissioner held that the claimant had not established good cause for her leaving suitable work because she made no effort to alleviate the emotional problems she was suffering by consulting a health caregiver for professional help before she quit her job. (9321175, June 18, 1993)

**F. Quit to Obtain Medical Services**

A quit to obtain medical services that are not available in the area is for good cause if the services are necessary and the claimant has no reasonable alternative. Except in unusual circumstances, a medical professional must verify

that services are not available locally. The comparative cost of the medical services is not a factor.

Example: 97 1784 deleted.

Example: In Commissioner review [02 2164](#), February 21, 2003, the Commissioner stated the agency “cannot simply take the word of a claimant that appropriate medical services are not available in the area of the claimant’s residence. To allow such a conclusion on the part of the claimant would allow any claimant to receive a travel exemption of availability for any illness whatsoever. There must be some evidence that the travel is necessary. Either a medical professional must have determined that adequate services are not locally available, or a reasonable mind must be able to conclude that the illness is such that adequate services are not locally available. ([02 2164](#) February 21, 2003)

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235.2 Illness or Injury

A. Illness

If the illness is temporary a worker is expected to seek adjustment from the employer prior to quitting, such as a leave of absence or light duty work.

A worker may leave work because of illness, either on a leave of absence or permanently. If a leave of absence is reasonable, the worker is expected to request it before quitting. However, a leave of absence may not be a reasonable alternative to for all illnesses, nor available in all employment situations. In most cases a doctor's statement is necessary to document the necessity for the quit. When the situation is obvious, it is not required.

Example: The claimant last worked as a pharmacy technician, filling prescriptions, stocking shelves, and entering data into a computer. She worked eight hours per day, Monday through Friday. The claimant was on her feet eight hours per day, with no scheduled breaks. The claimant did ask for occasional breaks but the store had no break room, requiring the claimant to rest in her car. The claimant began having pain in her back and legs. Seeking medical attention, the claimant was advised that she did have some degenerative change in her condition. The doctor did not believe the claimant was disabled; only that standing on her feet eight hours per day would substantially aggravate her condition. The record supported a finding that it was medically necessary for the claimant to quit work. The work was unsuitable due to her medical condition and a leave of absence would have been impractical. ([99 1221](#), June 25, 1999)

B. Injury

If the injury/disability is temporary, a worker is expected to seek alternatives from the employer such as leave of absence or light duty work. These alternatives may not be available or applicable to all situations, and may leave the claimant with no alternative but to quit.

Example: The claimant quit her job because a back injury prevented her from working. She was advised by her physician not to stand, not to lift more than ten pounds, and not to climb stairs. Her employer did not have work for her within these restrictions. The Tribunal held that she had good cause for leaving. ([98 0637](#), April 17, 1998)

**C. Risk of Injury or Illness**

In any quit due to an alleged risk of illness or injury, the adjudicator should first determine the ordinary risk of the occupation. Some occupations such as logging, mining carry a higher risk than others. A person working in an occupation assumes the ordinary risk of that occupation. Therefore a quit due to the ordinary risks of the occupation is without good cause. To establish good cause, the worker must show that the job risk was disproportionately high for that occupation or for the worker.

Example: In Commissioner Review No. 757, the claimant quit work with a gypsum producing mine. Although there was no indication that the risks exceeded those customary for gypsum production, the claimant had a pre-existing lung condition. The Commissioner held in this case the claimants reason for leaving provided good cause. Although the risks of employment were normal for the occupation, the occupation had become exceptionally risky for this claimant due to his lung condition.

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235.4 Pregnancy

A. Voluntary or Involuntary separation

The first step in adjudicating any termination of employment due to pregnancy, whether temporary or permanent, is to determine whether the separation is voluntary or involuntary.

If the leave is an **employer requirement**, then the separation is **involuntary** and would be adjudicated as a discharge for the purposes of [AS 23.20.379](#).

If the **worker requests** a leave of absence, the worker has **voluntarily left** work for the purposes of AS 23.20.379. Good cause depends on whether it was necessary for the worker to stop working at the time that she did.

A worker, who severs the employer/employee relationship, rather than accepting a reasonable period of pregnancy leave, voluntarily leaves work without good cause.

Example: A claimant quit her job because she suffered with headaches, nausea, and dizziness due to her pregnancy. The employer allowed her to sit down or go home whenever she mentioned the problems. She did not ask for a leave because she did not think that an extended absence would be fair to the employer. The Tribunal held that she quit without good cause as she could have continued to make use of the employer's accommodations or take leave. ([99 0041](#), February 5, 1999)

Often a worker separates rather than take maternity leave because she wishes to remain home and care for her child. This is understandable, but it is not compelling for unemployment insurance purposes.

Example: A claimant requested a maternity leave for more than six months. Because the employer's leave policy only allowed a leave of absence for six months, the employer refused her request. The claimant quit work in order to give birth to her child and to spend time with her child afterwards. In denying benefits, the Commissioner held, "[The claimant] could have taken a short leave to have her child and then returned to work. Her desire to take a long leave of absence created her separation from full-time employment and thus must be considered a voluntary termination. While commendable, her reasons for desiring a leave of absence are not compelling as to create good cause for leaving her employment." (81H-214, March 31, 1982)

B. Pregnancy Must Be Disabling

Pregnancy is a compelling reason for voluntarily leaving work **if it is disabling**. A worker does not need to establish that she cannot continue working under any

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circumstance; she only needs to establish that continuing work is unduly difficult or threatens her health or that of her child.

Example: A claimant took a leave of absence from her job to which she walked when walking became too difficult for her in the last months of her pregnancy due to icy weather conditions. The Tribunal held that she had good cause for leaving, due to the risks presented to herself and unborn child. ([98 0710](#), April 24, 1998)

**C. Timing of the Leave**

Pregnancy is considered an allowable reason to leave work at or near the time of the birth.

- A worker who works until eight days before her due date or four days before her actual delivery date has satisfied the test of compulsion and need not establish any extraordinary disability or furnish medical documentation to voluntarily leave work for good cause (9027892, October 5, 1990.)
- A worker who voluntarily leaves work more than eight days before her due date does not automatically have to establish extraordinary disability or furnish medical documentation to satisfy the test of compulsion.

Example: A claimant quit her job on March 30, because she was pregnant and her due date was May 3. The claimant's midwife advised her that she could have the baby earlier, but did not advise her to quit her job. The baby was born on April 15. In allowing benefits, the Commissioner held, "In this case, the claimant's baby was born 15 days after she quit. She had already been told that her due date was not certain and that she could have the baby earlier. At this point, a doctor could do no more than rely upon a worker's subjective assessment of her ability to work. A health advisor is most likely to tell a worker to work as long as she can and quit when she must. A statement would be valuable with respect to a quit occurring in the third month of pregnancy. In the ninth month, it in most cases simply recites the obvious. The claimant's testimony was credible. She provided enough subjective evidence of discomfort to justify the quit." (9121844, November 8, 1991)

**D. Advice of Physician**

While a physician's statement is usually conclusive on the state of the claimant's health, it is not necessary in all situations. The adverse effect on the worker is apparent without medical documentation.

Example: In 80B-1322, the claimant quit work when she was eight months pregnant. Although the pregnancy was uncomplicated, she was suffering from some dizziness and felt she could no longer do the heavy pulling and lifting required on her job. The claimant's physician did not advise her to quit on any specific date but left it to her to decide how long into the pregnancy she wanted to work. The Tribunal held that the claimant's actions were entirely reasonable and were good cause for voluntarily leaving work.

Certainly in the latter stages of pregnancy, a common sense approach should be taken with regards to the claimant's assessment of her ability to continue working.

In Commissioner decision 9121844 (November 8, 1991) the Commissioner said 'A (physician's) statement would be valuable with respect to a quit occurring in the third month of pregnancy. In the ninth month, it in most cases simply recites the obvious.'

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235.5 Stress

A worker who quits work on the advice of a physician or counselor because of work-related stress quits with good cause if:

- The stress is detrimental to the workers health; and
- The workplace conditions causing the stress are not likely to improve within a reasonable length of time; and
- The worker has made a reasonable attempt to adjust.

Stress related illness may take many forms, from emotional to physical, temporary to chronic. Because stress related illness is so varied, the absence of a physician's statement advising the quit will, in most cases, show lack of good cause.

Stress that manifests with physical effects on a claimants health has long been considered a health issue. ([950896](#) July 14, 1995) ([953327](#), March 5, 1996). In Commissioner decision [97 1968](#) (Feb 167, 1998) the Commissioner stated "Unusual stress at work may present good cause for quitting when it threatens a worker's health".

Example: A claimant left work because job related stress was causing migraine headaches. She sought help from medical professionals who advised her to quit. The Commissioner found the claimant had compelling reason for quitting. ([97 1968](#), February 17, 1998).

Example: A car salesman was experiencing high blood pressure. His doctor advised him to find other work that did not involve sales. The Tribunal found that he was subjected to continuous work place stress that may have caused his high blood pressure. Quoting [Wescott v. State of Alaska, Dept. of Labor 996 P.2 723](#),

"[P]hysical ability does not necessarily establish work-suitability in the case of a worker with an existing health problem since -- according to the department's policy manual -- '[i]f accepting work is detrimental to the claimant's health, or if the claimant's health or physical condition prevent the claimant's performing the work, there is no issue under [the waiting-week disqualification] statute.' 'Suitability' is thus an inquiry that encompasses more than short-term physical capability. A claimant may be 'capable' of performing a particular job and yet be 'unsuited' for it.

The Tribunal found the work unsuitable and that the claimant had good cause to quit work. ([00 0525](#), April 6, 2000).

Only when the health problems are on-going, exacerbated by working conditions, and the working conditions not likely to change, should the work be determined unsuitable.

**A. Advice of Physician**

Because job-related stress is somewhat subjective, the absence of a physician's statement advising the quit in most cases negates good cause. There must be supporting evidence to show that continued employment is harmful to the worker's health. (83H-UI-06, March 21, 1983)

Example: A claimant quit her job as a bank operations manager because the long hours that she was required to work adversely affected her health. The claimant worked an average of 56 hours a week during a six-day workweek. She often could not leave the bank for meal breaks due to the lack of management staff. Her physician indicated that the claimant was suffering from "Essential Hypertension" and that "job stress seemed to exacerbate hypertension." He did not advise the claimant to quit, but stated that "no job was worth her health." The claimant believed that there was direct relationship between the work and her hypertension as well as the sinus infections, skin allergies, and insomnia that she suffered since she began the job. The Commissioner held that the claimant voluntarily quit work, but with good cause because the medical statements she supplied and her physician's own statement supported her contentions and she showed that she made a reasonable effort to adjust the situation prior to her termination. (9321805, June 15, 1993)

**B. Normal for the Occupation**

Some jobs have more potential for stress than other, such as social worker, air traffic controller. A claimant does not have good cause to quit if the stress of the job is normal for that particular occupation. ([99 1899](#), August 20, 1999)

## 250 LAST WORK

A finding of voluntary leaving under [AS 23.20.379\(a\)\(1\)](#) applies only to the worker's **last work**.

A definition of "last work" depends first upon the definition of "work," and then upon a determination of what is to be considered the person's most recent work.

Regulation: [8 AAC 85.095\(h\)](#)

## A. Definitions

## 1. Work

The term "work" is not defined in the Alaska Employment Security Act. The Act defines "employment" to include only work covered for benefit purposes under the Act, but work includes both covered and uncovered employment, as long as there was an employer/employee relationship. Work, as used in the Act most nearly means "job."

Work includes permanent, full time, part-time, or stop-gap work. It also includes work where wages are paid in kind, such as room and board. Reporting to a job without actually performing services is considered work, if show-up or standby pay is paid or owed.

## 2. Employer-employee relationship

"Employer/employee relationship" is a relationship in which service is done for wages under any contract of hire, written or oral, express or implied.

## 3. Wages

"Wages" are in turn defined in [AS 23.20.530](#) to include all payment for service from whatever source, including "commissions, bonuses, back pay, and the cash value of all remuneration in a medium other than cash. . ."

## B. Last Work

## 1. General

Last work is the person's most recent work before filing a claim for benefits in which there was an employer/employee relationship.

The duration of the last work is irrelevant. Even if the last work was performed for less than a day, it is the last work if there was no other work intervening between that work and the filing of the claim.

Example: A claimant ([98 0236](#), February 26, 1998) worked until July 1997 for Aurora Village Chevron. He filed a claim effective January 6, 1998. He had also worked briefly in December of 1997 for Frontier Towing. That job was his last work.

2. Continued claims status

If the claimant is in **continued claims status**, the most recent work is the last employer for whom the claimant worked during the week claimed.

Example: In [9027696](#) (December 3, 1990) the claimant was in continued claim status from April 28 through June 16, 1990. On May 18 the claimant quit his full-time job as a sales clerk for Baker and Baker, Booksellers. On the same day, the claimant was hired as an on-call substitute teacher for the Fairbanks North Star Borough School District. He worked for them on May 18 in the afternoon. Because the claimant was in continued claim status for the week ending May 19, his most recent work is the last employer for whom he worked during the filing period. Therefore, his employment with the North Star Borough School District was his most recent work.

3. Simultaneous jobs

In some cases, a person has two jobs simultaneously, for example working days for one employer and nights for another. If the worker leaves both employers at the same time, the last work is the last employer for whom the worker actually performs services.

4. Work for temporary help agency

If the worker is employed by a temporary help agency, the employer is always the agency, not the agency's client who receives the services.

5. Not included as last work

- Unpaid training periods, such as training conferences for prospective salespersons, when the applicant is hired only after successfully completing the training period;
- Work performed in prison by an inmate;
- Jury duty;
- Inactive military service;
- Self-employment; and
- Short term, casual or temporary work taken to avoid disqualification for an earlier work separation.

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C. Self-employment

Self-employment is never a person's last work, and leaving self-employment raises no issue. In addition, self-employment may not be used to purge a disqualification.

AS 23.20.525(a)(8) states the distinction between self-employment and "work" (in which there is an employer-employee relationship). This is a coverage provision, but it is useful in determining "last work" under [AS 23.20.379](#) as well. The fact that an employer or the worker or both consider the work as self-employment is not determinative. It must meet all of the three tests below.

Service is self-employment (and therefore not "work") only if all three conditions are conclusively shown.

1. The worker is free from control and direction in the performance of the service;
2. The work is done outside the course of business or place of business of the enterprise for which the service is performed; and,
3. The person doing the work has an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

D. Short Term, Casual or Temporary Work Taken to Avoid Disqualification

At times a worker attempts to circumvent disqualification for leaving last work by taking a short term, casual or temporary job; that is, sham employment. Sham employment is principally characterized by the job being offered tailor-made to the individual through direct personal contact, rather than being offered to any qualified applicant. Other factors which may, but do not necessarily, indicate sham employment, are:

- Work other than in the person's usual occupation or occupations;

Example: After quitting his job as an eligibility technician, a claimant took a temporary job with his neighbor clearing wood and sheet rock from his property and mowing his lawn. As he was not seeking work as a groundskeeper or laborer, the Tribunal held that the work was inconsequential in comparison with his regular employment and therefore constituted a job taken in order to avoid disqualification. ([98 1938](#), October 16, 1998)

- Work for someone who is otherwise not an employer, and who has no established business; and

Example: In 88UI-0715, (May 13, 1988) the claimant took a temporary job with someone who did not employ anyone else and

had no established business. The Tribunal held that there was no employment, based on the relationship between the claimant and the so-called employer.

- Work for a short period of time, usually a day or less.

Example: A worker quit a job, and, before filing for benefits, accepted a short-term position as a house-pet-sitter. Although the timing was fortuitous, the work was not sham employment, as the employer was seeking a sitter while he traveled, and had asked other people to recommend someone reliable, and the worker needed the job.

Example: In [96 2217](#), (December 16, 1996) the claimant quit a job and accepted a one-day position transplanting strawberries. She had worked for the owners on call before. She stated that she had taken the job as a possible means of circumventing the statute. The Commissioner held that the work was not sham employment but was taken to avoid disqualification.

## 305 MILITARY SERVICE

## A. Separation from Military Not Subject to AS 23.20.379

A voluntary quit issue under [AS 23.20.379 \(a\)\(1\)](#) cannot arise in connection with a separation from military service, including National Guard duty, regardless of the reason for separation from the military.

National Guard Active duty is considered work and is considered "last work" for unemployment purposes, although the reason for the separation is not addressed.

## B. Job Retention and Re-employment Rights

[Title 38, Chapter 4312, of the United States Code](#) requires job retention and re-employment rights for military personnel.

If an ex-service person requests information as to re-employment rights under federal law, they should be referred to the Veteran's Employment Representative (VER).

## 315 VOLUNTARY LEAVING VS. REFUSAL OF NEW WORK

## A. Contract of Employment

The definition of "new work" depends on whether the offer is a new contract of employment. All work is performed under a contract of employment between a worker and employer. The contract may be written or oral, detailed or general, formal or informal. In any case, the contract describes the duties the parties have agreed the worker is to perform, and the terms and conditions under which the worker is to perform them.

The existence of an ongoing contract of employment does not depend upon whether the claimant is "unemployed" as defined in [AS 23.20.505](#).

Example: A claimant who is on a three-week layoff with a definite return-to-work date has not severed an existing contract of employment. Nevertheless, the claimant is considered unemployed for unemployment insurance purposes, since the claimant is performing no work and has no earnings for the three-week period.

