**Section 2840.25 What Is Meant by "Harm"**

The phrase "...has harmed the employing unit or other employees" in the general definition of misconduct in Section 602A of the Act [820 ILCS 405/602A] includes, but is not limited to:

a) physical or quantitatively measurable damage or injury;

b) other damage or injury to other employees' well-being or morale or to the employer's property, operations or goodwill;

1) EXAMPLE: An individual is dissatisfied because he does not receive a raise. He confronts his supervisor and threatens to injure him, if not immediately, at some time soon. The threat itself, even in the absence of a physical assault resulting in a tangible injury, constitutes harm.