For determination of the separation date when a leave of absence or lay-off period is involved, see [VL 440 Separation Date](#) – Leave of absence.

## B. Leave Period or Layoff

As stated above, a worker is considered unemployed during any layoff or leave period.

## 1. Definite leave or lay-off period

If the leave or layoff is for a specific period with a definite return-to-work date, the contract of employment has not been terminated. Therefore, in such cases, if a worker fails to return at the end of the leave or layoff, the person has voluntarily left employment at that point. The person has not refused an offer of new work. See [VL 440 Separation Date](#) for establishing the separation date in these situations.

## 2. Indefinite leave or lay-off period

An indefinite layoff or leave period terminates the existing contract of employment. Any subsequent offer made to the worker is an offer of new work, regardless of whether the job duties or conditions are the same or different from those of the previous period of employment.

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C. New Work vs. Changed Work Conditions

1. New Work

New work is an offer by a worker's present employer that changes the existing contract of employment in terms of:

- different duties from those the worker agreed to perform; or
- different terms or conditions of employment from those in the existing contract.

Example: A claimant quit her job when her hours were increased. Everyone else in her job class worked the longer hours, but she could not due to her health condition. In allowing benefits, the Tribunal held the work was no longer suitable for her and no reasonable alternative existed. ([98 0660](#), April 23, 1998)

Example: A claimant left work when the employer closed the store where she worked as a full time manager and offered her a part-time sales position in another store 17 miles away. The Tribunal held the closure of the store ended her contract of work; she was discharged but for reasons other than misconduct. The offer of a part time sales position in a new location was reasonably differed to be considered an offer of new work. ([98 0931](#), May 21, 1998)

If the worker performs any service or receives show-up or standby pay on the new job, this new work becomes the worker's "last work," and the separation from the previous job is irrelevant.

2. Contract not including new duties

The Commissioner has held that a worker has compelling reasons for voluntarily leaving work if the existing contract of employment does not include the new duties (9122004, March 4, 1992) and the new duties are reasonably different from those the worker agreed to do.

Example: A bus driver for a tour company worked at a rate of \$9 per hour. After two or three minor accidents, he was removed from the bus driver position and offered a customer service position that paid \$8 per hour. The Tribunal held that the difference in pay and duties made it an offer of new work. (97 1869, September 18, 1997)

3. Contract including varied duties

In some occupations the contract of hire includes a variety of different duties, or the work practices of the occupation include a variety of duties. A worker who leaves work rather than accepting a change in job duties

authorized by the existing contract of employment, has voluntarily left work without good cause.

Likewise the contract or work practices of the occupation may require the worker to transfer from one department to another as work is available. A worker who leaves rather than accept a transfer to reasonably related work at a comparable rate of pay (9029033, April 24, 1991), leaves work without good cause.

Example: A claimant worked as a personal care attendant. When that position ended, the employer offered her a position as either a certified nurse's aide or as a food service attendant. The Tribunal held that the positions were similar in duties, pay and hours to those in her existing contract, so that her refusal to accept the positions was a voluntary leaving of existing employment, not offers of new work. (97 1512, July 23, 1997)

#### D. Reasonableness of Requirement

A worker who voluntarily leaves work because an employer requires the worker to perform duties outside the scope of the worker's employment leaves work without good cause, if the employer's requirement is reasonable and motivated by business necessity.

The reasonableness of the employer's requirement depends upon the relationship between the worker's occupation and the new duties. A worker does not have good cause for voluntarily leaving work because the required duties are not customary in the occupation, as long as the duties are reasonably similar and the request is motivated by business necessity.

Example: A travel agent voluntarily left work because her supervisor assigned her the additional duty of soliciting business for the travel agency by telephone. The claimant contended that telephone soliciting was not a customary duty of a travel agent. The employer contended that the duty was customary and believed it was proper to require agents to solicit business in their spare time. In denying benefits, the Commissioner held, "The assignment of additional duties, even if outside the scope of the original hiring agreement, does not automatically give a worker [good] cause to quit. An employer must be given some flexibility to assign work and respond to business conditions. If the conditions of work are significantly altered, the suitability of the new conditions must be determined under the 'new work' standards in AS 23.20.385. There was no such significant alteration of the terms and conditions of work in this case." (9028974, January 18, 1991)

If the employer's requirement is not reasonable, is motivated by reasons other than business necessity, or changes the conditions of work to below prevailing

for the occupation, then the worker may have good cause for voluntarily leaving work.

In all cases, the worker must express dissatisfaction to the employer about the change in terms and conditions, and allow the employer opportunity to remedy the situation.

An employer's requirement that the worker perform duties outside the scope of the worker's employment is unreasonable if the new duties:

- are beyond the worker's abilities;
- impose undue risks that are unusual for the worker's occupation;
- imposed for the purpose of harassment;
- cause the worker to perform at a higher skill level at a lower wage;
- are at a considerably lower level of skill and status, and demeans the worker or causes the worker to lose the skills in the worker's customary occupation; or
- the duties are morally repugnant to the worker (9324931, February 9, 1994.)

Example: A claimant quit his job when it was reorganized and he was given work to do that was basically clerical in nature, although he was in fact a construction manager. He attempted to resolve the matter with several levels of supervision. The Tribunal held that the work was so far beneath his skill level as to give him good cause to quit. (97 1598, August 1, 1997)

#### E. Offer of Continued Work at Expiration of Contract

If at the end of a contract of employment or temporary assignment there is no further work immediately available, the worker is laid off due to lack of work. If the worker refuses an offer of additional work from the employer at the conclusion of the contract under the same terms and conditions of employment and without a break, the worker's refusal to continue working raises a voluntary leaving issue (9227165, August 26, 1992.)

#### F. Discharge or Leaving after Trial Period

When the claimant gives the prospective work a trial, even though it is for an exceedingly brief period, any issues are properly decided under voluntary leaving or discharge. Even if the claimant performed no actual work, but was paid, the issue is a separation, not refusal.

## 345 PENSION - RETIREMENT

## A. Mandatory Retirement

Automatic or compulsory retirement because of a company policy or collective bargaining agreement or an employer's rule which prohibits employment of anyone past a certain age is an involuntary separation, since the worker does not have a choice in remaining in employment at the time of the separation.

Example: A claimant (97 1849, November 18, 1997) quit his job after attempting to return to work as a pilot following a period of illness. He could not pass the flight test, nor, if the employer would not let him retrain, re-take the test, or transfer to other work. His only option was to take a flight check test, which he did not believe he could pass. If he attempted it and failed, he would lose his pension. He was only months short of the mandatory retirement age. The Tribunal held that he had good cause to quit.

## B. Optional Retirement

## 1. General

A worker who retires when it is not compulsory to do so leaves work voluntarily. Leaving solely to qualify for a pension is without good cause.

In [80H-49](#), a longshoreman left his employment when he reached 65. He contended that the job was too hard on him because of his age, but offered no evidence of specific physical ailments or disabilities that would keep him from the work. Although there was no mandatory retirement policy in the longshoremen's union, he was eligible for a pension at the age of 65. The Tribunal held that the primary reason the claimant quit was to receive his pension. The quit was without good cause.

## 2. Special bonus or separation payment

In [98 0607](#) (May 8, 1998) the Tribunal held, "[A]n offer of a special bonus or severance payment upon separation, although undoubtedly inviting, fails to establish good cause for voluntarily leaving."

Example: In the case cited above, the claimant was offered a voluntary "buyout" by the employer of \$20,000 as a retirement incentive to enable the employer to downsize. He was not faced with a layoff, although he did not know what his status would be in subsequent years. The Tribunal held that the offer, although inviting, was not good cause for his leaving.

**363 PERSONAL APPEARANCE**

A worker who leaves employment because of unwillingness, as opposed to inability, to conform to reasonable standards of personal appearance imposed by the employer leaves without good cause.

Persons have a right to dress and groom as they choose. However, employers have an equal right to establish reasonable standards of dress and grooming. These include standards designed to ensure the safety of employees working with machinery or in other dangerous areas; standards to protect the health and cleanliness of employees serving the public; and standards necessary to maintain the employer's image in dealings with the public. Employers have a right to set and enforce such standards except as limited by union, governmental, or other established controls.

## 365 PROSPECT OF OTHER WORK

## A. Quit to Seek Work

A worker does not have good cause to quit a job just to look for other work. In [79H-197](#), the Commissioner held, "A leaving of suitable work . . . in order merely to seek work is, of itself, a leaving without good cause."

A quit to seek other work often implies that the former work was not considered suitable by the worker. When the worker's reason for leaving is due to dissatisfaction with wages, hours, or other conditions of work, the worker's eligibility then depends on whether the working conditions themselves were good cause for leaving work. See the appropriate categories of the VL section to determine if the work was suitable.

## B. Quit to Accept Other Work

A worker who leaves work to accept an offer of work that gives reasonable assurance of more permanent work under better wages, hours, or other conditions is considered to have left work for good cause, even if the new employment fails to materialize, so long as the worker is not responsible for the failure to begin the new employment (9224137, April 2, 1992.)

**If the worker performs any service or receives show-up or standby pay on the new job, this new work becomes the worker's "last work," and the separation from the previous job is irrelevant.**

## 1. Assurance of new job

It is assumed that a worker tries to insure continued employment. Therefore, a worker who quits to accept new work must have definite assurance of the new job before good cause can be established for quitting the previous job.

- A written or oral promise of employment must be made, and
- A reasonably definite starting date must be established.
- The offer of employment must be made by a person with the authority to hire.

Example: A claimant ([98 0167](#), February 19, 1998) quit her job because she believed that she had another job with better pay. The prospective employer testified that she had only been told that there was a good prospect of work as an employee had given notice. She quit work after having been notified that the new job was not available because the present occupant of the position had rescinded her notice. The Tribunal held that the offer of prospective work was not bona fide, and that the claimant therefore left her employment without good cause.

2. Better wages, hours, or other conditions

A worker has good cause for leaving work to accept better employment elsewhere. This may include better wages, hours, or other conditions. A worker does not have good cause, to leave employment to accept new work that does not in any way improve the worker's circumstances. What is better employment must be determined individually.

a. Permanence of new work

Leaving permanent work to take temporary work, even at a higher rate of pay, generally is without good cause. This is usually true even if the permanent work is part-time. However, each case must be considered individually, and a skilled long-term temporary job with the opportunity to become permanent may be better than an unskilled permanent job with no hope of advancement.

Example: A claimant (97 1456, July 10, 1997) quit his permanent job to take a commercial fishing job with his uncle. The Tribunal held that the temporary nature of the commercial fishing job, combined with its probably lower remuneration, did not give him good cause to leave.

In 80B-115, a waitress left her employment in Fairbanks to take a house sitting job of about two to three weeks. Even though her waitress work occupied her only two days per week, the Tribunal held that she left without good cause, because the new work did not improve her working conditions.

On the other hand, leaving temporary work to accept permanent work is for good cause, even though the permanent work pays the same or somewhat less than the temporary work.

Leaving temporary work for other temporary work that is more advantageous as to pay or duration is for good cause.

Leaving part-time work to accept full-time employment is for good cause, even if the hourly rate for the full-time work is the same or less than the part-time employment.

Leaving part-time permanent employment to accept full-time temporary employment may be for good cause if the overall conditions for the worker have improved. Always consider the number of hours in the part-time work on the one hand, and the length of the temporary work on the other.

Example: Leaving a 24-hours-per-week permanent job for a full-time one-week job would not be with good cause, regardless of the benefits in wages in the temporary job. Leaving a 10-hours-per-week permanent job for a six-month temporary job would probably be with good cause.

Leaving full-time work to accept part-time work is without good cause, unless the worker has a compelling reason for accepting part-time work. Also note that in this case an availability issue may be raised.

b. Pay

The next step in determining good cause for leaving work is to consider the relative pay of the two jobs. Although the rate of pay is extremely important, it should not be emphasized to the exclusion of other factors.

However, when other factors are equal, a worker has good cause for leaving work to accept other work at an increase in pay. In determining whether the new job actually results in increased pay, consider:

- Basic wage;
- Shift differentials, if any;
- Payment in kind, such as board and room furnished by the employer; and
- Guaranteed overtime.

Example: A claimant quit work after his employer failed to honor a promised pay raise. He had secured a job in California that paid several dollars more per hour. In allowing benefits, the Commissioner held that “any prudent person would leave a job that failed to keep its promise of scheduled raises for new employment that paid a better wage.” ([10-1891](#), October 1, 2010)

c. Other conditions of work

Conditions other than wages and hours may be good cause for leaving one job to accept another job. The change in jobs must, however, improve the worker's circumstances, as, for example, a more healthful working environment. Otherwise, the quit is for personal reasons that are not good cause.

Paragraphs deleted.

## C. Quit to Pursue Self-employment

For a discussion regarding the difference between "work" and "self-employment," see [VL 250 Last Work](#).

A quit to enter or retain self-employment is always without good cause, regardless of the permanence of the self-employment, and regardless of whether the self-employment results in improved wages, hours, or other conditions.

Example: The Commissioner held, "[The unemployment insurance program] is not intended to protect those who go into self employment . . . I hold, therefore, that any person who has voluntarily left suitable work to enter self employment has left work without good cause." (82H-UI-169, October 6, 1982)

Example: A claimant quit his job when the employer relocated to an area where the workers could not use their own cars. They were to be brought into town by bus, but the employer could not guarantee when that would be. The claimant had a boiler maintenance job, as self-employment, that he would not be able to continue when he did not know when he would be available to do it. The Tribunal held that the self-employment did not give him good cause to quit. ([98 0367](#), March 26, 1998)

## 385 RELATION OF ALLEGED CAUSE TO LEAVING

## A. Proximate Cause

## 1. Close in time

In order to be good cause for leaving, the incident or circumstance allegedly causing the quit must be close in time to the quit itself. A single circumstance remote in time from the quit cannot be good cause for leaving. In addition, the longer a worker remains employed under the objectionable circumstances, the less weight can be given to those circumstances in determining the true cause of the leaving. The Commissioner has stated, "The establishment of good cause for leaving work is dependent, among other things, on the proximity of the incident creating the quit to the quit itself." (82H-UI-184)

Example: A claimant, employed as an acting supervisor, was passed over for promotion to the permanent supervisor's position, and was unable to get along with the new supervisor. He consulted a physician who indicated that he "might be getting an ulcer." The physician advised the claimant to quit his job because of his health problems. However, the claimant worked an additional five weeks before giving notice, because he wanted to see if things improved with his supervisor. He did not advise the next level of authority of any of his problems. The Commissioner decided that he had left work for a non-compelling reason because although the claimant was advised by his doctor to quit, the claimant removed that as proximate cause for the quit by working an additional five weeks before giving notice. At the time he quit, he did so because he had decided it "just wouldn't work out." However he gave the employer no opportunity to rectify the situation. (82H-UI-184, above)

However, there is no general rule as to what length of time must elapse before a given occurrence or circumstance is no longer the proximate cause for the quit. The question that must be resolved is whether the average reasonable and prudent person would have quit after that length of time for that reason. If the quit is because of an ongoing condition to which the worker objects, the question is whether the worker's continued employment represents a good faith attempt to adapt to the condition, or whether the worker's continued employment shows that the circumstance was not compelling.

Example: A worker may continue working with a disability, even though advised to quit by a physician, because the worker needs the wages. If the worker finally quits because of an inability to do the work with the disability, good cause is not negated merely because the worker continued in employment for an extended period of time.

Examples deleted.

2. Cause in existence at time of quit

The alleged cause must exist at the time of leaving. If the condition has been remedied or is about to be remedied, it cannot be considered good cause for leaving.

Example: A worker who has been working under the supervision of a foreman with whom the worker has a very bad relationship leaves the day before a new foreman is to start on the job. If this fact is known at the time of leaving, such leaving is without good cause.

3. Alleged cause is reason for quit

A claimant may establish good cause to quit due to working conditions, but only if the working conditions were the reason for quitting. There must be a connection between the alleged conditions and the reason for leaving.

Example: Claimant quit work to attend school. After he quit, he became aware that some of his employer's practices might not have been up to code. He then claimed that the work was not suitable. The Commissioner ruled that the reason he quit had nothing to do with the working conditions. (8925912, May 4, 1990)

B. Two or More Reasons for Quit

A worker may give two or more reasons for quitting. However, the one reason that was the precipitating event is the real cause of the quit, with the other reasons being incidental. In such cases, good cause depends on the precipitating event and the other reasons are irrelevant. In many cases, the quit is in fact caused by a combination of factors, but, although the other factors contributed to the worker's overall dissatisfaction, the worker would not have quit at the particular time, had it not been for the precipitating event.

1. Most recent occurrence

The most recent occurrence is most often the cause of the quit. This is especially true if the other reasons are based on incidents that happened long before the quit, or are based on conditions under which the worker continued working for some time.

Example: A medical technician who had been employed at a remote communications site for two years listed a variety of reasons for quitting, including racial discrimination, harassment, personal family problems, and a desire to continue his education. However, the claimant testified that he gave notice when the plane that was returning him to the job site nearly crashed. The claimant had filed two grievances with respect to the working conditions at

the site, and there had not been a final resolution of those grievances at the time he quit. The claimant was "unable to confirm that, had it not been for the airplane incident, he would have left his position . . ." The Tribunal held that the proximate cause of the separation was the airplane incident. (81A-184)

2. Combined Influence

A quit may be caused by the combined influence of several reasons. However, the precipitating event is the reason for the separation, although the combined effect of the reasons may be taken into account in determining good cause.

## 425 SUITABILITY OF WORK

Law: [AS 23.20.385\(a\)\(2\)](#) and : [AS 23.20.385\(b\)](#)

Regulation: [8 AAC 85.410](#)

## A. Definition of Suitable Work

Suitable work is defined in [AS 23.20.385](#). This definition applies to work refusal issues under [AS 23.20.379\(b\)](#) and voluntary leaving issues under [AS 23.20.379\(a\)\(1\)](#). However, the definition of suitability cannot be applied in exactly the same way for both voluntary leaving issues and work refusal issues. A worker does not necessarily have good cause to voluntarily leave work based on the same suitability factors that would give the worker good cause to refuse new work.

## B. When Establishing Suitability of the Work Is Necessary

A worker who voluntarily leaves unsuitable work leaves with good cause. The suitability of work need not be considered in every case. The suitability of work must be examined if:

- the worker objects on any ground to the suitability of wages, hours, or other conditions of work; or
- the worker specifically raises the issue of the suitability of the work; or
- facts appear at any stage of the investigation that put the agency on notice that the wages, hours, or other conditions of work might be substantially less favorable than those prevailing for similar work in the locality.

If it becomes apparent to the adjudicator that conditions of work were less than prevailing, or sub-standard, than suitability of work should be considered.

Example: The Commissioner of Labor reversed a Tribunal decision and allowed benefits, holding the work the claimant left was not suitable work due to violation of minimum wage laws. The claimant apparently did not quit work because of a minimum wage dispute, but the minimum wage problem was detected during the Commissioner review. The Commissioner held, "As the Department entrusted with the charge of enforcing the minimum wage law, we must consider work paying below that level to be inherently unsuitable. ([95 2379](#), November 27, 1995)

## C. Determination of Suitability

In determining whether the work is suitable for the worker, consider:

1. The degree of risk to the worker's health, safety, and morals.

2. The worker's physical fitness for the work.

Physical ability does not necessarily establish work-suitability in the case of a worker with an existing health problem. If accepting work is detrimental to the worker's health, or if the worker's health or physical condition prevents the worker from performing work, the work is not suitable. Suitability encompasses more than the short-term physical capability. A worker may be capable of performing a particular job and yet be unsuited for it.

Example: A claimant was employed as a car salesman. He worked many long hours and felt highly stressed as each salesman was pressured into selling cars to keep from losing his or her job. The claimant was seeing a doctor and taking medication for high blood pressure. While the doctor did not advise the claimant to quit, the doctor did advise that the salesman job was too stressful for the claimant's medical condition. The combination of too much workplace stress and the claimant's high blood pressure condition rendered the work as a salesman unsuitable for the claimant. ([00 0525](#), April 4, 2000)

3. The worker's prior training, experience, and earnings.
4. The length of the worker's unemployment.
5. The prospects for obtaining work at the worker's highest skill.
6. The distance of the available work from the worker's residence.

Work that is unreasonably distant from a worker's residence is unsuitable and the worker has good cause for leaving it.

Example: The claimant worked for a staffing agency that provided him a temporary assignment working for a company installing electrical systems. The work in his immediate area ended and the employer indicated they would like him to do the same work in a community 118 miles from his home. The claimant declined the assignment citing child care difficulties and the low rate of pay for work that would require him to be away from his home. Finding that the work was temporary, offered relatively low pay, and was relocated to an unreasonable commuting distance, the Commissioner found the claimant had good cause for quitting. ([99 1253](#), September 2, 1999)

7. The prospects for obtaining local work.
8. Other factors that influence a reasonable and prudent person in the worker's circumstances.

Example: A claimant quit her job as a child day care teacher when it was determined that she had an alcohol problem. The Tribunal held that her inability to function properly made the work unsuitable. ([98 2648](#), January 15, 1999)

#### D. Determination of Unsuitability

If the conditions of work violate a state or federal law concerning wages, hours, safety, or sanitation, the worker has good cause for leaving, regardless of the length of time that the worker has worked under the objectionable condition. Suitable work does not include:

1. Employment vacant due directly to a strike, lockout, or other labor dispute
2. Employment that offers substantially less favorable conditions (wages, hours, etc) than those prevailing for similar employment in the locality.

Example: A claimant quit her job as a waitress when she discovered that the job did not include tips. Without tips the job paid less than half of what she earned at her previous job, which included tips. The Commissioner held that the work was not suitable because there was no showing that the rate of pay was prevailing. ([98 0020](#), April 16, 1998)

3. Employment that requires joining a company union, prevents the worker from joining a union, or requires the worker to resign from a bona fide labor organization
4. Employment under illegal conditions of pay or hours
5. Employment in work that violates laws or regulations

Example: A claimant quit his job because he was required to do plumbing work which he was not licensed to perform. He brought his concerns to his supervisor, who took no action. In allowing benefits, the Tribunal held that the lack of regulatory compliance made the work inherently unsuitable. ([99 2195](#), October 1, 1999)

#### E. Acceptance of Conditions of Employment

1. Length of time on job

In voluntary leaving cases, examine the length of time that the worker has been employed under the conditions for which the worker left. If the worker has accepted the conditions of work by remaining on the job under those conditions for a significant period of time, then the work may be considered suitable even if the conditions of work are below those prevailing for similar work in the locality.

The worker has not accepted the conditions of work if:

- The worker has remained on the job only for a short period of time under those conditions; or
- has attempted to have the conditions adjusted.

Where the worker has not accepted the conditions of work, they are considered under the new work provisions of [AS 23.20.385\(a\)\(2\)](#) (92 25179, June 25, 1992.)

## 2. Change in conditions

If the worker's circumstances change, or the conditions of employment change, examine the length of time that the claimant has worked after the conditions or circumstances have changed.

## F. Requirement to Broaden Suitability Criteria

For the first thirteen consecutive weeks of unemployment, only work in the claimant's customary occupation needs to be considered suitable. After the claimant has been unemployed for thirteen or more consecutive weeks, the criteria for suitability of work is broadened to include any work for which the claimant is fitted by experience and training.

Example: A claimant worked for one week as a driver/trainee and guide. He was required to learn to drive a large tour bus while speaking to the passengers. He had no previous public speaking or public service experience. For this reason, although the claimant had been unemployed for more than thirteen weeks, the Tribunal held that the work was not suitable. ([98 0753](#), April 30, 1998)

## G. Efforts to Adjust

The "good cause" standard, and its attendant requirements that a worker have compelling reason to leave work and exhaust all reasonable alternatives before quitting, applies only when a worker quits work that is suitable. A worker is always free to quit unsuitable work.

Example: Despite being born with club feet, a claimant had worked as a roustabout in Prudhoe Bay for over ten years. He had been on leave for an operation on his feet and returned to work without restrictions from his doctor. While the doctor did not advise the claimant to quit work or change occupations, the doctor did suggest that the claimant pursue other job types in the future that would not require prolonged standing or walking on hard, uneven surfaces. The claimant resigned because he felt his employer failed to offer him reasonable accommodations for his foot condition by placing in other permanent work. In determining that the work was unsuitable, the Court ruled that the claimant was not required to

pursue alternative employment opportunities with the employer, albeit permanent, temporary, or part-time, or show good cause for quitting. ([Wescott v. State, Department of Labor, 996 P.2d 723 \(Alaska 2000\)](#))

## 440 SEPARATION DATE

## A. Unemployment Status

A worker's unemployment status under [AS 23.20.505](#) does not determine the worker's separation date. A voluntary leaving may in fact occur while the worker is already technically unemployed under AS 23.20.505, if there is a severance of an ongoing employer/employee relationship.

## B. Point of Separation

A voluntary leaving occurs whenever:

The worker voluntarily ceases performing services for the employer;

Example: A claimant was employed on a job due to end around July 30. However, the projected completion date was moved forward one week. He was absent from work August 1, due to illness and August 2, because of church attendance. The next three days he went to Seattle for a planned, three-day vacation trip to Seattle. On August 5, he traveled to Kodiak to perform volunteer work for a religious order. In denying benefits, the Tribunal held that the claimant had effectively quit work to vacation and then to travel to Kodiak, neither being good cause. ([99 2138](#), September 30, 1999)

Or, the worker severs an ongoing employer/employee relationship, regardless of whether the worker is performing services at the time.

Example: The Commissioner held, "[A]n individual may have a 'first week' of unemployment when the individual ceases to perform services and again another 'first week' of unemployment when the employer-employee relationship is actually severed." (83H-UI-087, June 6, 1983)

A voluntary leaving issue is not addressed until the worker has filed a claim for benefits in the week in which the worker left work or in a subsequent week. ([98 2336](#), November 19, 1998.)

## C. Leave of Absence

## 1. Definite leave of absence

A voluntary leave of absence for a definite period suspends but does not sever the employer-employee relationship. (9227526, September 15, 1992).

If the worker files a claim immediately after the worker begins a leave of absence, then the separation date is the date that the leave of absence

began, and the separation is adjudicated on the reason the worker has taken a leave of absence.

If the worker files a claim during a definite leave of absence because they have decided not to return to work, but have not yet notified the employer, then the separation date is the date the claim was filed.

If the worker files a claim during a definite leave of absence because the worker has decided not to return to work and has notified the employer, then the separation date is the date they notified the employer they would not be returning to work.

If the worker files a claim after the end of a definite leave of absence because they did not return to work, then the separation date is the date that employer-employee relationship was severed, or the date that the worker was supposed to return to work and did not do so. The separation is adjudicated on the reason that the employer-employee relationship was severed. (9225049, June 23, 1992).

Example: In the case cited above, the employee of a seafood processing firm took a medical leave of absence for a week due to tendonitis in his hands. When the claimant's leave of absence ended, the claimant requested to return to work. He was told that there was not enough work remaining in the season and therefore was laid off. The claimant filed an initial unemployment insurance claim after his layoff date. In allowing benefits, the Commissioner held, "In this case, the claim was not filed until after the claimant had been laid off. He was on medical leave for only a week. He asked to return to work and was told that there was no work. His unemployment when he filed the claim was due to the layoff, not the medical leave." (9225049, June 23, 1992)

2. Indefinite leave of absence

An indefinite leave of absence severs the employer-employee relationship. The separation occurs at the beginning of the leave of absence, and no further separation issue can arise, regardless of the actions of either party.

3. Unspecified leave of absence

An employer may grant a leave of absence for a definite but unspecified period. This is often true in cases regarding a maternity leave of absence where the employer holds the worker's job open and requests that the worker return to work when she is able. Such a leave of absence does not sever the employer/employee relationship. If the worker gives notice to quit or fails to return to work when requested, a voluntary leaving issue may arise at that time.

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**D. Layoff****1. Indefinite Period**

A layoff for an indefinite period severs the employer/employee relationship, and no further separation issue can arise.

**2. Definite Period**

A layoff for a definite period does not sever the employer/employee relationship. If the worker does not return to work on the back-to-work date, the worker has voluntarily left work, effective that date.

If a claimant is placed on a layoff with a definite return to work date, but notifies his employer prior to or on the last day of work that he will not return to work after the layoff period, then the work separation at the point of layoff becomes a voluntary quit. ([05 1364 and 1365](#) October 5, 2005)

If a claimant, in layoff status for a definite period of time, resigns after the layoff date, a voluntary quit occurs at that point. ([05 1364 and 1365](#) October 5, 2005)

**E. Receipt of Payments**

Receipt of payments may affect the separation date depending on the disbursement of the funds.

**1. Lump sum payments**

Lump sum payments of sick pay, accrued vacation pay, holiday pay, or severance pay do not extend a worker's period of employment past the actual separation date. These payments are simply deducted, as appropriate, from benefits otherwise due under [AS 23.20.362](#).

**2. Periodic payments**

Some workers use their accrued leave prior to separating from a period of employment. If a worker is receiving accrued leave, holiday pay, or sick pay on a regularly scheduled pay period and is considered 'in pay status'; the worker is still attached to the employer. The separation date is when the leave is exhausted and the worker terminates employment. See [MISC 375.05](#) and [TPU 80](#) for more information.

450 TIME

450.05 GENERAL

For separations from temporary employment, see [VL 440 Separation Date](#).

For separations from on-call employment, see [VL 135.05.C Working on Call](#).

For cases involving a reduction in hours, see [VL 450.4.C Reduction in Hours](#).

A. General Discussion of Time Factors

A quit due to work hours is for good cause only if the hours of work are illegal, violates a collective bargaining agreement, or are more than prevailing hours for the occupation in the local area.

Example: A claimant (97 2291, November 19, 1997) quit his job because the employer did not give him the days off that he wanted to attend to personal matters. The employer was still considering the request for the change at the time that he quit. The Tribunal held that he had not shown good cause for needing the change, nor had he allowed the employer time to grant his request.

A worker does not have good cause to quit because the hours, days, or shifts are inconvenient, undesirable, or interfere with other activities such as self-employment. The employer may have a variety of business reasons for requiring the work schedule. The employer's prerogative to establish the work schedule should be given primary consideration.

Example: A worker may dislike Saturday work because it interferes with household duties. Such an objection, though understandable, does not give good cause unless the household duties are compelling and the worker has no reasonable alternative but to fulfill them in person.

However, a worker may establish a compelling reason for not complying with the work schedule, even though the work schedule is a reasonable one. There are a variety of valid reasons that may make the work unsuitable, including health or excessive travel time due to public transportation schedules on certain days of the week.

B. Violation of Law, Regulation, or Collective Bargaining Agreement

1. Violation of law or regulation

Quitting because the required hours of work violate laws or regulations is for good cause. The Alaska Wage and Hour Act sets statewide workplace standards for hours of work. Consult that statute whenever there is a

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question as to the legality of the hours. For a discussion of legal and illegal overtime, see H. [Overtime](#) below.

It is not necessary that the worker file a complaint with the Wage and Hour Division in order to establish good cause for leaving because of alleged illegal hours of work. The filing of such a complaint is of course useful as verification that the illegal practice or condition actually existed.

2. Violation of collective bargaining agreement

A worker has good cause to leave work because of a requirement to work hours prohibited by an existing collective bargaining agreement if:

- a. The change in hours is substantial, not trivial; or
- b. The worker would be disciplined by the union if the worker continued to work hours prohibited by the existing agreement.

A change in hours is always substantial if it causes the hours to be less favorable to the worker than those prevailing for similar work in the locality. However, even though the new hours are prevailing, a change in hours may still be substantial and be good cause for leaving.

Example: If the union has negotiated hours which are substantially more favorable than those prevailing, the employer's insistence on the prevailing hours in violation of the contract are generally good cause for leaving.

On the other hand, a requirement that the worker work a few minutes overtime occasionally, or a temporary change in hours necessitated by an emergency, is not good cause for leaving.

As always, the worker must first attempt to use any available grievance procedure to resolve the alleged contract violation.

C. Prevailing Time Factors

The term "prevailing" as used in this section refers only to the **number** of hours or days worked. The term does not refer to shifts, night hours, and the like.

A worker has good cause for quitting whenever the worker is required to work hours or days substantially in excess of those prevailing for similar work in the locality. However, [AS 23.20.385](#) does not say that **non-customary** hours are unsuitable. The mere fact that an employer's work schedule differs from the customary practice in the locality does not make the work unsuitable

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**D. Irregular Hours**

Irregular hours are split shifts, schedules that lack uniform beginning and ending times, or a difference in the number of hours worked each day, week, or month.

**1. Objection to irregular hours**

There is nothing inherently unsuitable about irregular hours. Leaving work merely because of an objection to the irregularity of the work is without good cause. There must be some compelling reason that makes the irregular hours unsuitable for the worker.

Example: A claimant quit her job because her hours of work were interfering with her involvement in the community theater. She was required to work different shifts on a rotating basis and thus was not always free in the evenings to participate in rehearsals. The Tribunal found that the claimant was unemployed by choice, not compulsion. (75A-628)

**2. Request for irregular hours**

In the absence of compelling reasons for the request, leaving work because the employer refuses a request for irregular hours is a voluntary quit without good cause.

**E. Long or Short Hours**

"Long" or "short" refers to the worker's regular, non-overtime, work schedule. For a discussion of overtime, see [VL 450.05.G. Overtime](#). For a discussion of part-time or full-time work see [VL 450.4 Part-Time or Full-Time](#).

**1. Short hours**

A quit due to short hours is usually because the worker's desire to work more hours, such as fulltime or overtime. However, part-time work is not unsuitable, and therefore a worker does not have good cause for leaving.

**2. Long hours**

A claimant who leaves work because the hours are too long quits for good cause only if:

- the claimant is not properly compensated for the hours worked;
- the hours violate statutes or regulations; or
- the hours are unreasonably long with no apparent remission.

Example: A claimant quit his job because he was required to work 60 to 70 hours per week due to high employee turnover. He was

paid a salary based on a 40-hour workweek. The Tribunal held that the long hours without relief in sight gave him good cause to quit. ([98 0852](#), June 23, 1998)

Example: A claimant quit his job because he was required to work long hours. He had complained to the employer who said there were possibilities of a schedule change, but neither the claimant nor the employer pursued the matter further. In denying benefits, the Tribunal held that there was nothing to show that the long hours were unusual for the industry, and that the claimant had failed to pursue other alternatives. ([99 0066](#), February 3, 1999)

[AS 23.10.060](#) requires payment of time and half wages for all hours in excess of eight hours per day or forty hours per week, unless the employment is in an exempted class. In addition, the working hours of workers in certain categories are restricted. Consult [AS 23.10](#) if there is doubt as to the legality of the hours.

Night Hours section deleted.

**F. Shift**

Quitting work merely because of an objection to, or preference for, a particular shift is without good cause. Compelling reasons for quitting are established only if the worker's objection to, or insistence upon, a particular shift is for a compelling reason. Compelling reasons include health, violation of law, safety, or other reasons that would make the work unsuitable.

Example: A worker quits her job at a convenience store because the only shift available is the night shift. The store had been robbed on two recent occasions and the worker feared for her safety. Because the worker's fear was reasonable and no other shift was available, the worker had good cause for quitting.

**G. Overtime**

**1. General**

A worker who voluntarily leaves work because the employer refuses a request for overtime work leaves work without good cause, unless the worker can show that the employer violated an explicit promise to give overtime work or that the employer has unduly discriminated against the worker in the assignment of overtime work (9229252, February 23, 1993.) The employer has the responsibility to direct and control the work and has the right to decide who works overtime when it is necessary. Therefore, a worker who voluntarily leaves work merely because the employer refuses to allow the worker to work overtime leaves without good cause.

2. Required overtime

For cases involving unpaid overtime, see [VL 500.3 Failure or Refusal to Pay](#).

A worker who voluntarily leaves work because the employer requires properly compensated overtime work leaves without good cause, unless the overtime affects the worker's health or creates other conditions that make the work unsuitable. Before the worker leaves work, the worker must advise the employer of the objection to the overtime work and allow the employer to make an adjustment.

H. Work Schedule Changed by Employer

A change in the worker's hours, shifts, or days of work initiated by the employer is seldom a sufficient breach of the contract of hire to give a compelling reason to quit. Even where the employer and worker have specifically agreed that the worker is not required to work at a certain time, and the employer later requires the worker to work at that time, this fact alone is seldom good cause to leave.

Example: A claimant quit her job when her employer changed her work schedule from having days off either Thursday and Friday or Monday and Tuesday to Saturdays and Sundays. The claimant had actually wanted Fridays and Saturdays off in order to participate in activities at the senior center. Later the claimant learned that she would have the change she wanted, but the manager disapproved it. She went home, stating she was too ill to work, and the manager filled in for her. She came in later to discuss the change with him, and he intimated that she was fired. The employer determined that when she failed to come to work she had quit. The Commissioner upheld the Tribunal in finding that she had quit without good cause, as the employer was not obliged to accommodate her social schedule. ([99 1291](#), September 24, 1999)

If the objection to the time schedule is based on an alleged violation of a collective bargaining agreement, see [VL 475 Union Relations](#).

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450.4 PART-TIME OR FULL-TIME

A. Objection to Part-time Work

Part-time work is fewer than the customary number of hours per week in the occupation. Part-time work is not by itself unsuitable, and a worker who leaves work merely because the work is less than full-time has voluntarily left work without good cause.

Work is unsuitable if a worker is required to regularly report and stand by without pay and without the assurance of work. An unreasonable portion of unpaid waiting time in relation to paid time also renders the work unsuitable.

Example: A claimant quit her job because she was required to come in to work when she was scheduled, but often there was no work for her. She would be told to come in later or not come back at all that day. Often she did not have a ride because her husband had the car. She was not given show-up pay. The Tribunal held that the work was unsuitable and she had good cause to quit. ([98 2775](#), January 28, 1999)

Sections on part time work causing undue hardship or preventing seeking of full time work deleted.

B. Objection to Full-time Work

An objection to working full-time, if based on substantial and compelling reasons such as physical disability or other reason that makes the work unsuitable, may be good cause for voluntarily leaving work. However, if the worker has good cause for leaving the work when it becomes full-time, **the worker may be unavailable**. Quitting full-time work based solely on a preference for part-time work is never good cause for voluntarily leaving work

C. Reduction in Hours

A reduction in hours is not good cause for voluntarily leaving work. The Commissioner stated, "[A] cut in hours, in and of itself, does not constitute good cause for leaving otherwise suitable work . . . Usually a cutback in hours gives the claimant the time necessary to look for other work, and possibly qualify for unemployment benefits while working part time." (9427041, July 29, 1994)

A worker therefore does not ordinarily have good cause to leave work if the hours of the work are reduced from full-time to part-time, even if the earnings of the worker are thereby reduced. In those circumstances the worker is able to seek other work without leaving the existing employment.

Example: The worker quit when her hours were reduced by her employer from four to two per day. In denying benefits, the Tribunal pointed out that there was no evidence that she could not have sought other employment in her off-hours. (97 0367, March 20, 1997)

450.45 SEASONAL

Seasonal work is not in itself unsuitable, and voluntarily leaving such work is without good cause. The worker who leaves seasonal work near the end of the season in effect leaves in advance of a layoff. See [VL 135.45 Layoff Imminent](#), for a discussion of when this can and cannot be allowed.

Example: A claimant (97 2648, January 7, 1998) quit his job because it was seasonal work. He wanted to help his mother and mother-in-law financially, but did not feel that he could do so on his seasonal wages. The wages were sufficient income for him and his family. The Tribunal held that his leaving work was without good cause, since there was no need for him to give the support.

Often a worker who quits seasonal work has other reasons for quitting, such as dissatisfaction with wages, hours, or other conditions. In these cases, refer to the appropriate category to determine if the quit is for good cause.

450.5 TEMPORARY

A worker who objects to and voluntarily leaves temporary work leaves without good cause. Even leaving temporary work merely to search for more permanent work is without good cause.

Also, a worker who voluntarily leaves temporary work because the work does not carry the same "fringe benefits" as permanent work leaves without good cause (80H-184, November 26, 1980.)

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475 UNION RELATIONS

475.05 GENERAL

A. General

There is nothing inherent in union status, union rules, or collective bargaining agreements that give a worker good cause for quitting that are not true otherwise. Good cause for leaving employment is determined under the Employment Security Act, not according to the terms of a collective bargaining agreement. To hold otherwise substitutes the collective bargaining agreement for the Act.

Union relations are, however, good cause for leaving employment whenever they meet the test of compulsion.

Example: When a collective bargaining agreement has been accepted by both the union and the employer, the terms of the agreement become a part of the employment contract. A worker who leaves work because there has been a significant violation of the contract of hire leaves for good cause.

On the other hand, the union member is expected to follow the terms of the collective bargaining agreement. If the union has an established grievance procedure, a worker who leaves work without making a reasonable attempt to adjust any grievance through the union leaves without good cause.

B. Requirement to Join Labor Organization or to Resign from or Refrain from Joining

1. Requirement to join or retain membership in bona fide labor organization

[AS 23.20.385\(a\)](#) in no way implies that work is unsuitable merely because it requires membership in a labor organization. However, if the worker has a valid conscientious objection to union membership, the worker may show good cause for quitting. With this exception, refusing to join or to maintain membership in a labor organization that has a collective bargaining agreement with the employer requiring union membership as a condition of employment is voluntary leaving without good cause. Coercion by the union in an attempt to force the worker to join is not good cause for quitting, since the reason for the coercion is the worker's refusal to abide by the terms of the contract of the hire.

If union membership is required of all employees under the collective bargaining agreement, but the benefits of union membership are divided unequally by the terms of the same collective bargaining agreement that is a matter for adjustment through the collective bargaining process. It is not good cause for leaving.

Example: A claimant was required to join the Alaska Public Employees Association when he accepted a temporary position with the State of Alaska. However, he was denied such benefits as annual leave accrual, health insurance, and access to the grievance and arbitration services of the association. He attempted to have his dues reduced and, when that failed, gave up his employment. In holding that the work was suitable and that the claimant did not have good cause for leaving, the Commissioner compared the differential treatment of temporary and permanent employees to progressive wage scales. The Commissioner observed that a starting wage which is lower than that paid a journeyman doing the same work is not necessarily unsuitable, so long as the schedule of wage increases in progressing from the starting to the journeyman position is prevailing for the occupation and locality. Likewise, it may be a prevailing condition of work that temporary employees receive fewer fringe benefits than permanent employees. The Commissioner held that, so long as the remuneration and fringe benefits given the temporary employees compares favorably with that received by other temporary employees in the same occupation and locality, the work is suitable. Therefore, an objection to union membership simply because it does not give equal benefits to all employees performing the same general tasks is not a sufficiently compelling reason to leave work. (88-184)

The worker's personal objection to all unions, some specific unions, union officials, or union practices or policies generally does not give good cause for quitting work.

2. Requirement to join company union

Company unions are extremely rare in practice. A "company union" is distinguished from a bona fide labor organization in that the company union is dominated by the employer and is not free from interference, restraint, or coercion by the employer.

A worker who leaves because the worker is required to join or maintain membership in a company union leaves for good cause. Such employment is unsuitable under [AS 23.20.385\(a\)](#). A company union in existence at the worker's place of employment, but which the worker is not required to join, is not good cause for leaving.

3. Requirement to resign from or to refrain from joining a labor organization

Federal law protects the right to join a union. In addition, under [AS 23.20.385\(a\)](#), an offer of new work, as a condition of which

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membership in a labor organization is prohibited, is an offer of unsuitable work.

A worker, who is required, intimidated or coerced by an employer to resign from or refrain from joining a union has good cause to leave work.

**C. Internal Union Affairs**

**1. General**

Disagreements between the worker and the union are seldom good cause for quitting. Such things as union rules and disciplinary procedures that are not part of the collective bargaining agreement are outside the control of the employer and do not affect the suitability of the employment. Disagreement with internal union policies or rules are good cause for leaving only if the "average reasonable and prudent" person would be compelled to leave under the same circumstances. The same test of compulsion must be met by union and non-union workers alike.

Example: A construction foreman left his work in Arizona to return to Alaska where he had worked for approximately the last three years. He returned to maintain his position with his union in Alaska, because he had approximately 6,000 hours work in Alaska and would lose all his pension benefits unless he worked a minimum of 500 hours through the Alaska union for a year. However, he had no immediate prospects of work through the union in Alaska when he quit. Granted the "reasonableness" of the claimant's actions, the Tribunal still held that the claimant was voluntarily unemployed and denied benefits. (79B-542, July 12, 1979)

Example: On the other hand, proposed disciplinary action by his union gave the claimant good cause to end his employment. The claimant was employed by a roofing company that had refused to renew its contract with the Roofers' Union and therefore was scheduled to become non-union. The claimant was informed by the union that if he continued working on the job at the expiration of the contract he would no longer be eligible for dispatch and would lose his pension rights. The claimant had paid a \$1,000 initiation fee and obtained all his work through the union. The roofing job was scheduled to end in approximately one week. The Tribunal held that it was unreasonable to expect the claimant to continue his employment for one more week and thereby lose his union membership. (82UI-1973)

2. Discipline by union

In cases where a union member works for a non-union employer with the union's permission, there is good cause for quitting if the union member can show a well-grounded fear that union discipline would be imposed if the worker did not quit.

Example: The claimant, a union member, had been given verbal authorization to go to work for a nonunion employer with a view towards organizing them. The claimant worked for the employer for less than a month when he received a letter from his union indicating that the organizing effort was being canceled. The claimant and other union workers on the job decided that sanctions by the union could be imposed on them if they continued to work for the employer without permission. Because of this, the claimant quit his job.

The Commissioner, in allowing benefits, stated:

. . . Whether [the claimant] knew it or not, it is apparent that he was allowed to work on the Brown & Root job in order to help organize Brown & Root. When the organizing effort ended, the permission to work was effectively withdrawn. It is my holdings that [the claimant] did act as would a reasonable and prudent person faced with the real possibility of union sanctions in leaving his employment with Brown & Root.

I am convinced that, should [the claimant] have continued to work for Brown & Root after he was presented with a letter from his union indicating that he was being terminated as an organizer, he would have subjected himself to a real possibility of sanctions imposed by the union . . .(87H-EB-177, November 23, 1987)

3. Refusal of union membership

The refusal of a union to admit a worker to membership does not give the worker good cause to quit if the worker's position is not otherwise affected.

Example: A claimant was employed as a surveyor. Although the surveyors were represented by the Teamsters Union, the contract allowed non-union workers to be dispatched to union jobs. The claimant held a withdrawal card from the Teamsters Union, but had been refused readmission to membership in that union. The claimant received the same hours, wages, and other benefits from the employer as did union members. The Commissioner upheld the Tribunal in finding that the claimant did not have good cause to quit just because the union did not admit him to membership, so

long as he was receiving the same benefits from the employer as were union workers. The claimant's reasons for leaving stemmed from his relationship with his union, not from the employment, and were not compelling. (81H-26, March 13, 1981)

4. Intimidation by the union

If union membership is not a condition of hire, the worker has a right not to join. In such cases intimidation by the union in an effort to force the worker to join is good cause for quitting. The same holds true for intimidation as a result of failure to conform to a union rule or custom not covered by the collective bargaining agreement or authorized by statute or regulation.

D. Restriction to Union Work

Members of unions often restrict themselves to union work. However, if a worker who is a union member accepts a job knowing it is non-union, the worker cannot thereafter establish good cause for quitting on that basis alone.

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475.35 PARTICIPATION IN LABOR DISPUTE

A worker's separation from employment that is due to a stoppage of work because of a labor dispute is adjudicated by the UI Technical Unit under the provisions of [AS 23.20.383](#).

The labor dispute only suspends the employment relationship. Either the employer or the worker can sever the relationship during the course of the dispute.

If the worker is unemployed due to a labor dispute:

- and intends to resume work for the employer at the conclusion of the dispute, refer the case to the UI Technical Unit for adjudication.
- but does not intend to return to work for the employer because:
  - the employer has discharged the striking workers; the UI Technical Unit will terminate any indefinite labor dispute issue. Refer to the MC section to adjudicate the separation. If there is a mass separation, the UI Technical Unit will gather the separation facts from the employer.
  - the employer has laid off the striking workers without replacing them; the UI Technical Unit will terminate the indefinite labor dispute issue. Adjudicate the separation as a layoff.
  - the worker has resigned; the UI Technical Unit will terminate the indefinite labor dispute issue. Refer to the appropriate VL section to adjudicate the separation, depending upon the reason for the resignation.

In all cases consult the UI Technical Unit.

For a complete discussion, see the [Labor Dispute Policy Manual](#).

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500 WAGES

500.05 GENERAL

A. General

A worker has good cause to voluntarily leave work because of dissatisfaction with the wage if:

- The wage is illegal; that is, it violates the applicable minimum wage law or a law pertaining to the payment of overtime or is affected by illegal deductions; or
- The wage violates an express agreement between the worker and the employer made at the time of hire; or
- The employer fails or refuses to pay the worker's wages in a timely fashion; and
- The worker has attempted to adjust the matter with the employer.

In addition, a worker may have compelling reasons to voluntarily leave work if the wage is discriminatory (9229783, April 26, 1993.) It is still necessary to show that the worker attempted to retain employment. If the wage is less than the prevailing wage or compares unfavorably with the worker's former rate the worker has compelling reason to leave if the worker has not accepted the wage. (See [VL 500.45 D. Prevailing Rate](#) for a definition of "accepting" a wage.)

B. Definition of Wages

Law: [AS 23.20.530\(a\)](#)

Wages include remuneration for services in the form of:

- All cash payments in the form of salaries or commissions;
- The reasonable cash value of all gratuities customarily received from people other than the employer, regardless of whether or not such gratuities are reported to the employer;
- The reasonable cash value of room and board;
- The reasonable cash value of remuneration in a medium other than cash; and
- Bonuses that were included in the terms of hire for which the amount is fixed and computed by formula. If the bonus is given solely at the

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discretion of the employer, and the worker has no legally enforceable right to the payment of such bonus, it is not wages for this purpose.

**C. Promotion**

Cases that revolve around issues of promotion are considered in this section under the appropriate heading, as ordinarily the consideration in a promotion is an increase in wages. If the relevant issue in the promotion is one of working conditions, rather than wages, adjudicate it under [VL 515 Working Conditions](#) under the applicable subheading.

There are cases in which a worker's stated reason for quitting may be "lack of advancement," when in reality the cause of the quit is substandard wages or other working conditions. In such cases, a worker may be found eligible.

A worker has good cause to quit work if the cause of the lack of advancement was:

- Discrimination against the worker (see [VL 515 B. Hostility, Abuse, or Unreasonable Discrimination](#)); or
- A breach of faith on the part of the employer, such as the arbitrary breaking of a definite and specific promise of promotion made to the claimant at the time of hire.

NOTE: There is no breach of faith by the employer if the employer fails to advance the worker for reasons of business necessity or because of the claimant's own unsatisfactory actions or job performance.

Example: A claimant accepted employment at less than the prevailing wage, with the understanding that a promotion was very likely in approximately two months. However, the claimant was advised at the end of the first month that such a promotion would not be possible because of the financial position of the company. The Tribunal held in this case that the claimant had left work that was not suitable for her, because the potential for advancement to a suitable wage did not materialize. ([A-5145](#))

A promise of advancement made after the worker is on the job is not part of the original agreement of hire. A failure to follow through on such a promotion is not, therefore, a breach of an agreement made at the time of hire. In such cases, workers do not have good cause for leaving, unless the failure to advance the worker was due to discrimination against the worker.

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500.1 AGREEMENT CONCERNING

A. General

An employer's failure to pay a worker in the amount, in the manner, and at the time agreed upon at the time of hire is considered compelling reason for voluntarily leaving work (9121096, September 10, 1991.) However, an inadvertent error in figuring the amount due is not a compelling reason for voluntarily leaving work unless the employer is unwilling to correct the mistake.

When a worker quits because of an alleged violation of an agreement concerning the worker's wages, the exact terms of the agreement between the worker and the employer must be examined. Some employers give their workers a written wage scale. When employers only verbally inform their workers what wages they can expect to receive there is a wide area for misunderstanding. However, what the worker believed to be the terms of the agreement is not the determining factor.

If the employer made a definite promise to the worker and then broke the agreement, the worker has good cause for voluntarily leaving work. In hiring workers, the employer has the responsibility to give complete and accurate information regarding the duties, hours, working conditions, and wages of the job so that a prospective worker can determine the suitability of the work. A significant misrepresentation on the employer's part demonstrates a lack of good faith. A newly-hired worker has good cause to voluntarily leave work under such a circumstance.

Example: In the case cited above, the claimant had been re-employed as a fish buyer for a fish packing company. As a condition of his rehire, the employer promised the claimant an increase in salary and a large bonus to compensate the claimant for his lost wages during the period that the claimant was laid off. After the claimant returned to work, he received less than half of the bonus that he was promised and no salary increase. The claimant inquired about the remaining bonus payment and salary increase. He was told by the plant manager that the employer did not feel obligated to honor the reemployment agreement. The claimant quit because the employer broke the agreement to pay him the full bonus and salary increase. The Commissioner held, "A worker is not required to make a wage complaint to the Labor Standards and Safety Division in order to establish good cause. Such a complaint normally has the effect of ending the employment relationship. As we have said before, the worker need only bring the pay problem to the employer's attention. If the employer refuses to pay wages in the amount or under the terms agreed, and the claimant makes his grievance known to the employer, then good cause is established. These were the facts in this case, so we conclude that the claimant left his last work with good cause."

**B. Definite Promise**

An employer's failure to grant an increase in wages that was definitely promised is also considered compelling reason for voluntarily leaving work.

Example: A claimant quit his job because his employer did not give him a promised \$2 an hour increase in wages, but only \$1 per hour. Although the employer's reason was that he did not realize that the claimant was already making \$10 at the time of the request, and the time between the promise and the change was only one day, the Tribunal held that the employer's failure to keep the promise was good cause to quit. ([98 1720](#), October 2, 1998)

Example: A claimant was hired in 1996 with a promised salary of \$15 per hour, but was only paid \$14.50 per hour. The general manager at the time promised that the salary would be re-addressed after a 60-day review. This was never done. In March of 1997 the claimant again asked the general manager for a raise, to match a job offer he had received, and the general manager said he would look into it, but nothing further happened. In April of 1997, the general manager was replaced. The new general manager said the claimant did not ask about the raise until the fall or winter of that year at the earliest. The Tribunal, in denying benefits, held that the claimant had accepted the disputed wage for too long a period for it to give him good cause to quit. ([98 2543](#), December 22, 1998)

Example: A claimant was promised consideration for promotion with a consequent raise in pay. She followed up on this twice in February and twice in March, and each time was told that the promotion was in progress. When the paperwork had not been forwarded to the human resource manager by early April, the claimant quit. Because the employer was in the process of merger with another institution, all personnel matters were delayed, and, since the claimant knew that this was occurring, the Tribunal held that she did not have good cause to quit as her promotion was not unreasonably delayed under the circumstances, nor had she followed grievance procedures. ([99 1148](#), June 17, 1999)

**C. Contingent Promise**

If a worker is told that there would be an increase in wages if management approved, the statement is not a definite promise, but a contingent promise. Therefore, an employer's failure to grant an increase in wages when management did not approve the increase is not considered good cause for voluntarily leaving work (9224038, April 27, 1992.)

**D. Collective Bargaining Agreement**

A worker who quits because the worker is receiving a lower wage than stipulated in the collective bargaining agreement has good cause if:

- The wage is substantially less than the wage contained in the collective bargaining agreement; or
- The worker will be disciplined by the union if the worker accepts the reduced wage.

In all cases, the worker must follow normal union grievance procedures to resolve the wage discrepancy.

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500.3 FAILURE OR REFUSAL TO PAY

A. General

A worker has a right to expect to be paid for work done. Therefore the worker has good cause for voluntarily leaving work whenever the worker does not have a reasonable certainty of receiving wages when due (9229238, April 26, 1993.) This may occur:

- When the wages are consistently late;
- When the employer's checks consistently bounce; or
- When the employer fails to pay according to the standards previously established or required to be established.

Example: A pizza cook quit his job partway through his second day of employment. When he was hired, the employer told him she wanted to see him work before setting a pay rate, to which he agreed. On the second day, she told him she would let him know after she had talked on the phone to her husband, who was in Greece at the time. The Commissioner in holding that the claimant had good cause to quit, stated that, since [AS 23.05.160](#) requires that an employer notify the employee at the time of hire of the rate of pay, "While the claimant may not have had any reason to doubt that his employer would in fact pay him, he had no idea how much that pay would be. The employer did not abide by the provisions of the Act shown above. Additionally the claimant expected to know his pay rate by the beginning of his second shift. When that information was not made available, we conclude he had good cause to quit." (97 0435, June 4, 1997)

Example: A claimant quit her job when, four months after a promotion to department manager, she had still not received the increase in pay for the position. The Tribunal held that her doing the work without the usual compensation for that position, after her repeated requests for it, gave her good cause to quit. (97 2337, November 25, 1997)

Example: A claimant quit his job after reading in the policies and procedures manual that there was a \$50 per oil change incentive payment that he had not received. He showed the manual to the supervisor, and when the supervisor could not pay him immediately, he quit. He had not been promised the incentive payment at the time of hire, and, because he did not first clarify the matter with the employer, the Tribunal held that he did not have good cause to quit. ([99 0453](#), March 19, 1999)

The worker's belief that the employer is financially insecure does not give good cause to voluntarily leave work, so long as the worker receives wages when due.

Example: A claimant quit her job as innkeeper, because the IRS had seized the employer's bank account, leaving the claimant with no funds to operate. The employer wrote a check to cover some expenses, and the claimant made the decision to cover payroll with it. Because of lack of funds to run the business, she quit on April 26, and paid herself through April 30. In denying benefits, the Tribunal held that because she left four days early, she did not have good cause to leave at the time she did. ([99 1103](#), June 10, 1999)

Example: A claimant quit her job because her paycheck bounced and was not made good for three days. Although the employer contended that it was a one-time incident, the claimant showed that other employee's paychecks had also bounced at other times. The Tribunal held that the length of time that it took the employer to correct the situation plus the bouncing of other employees' checks gave the claimant good cause to leave. ([98 1145](#), June 13, 1998)

The worker does not need to bring the situation to the attention of Labor Standards and Safety in order to establish good cause for voluntarily leaving the work (9121096, September 10, 1991.)

**B. Late Pay**

A worker has good cause to voluntarily leave work when the employer is frequently late in the payment of the worker's wages. However, an isolated instance of the late payment of wages does not give the worker good cause to voluntarily leave work (9226624, July 30, 1992.)

Example: A claimant quit her job when the employer regularly failed to pay her employees on time. The claimant continually needed to ask for her check. On the day she quit, a coworker was discharged and told a \$750 deduction would be made from his paycheck. The claimant did not think that the deduction was appropriate and quit the next day, both because of the deduction, and because she felt that checks would continue to be late. In allowing benefits, the Tribunal held that her experience gave her good cause to quit. ([99 1800](#), August 6, 1999)

**C. Insufficient Funds**

A worker has good cause to leave work voluntarily when the employer frequently pays the worker with a check that bounces due to insufficient funds in the employer's bank account, even though the employer corrects the situation. However, an isolated instance of insufficient funds in an employer's bank account to cover a worker's check does not give the worker good cause for voluntarily leaving work, if the employer corrects the situation.

Example: A claimant quit his job for a variety of reasons. One of the reasons was due to problems with the employer's payroll. In June the claimant received his check seven days late. The employer rectified the situation, paid all the related bank charges on behalf of the claimant, and wrote a letter of explanation to the claimant's bank. In July the claimant's check was returned to him due to insufficient funds because the employer's bookkeeper had deposited funds into the wrong bank account. The employer rectified the situation. In denying that the claimant had good cause for leaving suitable work, the Commissioner held, "Considering that [the claimant] had been employed by [the employer] the year prior and no payroll difficulties were encountered, these two errors are not of such gravity as to provide good cause for [the claimant] to leave employment." (9229238, April 26, 1993.)

Example: A claimant had worked for the employer less than three months and been paid three times. In every case his paycheck had bounced at least once before it was made good at the bank. He called this situation to the attention of the employer who suggested that he redeposit the checks. The Tribunal held that the claimant had good cause for quitting. (97 1008, May 20, 1997)

**D. Refusal to Pay**

**1. General**

An employer who refuses to pay all of a worker's wages when due is in violation of the law. However, there are times when the employer and the worker disagree about whether certain wages are actually due. A worker does not have good cause to voluntarily leave work unless the facts clearly establish that the wages were actually due.

Example: A claimant quit his job because his employer consistently over a period of three months failed to pay him overtime properly, nor would the employer furnish him with information about the days and hours worked for him to determine the overtime actually owed him. Although the wages were corrected on the next paycheck, the Tribunal held that the employer's failure both to pay and to give information was good cause for leaving employment. (97 2172, October 23, 1997)

**2. Deductions**

**a. General**

Deduction from an employee's pay may seldom be used by the employer to recover losses. Under [AAC 08.015.160](#) an employer may not legally deduct from a worker's pay for breakage, shortages, or lost or stolen property, unless the worker in writing

acknowledges responsibility for the breakage, shortage, or loss. If the deduction is lawful, --- that is, the worker has acknowledged responsibility for the breakage, shortage, or loss --- it is not good cause for leaving. Employers also may not deduct for any other reason, other than the standard deductions of taxes and insurance, and those authorized by legal processes, without the written consent of the employee.

The deduction in no case may reduce the employee's pay below the statutory minimum wage.

An employer may not under any circumstances deduct from a worker's pay for bad checks accepted by the worker from customers, or for non-payment by customers.

b. Illegal deductions

If the employer has made an illegal deduction from the worker's wages and the worker brings the matter to the employer for correction before leaving, the worker has good cause to quit.

Example: The claimant's employer deducted money from the claimant's pay in order to recover money which the employer claimed the claimant owed him. The claimant disputed the amount and filed a complaint with Labor Standards and Safety for the balance. The deductions were not according to a written agreement, and brought the pay below the minimum wage. He had good cause for quitting. (97 0299, March 7, 1997)

c. Deductions due to union agreement

"Any deductions made from an employee's check based on a union agreement are considered agreed upon by all members" ([98 2701](#), January 8, 1999.)

3. Unpaid overtime

a. General

The Alaska Wage and Hour Act require the payment of overtime wages in most circumstances for work of more than eight hours per day or forty hours per week ([AS 23.10.060](#)). A worker has good cause to leave work if the overtime has not been paid, and the worker has brought the matter to the employer's attention.

Example: An employer may schedule a worker for eight hours per day, but actually require an additional hour of "cleanup" time at the conclusion of a shift. If the employer does not pay the worker for this additional hour, then the worker has good cause for voluntarily leaving work.

b. Voluntary overtime work

In some cases, a worker may voluntarily work overtime, such as taking part of the work home to finish in the evening. The fact that the employer does not pay for this work does not give the worker good cause to leave work, unless the employer knows or has reason to believe that the worker has worked overtime and refuses to pay the worker for it in violation of the law ([95 1849](#), October 2, 1995.)

Example: The Commissioner held, "The Department has adopted an interpretation of federal wage and hour law in [29 CFR Section 785.11](#), which provides that work time which is 'suffered or permitted' must be counted as work time. An employee who voluntarily continues to work at the end of a shift is entitled to have that time counted as working time, if the employer knows or has reason to believe that the employee is continuing to work.

"Under [29 CFR Section 785.13](#), it is the duty of management to exercise control and see that the work is not performed if it does not want it to be performed. Management cannot accept the benefits of overtime work without compensating the employee. The mere promulgation of a rule against such work is not enough. Management must make every effort to enforce the rule . . . We therefore hold that a worker has good cause to quit if an employer 'suffers or permits' overtime, even if voluntary, and refuses to compensate the worker for it in violation of law. We emphasize that uncompensated voluntary overtime performed [in the face of the employer's express prohibition] does not provide good cause to quit, even though the employer may eventually be legally required to compensate the employee for the overtime." (9122089, January 23, 1992)

4. Efforts to correct

Whenever there is a dispute about the wages that an employer owes a worker, the worker must, as in all cases, first attempt to resolve the problem. The worker must, in addition to bringing the matter to the employer's attention, at least question the Division of Wage and Hour to find out if the employer is correct in refusing to pay the disputed amount.

Example: A claimant quit her job because her employer had installed a time clock that rounded hours worked into quarter hours. The claimant believed that this had shorted her out of two hours' overtime pay. In denying benefits, the Tribunal held that she had failed to discuss this with the owner or to contact the Division of Wage and Hour to find out if this was allowable. ([98 0428](#), March 24, 1998)

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500.4 INCREASE REFUSED

Quitting because a request for an increase in wages was refused is without good cause, where:

- the wages were within the prevailing rate for that work in the locality; and
- the refusal involved no discrimination or breach of faith on the part of the employer.

Example: A claimant (97 2051, October 31, 1997) quit her job principally because the employer did not raise her salary to \$3,000 per month, which she felt she deserved. Since she had accepted the wage, and the employer told her that her position was still under review at the time she quit, the Tribunal held that she did not have good cause for leaving.

Example: In AW-3152, the claimant was last employed as a physician for \$1,200 per month, plus the use of a small apartment. The claimant was previously employed as a physician, earning \$3,000 per month. He was told after he arrived on the job that he had to pay for malpractice insurance at \$1,375 per year. In addition, his paycheck was consistently a month or more late. The claimant believed that the increased workload justified a salary of at least \$2,000 per month. The employer agreed that the claimant's services are worth that amount but told him they could not afford it. The Tribunal held that the claimant left his employment for good cause, taking into consideration his training, experience, and prior earnings; the additional workload that was not compensated by additional wages; and the delay in paying his wages.

Example: A claimant ([97 2535](#), March 5, 1998) quit her job because she was not given a raise that was promised by her employer as a condition of hire. She complained to the responsible parties. The Commissioner held that the employer's failure to follow through on the promised raise after the agreed-upon 90 days was good cause to quit, as she had attempted to resolve the situation.

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500.45 MINIMUM WAGE, PREVAILING RATE, OR WAGE TOO LOW

A. General

It is assumed that workers adjust their standard of living to their wage level. Workers who are earning the prevailing wage in their occupation, and who quit solely because their income does not support the standard of living they have adopted, quit without good cause.

B. Violation of Legal Wage

1. Minimum wage

A worker who voluntarily leaves work because the worker receives a wage that violates the minimum wage standards set by applicable state or federal law leaves work for good cause. Where there is both a state and federal minimum wage, use the higher of the two ([95 2364](#), October 20, 1995.)

Example: The Commissioner of Labor reversed a Tribunal decision and allowed benefits, holding the work the claimant left was not suitable work due to violation of minimum wage laws. The claimant apparently did not quit work because of a minimum wage dispute, but the minimum wage problem was detected during the Commissioner review. The Commissioner held, "As the Department entrusted with the charge of enforcing the minimum wage law, we must consider work paying below that level to be inherently unsuitable. ([95 2379](#), November 27, 1995)

2. Failure to pay overtime when required

Similarly, a worker who leaves a job because the employer has failed to pay overtime, when overtime pay is required to be paid, leaves with good cause if the worker has first attempted to adjust the matter with the employer.

Example: A claimant quit his job when his employer failed to pay him overtime after he had checked with the Division of Wage and Hour that overtime was required and called it to the employer's attention. The Commissioner held that he had good cause to quit. ([98 1253](#), August 31, 1998)

C. Wage Not Union Scale

A collective bargaining agreement is a negotiated contract between a union and an employer. The contract establishes the pay rate for union members. If an employer is not abiding by the terms of the contract, the worker should follow grievance procedures through the union prior to quitting.

The Davis Bacon Act requires the payment of prevailing wage to non-union workers on federal construction contracts or federally assisted construction contracts.

**D. Prevailing Rate**

**1. Definition**

The prevailing rate is the rate paid to the largest number of workers doing similar work in the locality. It is a single monetary figure, not a range of rates.

If one wage is paid to at least one-third of the workers doing similar work in the locality, it is the prevailing rate.

Example: If 10% of the workers receive \$6.35, 40% receive \$6, 15% receive \$5.80, 10% receive \$5, 15% receive \$4.90, and 10% receive \$4.80, the prevailing rate is \$6. More than one-third of the workers receive that rate, and it is the rate paid to the largest percentage of workers.

If the largest number of workers employed at the same rate is not one-third of the total employed in the area, the prevailing rate is the weighted average of the total number of rates. To obtain the weighted average:

- Multiply each rate by the number of workers employed at that rate;
- Add the products; and
- Divide by the total number of workers employed in the occupation and locality.

Example: If 10% of the workers receive \$6.35, 25% receive \$6, 15% receive \$5.80, 20% receive \$5, 15% receive \$4.90, and 15% receive \$4.80, there is no rate that is paid to one-third or more of the workers. Multiply \$6.35 by 10, \$6 by 25, \$5.80 by 15, \$5 by 20, \$4.90 by 15, and \$4.80 by 15, and add the results for a total of \$496. Divide that figure by 100, and the prevailing rate is \$4.96. (We used 100 because we used percentages instead of actual numbers; if we had used the numbers of workers, we would have divided by the total number of workers.)

**2. General**

There is no issue if a worker **refuses new work** paying less than the prevailing wage. This prevents the Unemployment Insurance program from exerting downward pressure on wages, which would occur if workers

**Minimum Wage, Prevailing Rate, or Wage Too Low**

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were forced to accept new work paying a substandard wage or lose benefits. However, the same guarantee does not apply to a worker who **leaves existing employment** paying less than the prevailing wage. Although the prevailing wage is an important consideration whenever a worker quits because of dissatisfaction with the wage, the worker is not automatically eligible just because the wage was less than prevailing. The prevailing wage is often an average of wages currently paid in the labor market, so that a number of rates fall above and below the prevailing rate. To hold that a worker always has good cause to leave a job paying less than the prevailing rate means that a significant percentage of the work force has automatic good cause to leave employment regardless of any other consideration.

As a general rule, a worker who has accepted a wage and worked under that wage for a period of at least six months does not later have good cause to quit solely on the basis that the wage was less than prevailing.

Change in Worker's Circumstances section deleted.

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500.5 METHOD OR TIME OF PAYMENT

If the worker quits because of insufficient funds in the employer's account to cover the paychecks, see [VL 500.3 Failure or Refusal to Pay](#).

A. Method of Payment

Wages are payment for services and may take the form of money or other value, such as board, lodging, and the like. Wages are usually paid by check or cash. However, wages in the form of board and lodging are common in domestic service and agriculture. Usually, when wages are paid by other than cash or check, the contract of hire specifies the method of payment.

Quitting because of an objection to the method of payment is without good cause, so long as the method of payment conforms to the contract of hire and applicable law.

B. Time of Payment

Under [AS 23.05.140](#), an employer is required to pay employees at least monthly, and an employee may choose to be paid semi-monthly. A worker who leaves work when wages have not been paid in the manner and in the time prescribed by law, leaves work for good cause.

A worker may quit because the time of payment has been changed, such as a change from weekly to semi-monthly paydays. However, the fact alone that the time of payment was changed does not give a worker good cause to quit, if the time of payment still conforms to Alaska law or the law of the state in which the services are performed.

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500.65    **PIECE RATE OR COMMISSION BASIS**

A.    **Wage Unsatisfactory**

Straight commission earnings vary greatly depending on the product, season, amount of time spent working, and the like. To determine whether commission earnings were within the prevailing wage or consistent with the worker's prior earnings, it is necessary to determine the worker's earnings over a reasonable length of time. Low earnings over a short period of time do not give good cause for voluntarily leaving work if the low earnings are offset by higher earnings during other periods of time.

A salesperson selling on commission has good cause to quit if economic conditions or the like cause the earnings of the salesperson to be reduced. On the other hand, if other persons similarly employed are not suffering a decrease in wages, and the lack of sales is due to the salesperson's own lack of effort, good cause is not shown.

Example: A claimant ([98 1427](#), July 21, 1998) quit his job as manager of the retail outlet for his company in part because he was to receive, in addition to his salary, a commission of 10% of the net profit of the shop. Since the shop made no profit, he received no commission. In denying benefits, the Tribunal held, " A person who works on commission takes on part of the responsibility for his own income. The claimant identified nothing that would indicate the company, itself, was responsible for a lack of work leading to loss of commission."

1.    **Method of computation**

If the method of computing the wage is customary in the industry and locality, a quit because of dissatisfaction with the method of computation is without good cause, unless the wage is substantially below the prevailing wage for similar work in the locality. However, the worker must attempt to use the method for a reasonable time period. A worker who assumes that wages will be unsatisfactory because of a new method of computation does not have good cause for voluntarily leaving work.

Example: In 9229894, (April 27, 1993) the claimant was employed as an automotive mechanic. The claimant quit work because of a reduction in his commission earnings, due to the employer's implementation of a new system to deal with customers. The new system added more duties for automotive mechanics and resulted in less time for the automotive mechanics to do repairs. The claimant's earnings were reduced 14% from 1991 to 1992. Furthermore, the employer had decreased the claimant's health insurance coverage for 1992. The Commissioner held that the 14%

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reduction in the claimant's commission earnings, the decrease in the claimant's health insurance coverage, and the added duties given to the claimant were good cause to voluntarily leave work.

2. Inability to earn living wage

A salesperson on straight commission may voluntarily leave work, stating an inability to earn a living wage. Good cause depends upon a comparison of the commissions with the prevailing rate for similar work in the locality. If a prevailing rate cannot be determined, compare the commissions to the prior earnings of the worker. In such cases, the worker has good cause to leave work if the commissions are substantially less than the worker's prior earnings and the low commissions are not due to any fault of the worker, such as lack of effort or failure to follow instructions (9321694, May 17, 1993.)

B. Worker's Commission Withheld

A worker on commission may quit work because the worker does not receive an earned commission, either because another worker "steals" the sale or because of some action or policy on the part of the employer. In either case, first determine if the worker rightfully earned the commission. If the worker did, and the incident was brought to the attention of the management but not corrected, the worker has good cause to quit.

Example: In 97 2414, (November 28, 1997), the claimant quit his job because another worker received a commission on a sale that he had originally worked on. He attempted to rectify the matter with the employer but without success. The Tribunal held that he had good cause to quit.

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500.8 REDUCTION

For a discussion regarding situations where an employer makes deductions from a worker's pay, see [VL 500.3 Failure or Refusal to Pay](#).

A. General

A worker does not have good cause for quitting solely because the wages are less than the worker formerly received, either with the same or previous employers. However, when faced with demotion or reduction in wages, a worker may have good cause for quitting if the worker attempted to retain employment.

Wages may be reduced either directly, or by increasing the number of hours worked for the same monthly rate, or by decreasing benefits.

A worker who accepts the wage reduction does not have good cause to quit. The worker accepts it by not raising the question at the time of the reduction and by working under the reduced rate. However a worker who continues to work under the reduced wage while challenging the pay cut has not accepted the wage reduction. ([95 0101](#), March 24, 1995).

1. Temporary reduction

If the worker is aware at the time of the wage reduction that the reduction is temporary, then the worker does not have good cause for voluntarily leaving work as long as the wages are at least the minimum wage.

2. Reduced wages below prevailing

A worker has good cause for voluntarily leaving work if the reduction of the worker's wage brings the worker's wage substantially below the prevailing rate for similar work in the local labor market area.

3. Percentage of reduction

A worker has good cause for voluntarily leaving work if the reduction of the worker's wage is 20% or more. If the reduction is between 10% and 20%, then there must be some other factors involved to be good cause. If the wage reduction is 10% or less, then the worker does not have good cause for voluntarily leaving work. ([Gay v. State of Alaska, Superior Court](#), 4FA-88-509 Civil, 1C Unemp. Ins. Rptr. (CCH) AK 8149, January 25, 1989.)

Example: A claimant quit his job because his pay was reduced by 50% without a reduction in his duties or hours. The Tribunal held that he had good cause to quit as he had complained to the employer without success. ([98 0369](#), April 15, 1998)

Example: A claimant quit her job because her employer refused to pay her for extra hours he was requiring her to work. He had hired her to work 35 hours a week, but expected her to work additional hours without compensation. After three years the employer told her that he wanted her to work 40 hours per week at no increase in pay. This increase in hours resulted in a 13% reduction in her rate of pay. As she had also been required in the past to work hours in addition to the 35 at no additional pay, the Tribunal held that the anticipation that this might again occur gave additional good cause to quit. ([98 0553](#), April 9, 1998)

Example: A claimant quit her job because her wages were reduced by 14% when the employer eliminated her health insurance coverage payment. In addition, her hours were cut, and she was no longer given vacation or sick leave. The Commissioner held that the combination of losses gave her good cause to quit. ([98 2654](#), March 16, 1999)

**B. Reduction in Hours**

A reduction in hours with a corresponding reduction in the worker's wages is not a wage reduction. For a discussion of this situation go to [VL 450.4 C Reduction in Hours](#).

**C. Reduction Due to Increase in Expenses Incidental to Job**

Personal expenses such as transportation or childcare, which only some workers might have to pay in order to work, are not considered expenses incidental to the job. Expenses incidental to the job are expenses for such items as special clothing, tools, or housing that **any worker** has to pay in order to work in a given job. A worker who incurs a wage reduction due to incidental expenses could have good cause to quit.

Example: A beautician began work at a rate of 65% for the employee and 35% for the shop. Later the claimant was advised that a \$100 per week booth rental fee would replace the commission wage formula and that the shop would no longer furnish supplies. The new wage arrangement caused a 41% decrease in her pay for the first week. The Tribunal held that the wage reduction was good cause for leaving her employment. ([76B-744](#))

Example: A claimant went to Seattle to contact his employer after helping the business relocate to that area. He was unable to contact the employer for three weeks in spite of repeated telephone calls. During this time he had to stay in a hotel at his own expense. When he could no longer afford this, and still had not reached the employer, he returned to his home in

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Fairbanks. The Tribunal held that the cost of the hotel was an expense that gave the claimant good cause to quit. (97 2474, December 10, 1997)

Good cause for quitting does not exist where the employee's payment of expenses incidental to the job is customary and reasonable for the occupation, industry, or locality.

Example: The claimant lived and worked in Anchorage, but the employer had a project in Fairbanks that he wanted the claimant to take. The claimant would have been required to pay his own transportation to Fairbanks and his living expenses while he was there. Because the claimant did not usually work out-of-town, and because of the expenses incident to his doing so, the Tribunal held that he had good cause for quitting. ([98 0156](#), February 19, 1998)

**D. Reduction within Worker's Control**

A worker whose wages are reduced due to factors solely within the control of the worker does not have good cause to quit. For a complete discussion of a reduction due to payment by commission or piecework, see [VL 500.65 Piece Rate or Commission Basis](#).

Example: A claimant accepted a job in which, by his job contract, his wages were reduced in any pay period in which he was unduly absent or tardy. He quit due to the reduction in wages. In holding that he did not have good cause for leaving suitable work, the Tribunal held that the claimant had accepted the varying pay scale and had not made an effort to keep the wages from reducing by consistently being at work and on time. (97 1227, June 18, 1997)

**E. Reduction Due to Demotion**

A worker who voluntarily leaves work rather than accept a demotion and consequent reduction in wages under some circumstances leaves with good cause. However, if the worker accepts the wage reduction, there is rarely good cause for voluntarily leaving work because of dissatisfaction with the new wage.

Example: A claimant quit his job when his wages were reduced by 18.5%. In addition, the company stopped contributing to the 401(k) plan, and evicted him and his wife from the company-furnished housing. Further, his duties and responsibilities were substantially reduced. The Tribunal held that the claimant had good cause to leave. (97 1786, September 5, 1997)

Example: A claimant quit his job when he was transferred because of a disability to a job that paid less than his former job. There was no other position available. He protested the decrease, and retained an attorney who negotiated a settlement with the company on July 2, 1997 in which

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the claimant was paid his former rate retroactively, but agreed to retire January 1, 1998. Because the claimant had accepted the rate and continued to work until January, the Tribunal held that he did not have good cause for leaving. ([98 0183](#), February 24, 1998)

1. Justifiable demotion

If a demotion is due to the worker's lack of training or experience, the worker does not have good cause for voluntarily leaving work. Nor can a justifiable disciplinary demotion or transfer provide good cause for leaving employment.

Example: A claimant was demoted from his position as a head stocker to the position of a regular stocker because of several warnings regarding his failure to follow the correct schedule, complaints about the work of his crew, and repeated absence and tardiness. The claimant quit because he felt he was being "harassed" by his employer and would have no chance for advancement. Although he was employed under a union contract, he filed no grievance with his union regarding any of the actions taken against him. The Commissioner denied benefits, and held that the employer's action was justified, and further the claimant failed to file a grievance with his union. ([80B-71](#))

2. Demotion causes possible loss of skills

If a demotion causes a wage reduction and a possible loss of the skills that a worker used at the higher job classification, the worker has compelling reasons and may have good cause for voluntarily leaving work if the worker attempted to retain employment.

3. Reduction causes loss of rights or benefits

If the demotion results in the loss of the worker's rights or benefits, such as seniority or recall, due to the lower wage classification, the worker has compelling reasons and may have good cause to quit if the worker attempted to retain employment.

4. Demotion constitutes discharge and offer of new work

If the demotion is a significant change in duties and salary, it constitutes a discharge from the former position and an offer of new work ([98 1561](#), July 31, 1998.)

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515 WORKING CONDITIONS

515.05 GENERAL

A. Compelling Reason

A worker has good cause to voluntarily leave work due to working conditions if the worker's reasons for leaving are compelling. A mere dislike, distaste or slight inconvenience based on the working conditions does not give good cause for voluntarily leaving work.

Example: A claimant quit his job because of the "lack of direction and poor planning on the part of management, stress, fear of being fired, and the generally chaotic nature of the working conditions." The claimant felt that if anything had gone wrong with the procurement of the hatchery supplies, he would have been blamed for it. The Commissioner upheld the finding that the claimant quit without good cause. The Tribunal held, "Disagreement with the goals and practices of one's supervisor, even if there is direct interference in the conduct with the job, does not necessarily provide good cause for leaving, unless the interference is abusive or hostile and makes it extremely difficult or impossible to perform the duties of the job." (82H-UI-025, April 30, 1982)

B. Employer out of Compliance

Some working conditions, such as those affecting sanitation and safety, are regulated by law or regulation. A worker has good cause for voluntarily quitting work whenever an employer is substantially out of compliance with law or regulation, if the employer fails to adjust the matter after it is brought to the employer's attention.

Example: A claimant quit her job because her supervisor attempted to save money by defunding one of the night aide positions. The claimant felt that this would create an unsafe environment for the residents she was in charge of. This had happened before and she had gone to the Board of Directors who had ordered the retention of two night aides. The claimant did not want to go to the Board again because she felt it would create a hostile work environment for her. The Tribunal held, in denying benefits, that she had not pursued all alternatives before quitting. ([99 0502](#), April 12, 1999)

Example: A claimant quit his job as an asbestos abatement worker because the employer was exposing the employees to more than a safe percentage of asbestos fibers. The claimant had completed a course in asbestos abatement and therefore qualified as competent to recognize safe practices. He complained to the company's air monitoring person that the job was unsafe before quitting. In allowing benefits, the Tribunal held that he had good cause to quit. ([99 0562](#), April 14, 1999)

**C. Prevailing Standards**

If a change in working conditions brings the working conditions below those prevailing for similar work in the locality, the worker has good cause to quit for that reason.

However, a worker who accepts a change in working conditions and works under the changed conditions for a reasonable period of time does not have good cause for leaving solely because the conditions of work are not prevailing.

**D. Preference for Other Work**

A worker who has no immediate prospects of other employment is not justified in leaving employment just because of a preference for other work. However, a worker who objects to the nature of the work often raises other questions that must be investigated. For example, a worker who objects to outside or heavy work may raise a question of the worker's physical capacity for the work. Or the worker may object to the employment because it does not utilize the worker's acquired skills. In such cases, see the appropriate category dealing with the specific objection.

**E. Change in Working Conditions**

For a discussion of cases where the change in working conditions may be new work, see [VL 315 Voluntary Leaving vs Refusal of New Work](#).

In most cases, when working conditions change a worker is expected to try the new conditions to determine whether or not they create an intolerable situation. The worker must also bring the condition to the notice of the employer if this would possibly be useful. However, if the worker knows from the outset that working under the change would be impossible, the worker has good cause to quit.

Example deleted.

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515.15 VIOLATION OF AGREEMENT

For a discussion regarding situations in which a worker alleges that the employer violated a collective bargaining agreement, see [VL 90 Violation of Conscience or Law](#).

Many of the decisions made by an employer in the course of the business affect the workers. Therefore, when a worker voluntarily leaves work because of an alleged violation of a working agreement, good cause depends on whether the employer has acted unreasonably. Even though an employer violates a working agreement, the employer is acting reasonably if:

- The employer's action was necessitated by business reasons; and
- The employer's action imposed no undue hardship on the worker (9321835, June 15, 1993.)

If the employer acted reasonably, the worker does not have good cause for voluntarily leaving work. However, if the employer's action was not necessitated by business reasons, or the employer's action imposed undue hardship on the worker, then the worker has good cause to voluntarily leave work.

Example: In the case cited above, the claimant quit her job as a correctional officer because she was required to work with sex offenders. The claimant had an agreement with her employer since 1985 that she would not be required to work with these offenders. In January 1993 the claimant was reassigned to work in a facility that housed sex offenders and to participate in counseling sessions with the sex offenders. The claimant protested to her supervisor. Her supervisor told her to try it for six months. She tried it for a week and then resigned. The Commissioner allowed benefits because the claimant had a long-standing agreement with her employer that she would not be required to work with sex offenders; she brought up her objections to her supervisor when he reassigned her to work with such inmates; the change in her working agreement was without a clear show of some business necessity on the part of the employer.

Example: A claimant ([98 0295](#), March 13, 1998) quit his job because the employer had led him to believe that he would receive a promotion to produce manager. He served as acting manager, and believed that vendors had been told and that his promotion had been announced at a general managers' meeting. When he was told that he would not receive the promotion, he quit because he felt he had been humiliated in front of his peers. In denying benefits, the Tribunal held, ". . . being led to believe something and actually being promised a position are not the same."

Example: The Commissioner held that an accounts payable clerk who had been promised a promotion quit with good cause. It was held that the employer's failure to promote the claimant constituted a "breach of faith and a violation of their working agreement." (76H-129, October 15, 1976)

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Undue hardship exists whenever the conditions of work are less favorable to the worker than those prevailing for similar work in the locality. In such cases, it does not matter what the reason was for the violation of the agreement; the work is still unsuitable. If the agreement violated was a condition of hire, the worker has good cause to leave if the problem cannot be corrected.

Example: A claimant quit his job after a month because he was told that he would not be promoted to an assistant manager after being promised such a position at the time of his hire. The Tribunal held that although the employer may have had sound business reasons for the breach, the claimant had good cause to quit when no adjustment was made. ([98 0548](#), April 17, 1998)

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515.25 COMPANY RULE OR DIRECTIVE

Leaving work because of an objection to a supervisor's directive or to a company rule, which is generally known and enforced, is without good cause, unless:

- The rule is unreasonable; or

Example: The claimant, and several other employees, all telephone solicitors, walked off the job when the new management presented new policies including a dress code that forbade facial rings and loose pants. Although the Tribunal held that some of the claimant's objections may have had merit, because she did not discuss her concerns with management before leaving, the Tribunal held that the claimant did not have good cause for leaving. ([98 2755](#), March 5, 1999)

- Although reasonable, the enforcement of the rule or directive creates undue hardship for the worker as an individual.

It is the employer's right, generally, to establish such rules for employees as the employer believes necessary for the proper conduct of the business. Accordingly, in most cases, a rule is judged reasonable solely because the employer considers it necessary for the proper conduct of the business. However, a company rule is unreasonable when:

- The rule or directive is not designed to protect or preserve the employer's business interest; or
- Compliance with the rule or directive:
  - is impossible;
  - is unlawful;
  - imposes new and unreasonable burdens on the employee;
  - is physically injurious to the employee.

The Commissioner stated, "The employer does have the right to set the parameters of the work. Furthermore, insubordination --- that is, refusal to obey a reasonable request of the employer --- does constitute misconduct. On the other hand, if just cause can be shown for refusing the request, then misconduct may be converted to a non-disqualifying separation." (85H-UI-184, September 9, 1985)

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515.35 LOCATION AND EMPLOYER-FURNISHED HOUSING

A. General

Leaving work because of objections to the physical conditions surrounding the work is without good cause, unless those conditions result in undue hardship to the worker, over and above that which is normal for the occupation.

B. Remote Site

A reason commonly given for leaving work in Alaska is the remoteness of the work site itself. The Department has consistently held that leaving work because of a remote location is not, by itself, good cause for quitting.

Example: A painter quit his employment at Northeast Cape on St. Lawrence Island because it was very difficult to get out of the island if an emergency ever came up. In the absence of any evidence of an immediate emergency, the Tribunal held that the remoteness of the job site alone did not supply him a good cause for leaving. (AW-2989)

Example: An accountant at Sand Point left her employment because of a variety of conditions all associated with the remoteness of the job site. She objected to traveling to Anchorage at great personal expense just to have a tooth filled. In addition, she testified that it took ten hours for a telephone message to be relayed to her at Sand Point advising her that her brother in Canada had suffered a heart attack. Earlier, she suffered a hand laceration that resulted in permanent nerve damage because of a 25-hour delay in evacuating her to Anchorage. Even so, the Tribunal denied benefits, stating, "The conditions and inconveniences are the ordinary conditions which one accepts when one agrees to work in a remote area in Alaska. As such, they themselves do not render the work unsuitable or provide compelling reasons for the leaving of such work." (A-5136)

C. Employer-Furnished Housing

1. Breach of agreement by employer

A breach of an agreement by the employer to furnish housing normally gives good cause for leaving work.

2. Employer-furnished housing substandard

Where employer-furnished housing is the only housing available and that housing is unsafe, the worker has good cause for leaving.

Example: A claimant left his job because the housing that the employer furnished was substandard, with "roof and water pipe

leaks; mold and dirt rot throughout; uncovered electrical outlets; exits not winterized; smoke detectors non-operational; refrigerator rusted; animal hair throughout the interior; animal urine and diesel fuel odors; hole in door; missing light fixtures; musty carpet smells; toilet, sink, and tub constantly overflows - wetting carpet; and brackish water." The employer failed to correct the situation when the claimant pointed out the deficiencies. The claimant suggested that he be moved to private housing, but this was not done. In allowing benefits, the Tribunal held that he had good cause to quit. ([99 0087](#), February 19, 1999)

3. Employer-furnished housing unsatisfactory

If the housing furnished by the employer is merely unsatisfactory, the worker does not have good cause to leave.

Example: A claimant quit his job, among other things, because he was to be sent on an out-of-town project with a fellow employee of the same sex and required to share a room with him. The Tribunal, in denying benefits, held that the requirement was not unreasonable. ([99 1727](#), August 5, 1999)

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515.4 FELLOW EMPLOYEE

A. General

A worker who voluntarily leaves work because of the worker's dislike for a fellow worker leaves work for good cause only if:

- The worker establishes that the actions of the fellow worker subjected the worker to abuse, endangered the worker's health, or caused the employer to demand an unreasonable amount of work from the worker and,
- The worker attempted to remedy the situation by presenting the grievance to the employer and allowing the employer an opportunity to adjust the situation ([95 1484](#), August 1, 1995.)

Example: A sales manager for a radio station voluntarily left work because she had an argument with the radio station's program manager. The argument escalated with the program manager screaming and cursing at the claimant. The claimant told her employer who told both the claimant and the program manager that they needed to resolve their differences. If they could not, the employer would intervene the next day. The claimant left a note informing the employer that she would return to work when the employer had resolved the problem. In denying benefits, the Commissioner was upheld by the Court in finding that the claimant had walked off the job and presented the employer with an ultimatum that she would not return until he had fixed the problem. The Commissioner stated, "Dislike of a fellow employee, or inability to work harmoniously with a fellow employee, isn't by itself good cause to quit. Actions of a fellow employee constituting abuse or harassment will provide good cause to leave work only if the worker makes a reasonable attempt to remedy the situation. The worker must present the grievance to the employer and give the employer an opportunity to adjust the matter. If the worker fails to do so, any good cause will be negated." ([Larson v. Employment Security Division](#), Superior Court 3JD No. 3KN-91-1065 Civil, March 4, 1993)

Example: A claimant quit his job because of a personality conflict between him and a fellow employee. The claimant believed that the other employee had spit on his car and written graffiti about him. The employee had also threatened to get a gun to fight with him. The claimant talked with the employer about the incidents, and the employer was aware that the two men had a ten-year history of disagreements. The Tribunal held that, given the potentially explosive situation, and his efforts to adjust it with the employer, the claimant had good cause to quit. ([98 0392](#), March 20, 1998)

Example: A claimant was subjected to stress by a fellow employee who referred many problems to her, leaving the claimant unable to complete

her own work. The claimant consulted management, who promised to remedy the situation. When the supervisor failed to take action within the time promised, the Tribunal held that the claimant had good cause to quit. (97 0404, March 26, 1997)

Section on Family Member deleted.

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515.6 QUANTITY OR QUALITY OF WORK

A. Additional Production

A worker who leaves employment because the quality of the work or rate of producing the work is raised has good cause to quit only when the employer's requirement is unreasonable and when the worker has attempted to resolve the situation.

Example: An employer's requirement is unreasonable when it is set so high that it adversely affects the health of the worker, even though the work might be within the capability of the worker.

Example: A claimant's duties and responsibilities were increased without an increase in pay. The Commissioner, in overruling the Tribunal, held that the worker quit with good cause, as he had attempted to remedy the situation. ([99 0798](#), July 19, 1999)

Example: An employer increases the production requirements of an employee without increasing the pay. In effect, this reduces the employee's rate of pay. See [VL 500.8 Wages Reduction](#).

The requirement for the additional duties must be permanent, or at least not subject to change in the foreseeable future. If the situation is in the process of being remedied, the worker does not have good cause to quit.

Example: A customer service representative was being required to work 42 to 44 hours per week. The company had brought in another sales representative, but the new representative became disabled. At the time the claimant quit, he knew that the company was in the process of hiring another sales representative. The Tribunal held that, since the situation was temporary and in the process of being remedied, the claimant did not have good cause to quit suitable work. (97 0351, March 12, 1997)

B. Apportionment of Work

The Commissioner stated, "It is the prerogative of the employer to make those work assignments as the employer feels best befits the work needed to be done." (86H-78-310, October 31, 1986) Therefore, leaving work because of an objection to the distribution of work is for good cause only if:

- The distribution of work caused undue hardship to the worker; or
- The evidence clearly shows that the employer, in distributing work, unfairly discriminated against the worker.

A worker may reasonably expect fair treatment by the employer. If the worker is regularly assigned more work than other workers of this class, the worker may

feel justifiably that discrimination is evident. Among piece workers, discrimination may arise from the failure without justification to furnish a particular worker with as much work as others receive. If any such discrimination is established, it is good cause for leaving. However, an occasional inequitable assignment, such as during an emergency, does not justify leaving. See [VL 139 Discrimination](#).

Example: A claimant was employed as one of three janitors. When the third janitor was laid off, the work was redistributed between the claimant and the one remaining janitor, who was also the claimant's supervisor. The claimant complained that there was too much work--- a fact amply supported in the record--- and requested additional help. It was the claimant's testimony that her supervisor refused to hire additional help, citing budgetary reasons. The claimant also testified, however, that her supervisor regularly hired a part-time janitor to help him with his work. The claimant made numerous attempts both to her supervisor and her supervisor's supervisor to alleviate the situation, all to no avail. The claimant then quit. The Commissioner found the claimant voluntarily left suitable work for good cause. (88H-UI-011, March 15, 1988)

Example: A housekeeper in a motel quit because she felt the room assignments were excessive. In addition, there was not always enough clean linen at the beginning of her shift and the vacuum cleaner needed repairs. She was, however, always able to complete her assignments. In denying benefits, the Tribunal held that there was no showing that the work assignments created undue hardship on the claimant. ([98 0112](#), February 10, 1998)

**C. Insufficient Work**

A worker who quits because the job duties do not keep the worker fully occupied leaves without good cause. Some people become very dissatisfied when they do not have enough to do. However, this is not a compelling reason for quitting.

Example: A construction inspector left his employment because he was "getting tired of doing nothing." In a total of eleven weeks of employment, the claimant actually worked a total of 2½ days. When on the site, the claimant read, wrote, or walked around the area. He phoned his supervisor twice to ask when the work would start, but was told that he was on the payroll and should stay on the site. On review, the Commissioner found the claimant ineligible and cited two previous cases in support of his decision. In one case, ([Sabloff v. UC Board](#), 166 A 2d 95, 1960), a planning official quit his job because he was "sitting around doing nothing" and felt he was wasting government funds. The court stated: "While we are not without sympathy for appellant's sense of futility, it is clear that his unemployment was entirely self-willed, and therefore not compensable." In [Eisenberg v. Catherwood](#), 289 NYS 2nd 498 (1968), a clerk typist quit her job because of "boredom" and the fact that there was

"practically no work" for her to perform. The court held that "boredom" was not a qualifying reason for ceasing her employment. (80H-22, April 25, 1980)

**D. Work Standards**

It is the employer's right to establish methods of performing work, and the quality standards for that work. A worker who quits because of an objection to the work standards normally quits without good cause.

Example: The claimant, an electronics technician, resigned because he disagreed with the methods used in performing a specific radio installation. He felt that the proposed installation was inadequate, but his employer ignored his protest. He had been dissatisfied for some time with his employer's attitude toward the maintenance and supply of equipment. He also felt that his suggestion for a "team approach to management" was being ignored. In this case, the Commissioner affirmed the Tribunal's holding that the claimant had left without good cause. (80H-104)

If the standards are so high that complying with them would affect the worker's earning power, the worker could show good cause for quitting, if they are outside the prevailing conditions.

A worker might also have cause to quit if the standards are subnormal, and the worker could be held personally liable for defects.

Example: A claimant ([98 0544](#), April 14, 1998) quit his job as a mechanic because his employer consistently put back into service trucks that he had pulled out for repairs, on the grounds that the employer could not afford the time or money to make the repairs. The claimant was afraid that he would be legally responsible for the failure of the trucks to meet minimum federal standards. However, because at the time he quit, he offered to work on call for the employer in an emergency, the Tribunal denied benefits, holding that the claimant had negated his concern.

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515.65 SAFETY OR SANITATION

A. General

Work-site conditions affecting health or safety include temperature, ventilation, location, and sanitation, as well as safety conditions on the job or at the site in general.

A worker who voluntarily leaves work because of hazardous or unhealthy working conditions does not necessarily leave work for good cause. Some occupations and industries are hazardous by the nature of the work, and these hazards are considered normal for the occupation and industry. A person entering an occupation assumes the ordinary risk of that occupation. Therefore, a quit because of the **ordinary risks** of the occupation is without good cause. To establish good cause, the worker must show that the job risk was disproportionately high for that occupation.

A worker voluntarily leaves work for good cause only after the worker informs the employer of the objectionable conditions and allows the employer to remedy the conditions and if the worker leaves work because:

- The danger to health or safety was greater than normal for the occupation and industry; or
- Because of circumstances peculiar to the worker such as physical impairment, the working conditions are more hazardous to the worker than for other workers performing similar work ([95 0992](#), July 19, 1995);

Example: A psychiatric aide quit his employment because he had been injured in the recent past and feared that he would have future injuries. The claimant worked in the chronic adult unit of the Alaska Psychiatric Institute, which houses the most dangerous of the patients. He had asked for a transfer to another ward, but was denied. Furthermore, the claimant stated in his appeal to the Commissioner, that the doctor who treated his back injury told him that any further injuries to his back would result in his being laid up for a period of time. In allowing benefits, the Commissioner stated, "It is clear that the claimant had a fear of returning to this work. Conceivably, fear may constitute good cause . . . but certainly a groundless, an unreasonable, a pathological or a phantasmal fear will not answer the requirements of good cause. (Glenn Alden Coal Company vs. Board of Review, 90 A2d 331,333 PA, 1952). However, a fear which is real when that fear has been created by a change in the working conditions such that the job risk was disproportionately high to that occupation can establish good cause." (87H-UI-256, August 31, 1987)

Example: A claimant left his job because his coworker repeatedly put him in hazardous situations. He notified his union business agent about the matter and the business agent told him to come back to town. In denying benefits, the Tribunal held that the claimant had not offered the employer the opportunity to correct the situation. ([99 0068](#), February 3, 1999)

Example: The claimant, a truck driver, requested a lay-off from his employer near the end of the work season. He was worried about the safety of his children, due to messages he had received from his ex-wife and others, and could not keep his mind on the driving, which was hazardous due to ice and snow. The employer gave him an early lay-off for him to go to his children. In allowing benefits, the Tribunal held that Mr. Burns' concern over his children, combined with the driving conditions, created a safety issue for himself and others. ([98 0076](#), February 4, 1998)

Example: A claimant was employed as a security guard. He quit when the position was reduced from two guards to one at night at the remote arctic site where he worked. He was afraid that if something happened, a single guard might not be able to get timely assistance. The employer provided hand-held radios and radios in the vehicles. The claimant did not pursue the matter through the employer's grievance program because he believed it would be futile, although he did bring his concerns to the employer, who responded with a memo. In denying benefits, the Tribunal held that the employer had responded adequately, and that further the employer's policy was that the claimant had the ability to refuse to do anything that he felt was unsafe. ([99 0424](#), March 19, 1999)

- Or, because the proven condition is below legal standards of safety or sanitation, and the employer refuses to correct the problem.

Example: A claimant quit his job because he was required to drive a vehicle in 50-below temperature without a radio or fire-starting equipment. The supervisor could not assure him that such a situation would not happen again. The Tribunal held that the violation of the employer's own safety policy, without assurance that it would not recur, gave good cause for quitting. ([98 1280](#), July 1, 1998)

If the work-site conditions violate law or adversely affect the health or safety of any employee working under this condition, medical advice for the quit is clearly unnecessary. Good cause for quitting exists if the employer is made aware of this condition and does not correct it.

**B. Sanitation**

This section deals with unsanitary working conditions. For cases of unsanitary housing conditions, see [VL 155.05 D. Housing Difficulties](#) or [VL 515.35 C Employer-Furnished Housing](#) as appropriate.

Unsanitary is not synonymous with dirty. Unsanitary is defined as "unhealthy; liable to promote disease." Unsanitary conditions may be due to such factors as allowing trash to accumulate, failing to furnish adequate restrooms, and failing to furnish sanitary drinking water.

Example: A claimant, a heavy duty truck driver at a coal company, lived in employer-furnished quarters. The claimant quit because the bunkhouse was "filthy," the plumbing facilities were completely frozen, and the heating was so inadequate that the only way to keep warm was to stay in bed. The only toilet was in the kitchen mess hall, and it was separated from the cooking facilities only by a partition with no door. The claimant was unsuccessful in getting the employer to correct these conditions. The Tribunal held that the living conditions were "abnormal" and could have endangered the claimant's health. The quit was with good cause. ([AW-615](#))

**C. Existence of Hazard**

If a worker quits because of safety or sanitation considerations, the degree of the hazard must be established which can include such documentation as:

- results of safety inspections, if any, at the job site;
- violation of safety rules; or,
- violation of occupational safety and health regulations.

Example: A roustabout on the North Slope of Alaska voluntarily left work because of safety concerns. He had complained to his employer about blocked doors, a propane odor, the lack of functioning smoke detectors, the lack of fire extinguishers and exposed electrical wiring. The employer did not correct these safety problems. After the claimant left work, the employer was cited by the Division of Labor Standards and Safety for these safety problems. In allowing benefits, the Commissioner held:

A claimant has good cause to quit if conditions are more hazardous than normal for the occupation and industry, if the worker informs the employer of the hazardous conditions and gives the employer a chance to remedy them. The citations [by the Labor Standards and Safety Division] are evidence of safety violations severe enough to make the conditions of the camp more hazardous than normal. The employer correctly contends that a safety citation does not automatically give the employer's workforce good cause to quit, but

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unsafe conditions will be good cause if the employer refuses to correct them. The employer's refusal to correct them on the claimant's complaint, were compelling reasons to quit. Filing a complaint with the Labor Standards and Safety Division is not prerequisite for compelling reasons. The worker need only bring the unsafe conditions to the employer's attention. We therefore conclude that the claimant quit his employment with good cause. (9121035, July 30, 1991)

Example: A claimant quit her job with the Ninilchik Traditional Council because a dissident group was attempting to take over the Council and threatening violence. Although no violence had actually occurred, the State Troopers had been called in to be a presence in the community. As an indirect result, the claimant had also lost her housing and was living in a 15-foot trailer. The Tribunal held that the on-going situation and lack of housing gave her compelling reasons to quit. (97 2190, October 30, 1997)

Example: A claimant quit his job because he was concerned about being exposed to hydrogen sulfide, a deadly gas. The pads where exposure was most likely to occur had self-contained breathing apparatus (SCBA's), but the trucks that went to the pads did not. The claimant drove such a truck. The employer's safety advisor determined that SCBA's were not necessary in the trucks. The Tribunal held that the claimant's reason for quitting was not compelling, as there was no evidence that he was in immediate danger or subjected to a condition more hazardous than normal for the area. Good cause was therefore not shown. ([98 0738](#), April 28, 1998)

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515.7 INABILITY OR UNWILLINGNESS TO MEET WORKING CONDITIONS

A. Changed Working Conditions

If working conditions change sufficiently to create new work, see [VL 315 Voluntary Leaving vs Refusal of New Work](#).

If working conditions have changed in terms of hours or shifts, see [VL 450.05 Time](#) or [VL 450.4 Part-Time or Full-Time](#), as appropriate.

If working conditions have changed in terms of wages, see [VL 500.8 Wages Reduction](#).

If none of these are true, examine whether the worker was unable or unwilling to meet the changed conditions.

B. Change in Worker's Circumstances

Section deleted.

If a change in the worker's circumstances is due to reasons of personal health or physical condition, see [VL 235 Health or Physical Condition](#).

If a change in the worker's circumstances is due to family circumstances, see [VL 155 Personal Circumstances](#).

When considering the change in circumstances, examine whether the worker was unable or unwilling to alter or adjust the changed conditions.

C. Worker Unable to Meet Conditions

If the worker cannot meet the conditions of employment, the worker must first attempt to make whatever adjustment is necessary, either with the employer or in the worker's personal life. In general, only if these adjustments are not possible does the worker have good cause for leaving.

Example: A claimant was hired and, during her three-hour orientation, was told she needed a medical release due to a previous injury. She did not realize that she was actually hired as of the orientation. She could not afford to go to the physician in order to get the medical statement. Since she did not know she was hired, she did not think she could go to the employer for possible assistance with the expense. She therefore did not return to work. The Commissioner held that because of these circumstances, she had good cause to leave the work. ([98 0750](#), August 4, 1998)

**D. Worker Unwilling to Meet Conditions**

If the worker is simply not willing to meet the conditions of employment, the worker does not ordinarily have good cause for leaving. However, there may be allowable situations in cases involving legal or moral objections. See [VL 90 Violation of Conscience or Law](#).

Example: A claimant quit his job rather than take a random drug test. He claimed that he was not subject to the requirement because he was at the time only doing warehouse work, as his driver's license had been suspended pending a DWI court hearing. The employer stated that they only employed drivers and office supervisors, and that the claimant's position was a temporary accommodation. The Court held that he was a driver, that he was required to submit to random testing and had been previously informed of this, and that therefore his noncompliance was unreasonable, so that he did not leave work with good cause. (Stephenson v. State, 3AN-92-8821 CI, August 6, 1993)

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515.75 SEXUAL HARASSMENT ON THE JOB

A worker who quits due to sexual harassment on the job, whether by a co-worker or a supervisor has good cause for quitting if the charges are substantiated, and if the worker has taken appropriate action to attempt to resolve the situation. The law "does not reach genuine but innocuous differences in the way men and women routinely interact with member of the same sex and of the opposite sex. The prohibition on the basis of sex . . . forbids only behavior so objectively offensive as to alter the conditions of the victim's employment. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment --- an environment that a reasonable person would find hostile or abusive --- is beyond Title VII's purview." (Opinion of U. S. Supreme Court Judge Antonin Scalia)

Example: A claimant (97 1789, September 3, 1997) quit her job because her supervisor, the owner of the company, made sexually suggestive remarks to her and about her to other employees. The claimant filed charges with the Equal Rights Commission. Because the claimant was young and had been abused in the past, she did not confront the employer directly. The Tribunal held that the behavior was sufficient to give her good cause for quitting.

Example: In [98 1410](#), (August 17, 1998) a worker quit her job because of sexual harassment by one of her subordinates. He had been making sexual remarks and innuendoes to her over a period of time. She let him know that his advances were unwelcome, but he continued in his conduct. She reported it to her supervisor and received permission to fire him. He was still at work the next day. When she met with the supervisors, she was told that she did not have the authority to fire him. She quit immediately. The Tribunal held that she had good cause to quit, as there was sexual harassment and she and attempted to resolve it through her supervisor.

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515.8 Supervisor

A. Disciplinary Action

Disciplinary action administered by an employer implies that the worker's behavior has been adverse to the employer's interest. It is well within the employer's rights to take reasonable corrective action. The Commissioner has held that the worker is justified in leaving only if:

- The employer's action was unduly harsh or unwarranted by the alleged offense, or indicated a course of conduct amounting to "abuse, hostility or unreasonable discrimination," and
- The worker made a reasonable attempt to resolve the issue with his employer before quitting. (86H-UI-067, June 11, 1986) See [VL 160 Efforts to Retain Employment](#), Requesting adjustment from the Employer.

1. Reasonable and unreasonable disciplinary action

Disciplinary action may be criticism, rebuke, demotion, or suspension of the employment relationship. If the action is warranted and not unduly harsh, the worker who leaves because of the imposition of such penalty voluntarily leaves work without good cause. In deciding whether the penalty is a just one, consider:

- the practice in the establishment or in similar establishments; and
- whether the worker has received previous warnings regarding the offense.

a. Justifiable disciplinary action

A justifiable disciplinary demotion, transfer, or suspension cannot be good cause for leaving employment.

Example: A claimant quit her job rather than accept a one-week suspension for having left work early without permission. She had left work early because her work was finished and she had arthritis pains. She did not tell the employer about the arthritis because the employer had said that if she did not want to work, she would be replaced. The Tribunal held that her failure to tell the employer about the arthritis justified her suspension and therefore she left without good cause. ([98 2249](#), November 6, 1998)

b. Unfair disciplinary action

A claimant who resigns over an unfair disciplinary action has good cause, if the claimant has first attempted to resolve the matter.

Example: A claimant was suspended for three days by his employer for absence. He had called in sick, but the employer had not received the message. The suspension under the circumstances was unwarranted. The Tribunal held that the claimant had good cause for leaving when, after trying, he could not resolve the matter with his supervisor. (97 1575, August 13, 1997)

Example: A sales merchandiser was put on probation by his employer for having stale-dated beer on his customers' shelves during an audit. If he was again found with stale-dated beer he could have been discharged. However, the employer continued to sell stale-dated beer to the claimant's clients. The claimant protested to the employer and then quit after giving notice. In allowing benefits, the Tribunal held that the claimant was being told to sell the stale-dated beer but not to get caught, which was a "course of conduct amounting to hostility, abuse or unreasonable discrimination." ([99 0260](#), February 26, 1999)

2. Pending disciplinary action

If the worker is suspended without pay for a definite period while an investigation of charges against the worker is underway, and leaves before the final adjudication of the charges, the worker has not allowed the investigation to take its course, and therefore has not taken all steps to remain employed. The worker leaves without good cause, regardless of the worker's innocence of the charges.

Indefinite suspensions without pay sever the employer-employee relationship and no further issue can arise regardless of the actions of either party. See MC 440.

B. Hostility, Abuse, or Unreasonable Discrimination

1. General

A worker has good cause for voluntarily leaving work because of a supervisor's conduct only if the supervisor follows a course of conduct amounting to hostility, abuse, or unreasonable discrimination. In addition, the worker must attempt to resolve the matter prior to leaving work ([95 1844](#), October 20, 1995.)

Example: A claimant left work because the branch manager, her supervisor, undermined her authority by telling her subordinates business matters that he did not tell her, telling workers that she was inept in her job, and arbitrarily changing the schedule of employees under her control without telling her or them. He also made sexual comments and lewd gestures to workers. When she complained to upper management about him, they threatened to put a reprimand in her file about a non-specific complaint. The Tribunal held that the claimant had good cause to leave a hostile and abusive work environment after she had attempted to correct it without success. ([98 0480](#), April 7, 1998)

Example: The claimant quit work because the executive director continually told untruths and created an environment of suspicion and tension that subjected the claimant to a course of conduct amounting to abuse. Filing a grievance would have been futile. The claimant voluntarily left work for good cause. ([02 0931](#), August 28, 2002).

a. Singling out or supervisory style

A supervisor who is uniformly strict or overbearing may not have a commendable style of supervision, but does not give a compelling reason for leaving.

Example: A claimant voluntarily left work because she felt that her supervisor was harassing her. She had been written up by her supervisor almost every week. On the day that the claimant quit work, the claimant was serving a large group of customers when her supervisor told her to have another salesperson take care of some customers. Angered by this, the claimant went to the employees' break room. While the claimant was in the break room, her supervisor wrote her up for leaving too many trays of jewelry on the sales counter. When the claimant returned and was told this, she told her supervisor that she was going home. She then called her supervisor from home and said that she quit. She had complained to the store's personnel manager on several occasions about her supervisor. The store's personnel manager had received similar complaints from other salespersons about the claimant's supervisor but he had determined that the claimant's supervisor was merely a demanding supervisor and was not singling out the claimant. The Court affirmed the Commissioner in denying benefits, finding that there was some harassment toward the claimant by her supervisor but that the claimant had failed to show that her supervisor's course of conduct was abusive, hostile,

or unreasonably discriminatory. The claimant's supervisor acted similarly to all the salespersons because it was her style of supervision. ([Griffith v. State Department of Labor](#), Alaska Superior Court, No. 4FA-89-0120 Civil, September 25, 1989)

Example: A claimant quit her job in a greenhouse because the owner often yelled at her about dry plants. The claimant's job was to water the plants, but the temperature in the greenhouse and the soil conditions caused them to dry out quickly. The claimant spoke to the owner about the way she was treated, but the yelling continued. The Tribunal held that, as the claimant was singled out for the abusive treatment, and attempted to remedy the situation, she had good cause to quit. (97 2371, November 26, 1998)

Where the supervisor/claimant relationship is new, in all but extreme cases the claimant must give the situation a fair trial.

Example: A claimant quit her job when a co-worker with whom she had often had personal clashes was promoted to be her supervisor. In denying benefits, the Tribunal held that the claimant had not given the situation a fair trial nor had she explored other alternatives before quitting. ([99 0950](#), May 27, 1999)

b. Efforts to correct

The claimant must attempt to correct the situation by all appropriate means. See [VL 160. Efforts to Retain Employment](#). However, if this is futile, the claimant is not expected to perform a useless gesture.

Example: A claimant was employed as a plumber's helper. The claimant voluntarily left work because of his supervisor's attitude and manner of communication. On one occasion, the supervisor had called the claimant an "idiot" because the claimant had filed a workers' compensation claim regarding an on-the-job injury without completing the employer's forms. The claimant did not attempt to resolve the matter before he left work. In denying good cause for quitting suitable work, the Commissioner held, "The facts do not show a course of conduct on the part of the supervisor amounting to abuse, hostility, or unreasonable discrimination, although the supervisor may have been difficult and overbearing at times. Most importantly, the claimant made no attempt to correct this objectionable situation before quitting, by bringing his grievance to the employer's attention. He therefore left his

last suitable work voluntarily without good cause."  
(9213608, April 16, 1992)

Example: A claimant left work because the employer habitually yelled and cursed at her. The Tribunal held that, since he was the owner, it was futile for the claimant to attempt to remedy the situation, and that therefore she had good cause to quit. (97 1685, August 19, 1997)

Example: A temporary help worker quit her job after three days when the owner blew up and yelled at her after several other incidents in which he yelled at others in the office. She called the temporary services agency that had sent her on the job and told them she would not return to work for that employer. The agency called her and told her to call the owner because he wanted to apologize to her. Because she did not return the owner's call, and because the owner was stressed over the need to complete a project, the Tribunal held that she did not have good cause to quit, as the owner was attempting to rectify the situation. (97 2459, November 28, 1997)

2. Single instance of abuse or rebuke

A one-time incident of abuse, hostility, or rebuke is ordinarily insufficient; the supervisor must follow a course of conduct of abuse or hostility. The manner in which the employer speaks may not be commendable, but that alone is not good cause.

Example: A claimant quit her job when her supervisor yelled at her in front of customers. The Tribunal held that, even if he had yelled, as opposed to projecting his voice forcefully, the single incident did not rise to a course of conduct, and so she did not have good cause for quitting. ([98 0370](#), March 24, 1998)

A single unfair reprimand is not good cause, for leaving. However, repeated unwarranted reprimands may indicate "abuse, hostility or discrimination."

Example: A claimant was written up by her employer for cash shortages in the till which she shared with another employee. The claimant believed that the other employee was responsible for the shortages and attempted to rectify the matter with management by asking for her own till or for another shift with a different employee. Neither request was granted. Because she believed that she was falsely accused of taking money, which was a serious offense, and because she attempted to rectify the situation prior to leaving, the

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Tribunal held that she had good cause for leaving suitable work.  
(97 0348, March 14, 1997)

However, if a single offensive comment or instance of abuse is severe enough, then a worker need not show that the supervisor had followed a course of conduct amounting to hostility, abuse, or unreasonable discrimination in order to establish good cause for voluntarily leaving work ([94 9324](#), February 21, 1995.)

Example: A claimant, employed as an apprentice electrician voluntarily left work because his supervisor made an off-color and offensive "joke" about the claimant's girlfriend in the presence of 15 of the claimant's co-workers. After the incident, the claimant approached his supervisor about the comment, and he was told that if he didn't like it, he could "go join the hall." The court held that the offensive comment was severe enough to be good cause for voluntarily leaving work. (*Kron v. State of Alaska*, Alaska Superior Court, 3rd JD, No. 3AN-82-3189 Civil, March 10, 1983)

**C. Lack of Support**

A worker who quits work because a supervisor is unsupportive quits with good cause if the worker has attempted to resolve the situation and the lack of support is inhibiting the worker's ability to perform.

Example: A claimant quit essentially because she was not allowed to discipline certain insubordinate employees, even though she was responsible for the operation of the employer's bakery. The insubordinate behavior undermined the claimant's authority over the other employees. The Commissioner stated, "We conclude that the insubordinate behavior and personal remarks by the employees in question made the claimant's work situation untenable. The employer's admitted refusal to correct the situation, after repeated complaints from the claimant, gave her good cause to leave employment." (9226966, August 20, 1992)

Example: A claimant quit her job because her supervisor did not give her the support she needed in dealing with the employees whom she supervised. The Tribunal, in denying benefits, found that, on the contrary, the supervising council gave her advice that she did not follow. ([98 1183](#), July 2, 1998)

515.9 TRANSFER TO OTHER WORK

A. Objection to Transfer

For cases involving a worker who elects to be laid off or discharged rather than accept a reclassification or transfer to other work, see [VL 315 Voluntary Leaving vs Refusal New Work](#).

B. Desired Transfer Not Granted

A worker who leaves employment because a requested transfer is not granted is usually motivated by personal reasons such as convenience, self-advancement, prestige, or the like, that are not good cause.

A voluntary leaving for this reason is with good cause only if:

- The failure to effect the transfer is a breach of faith by the employer; or
- The worker has a compelling reason, such as a health problem, for desiring the transfer.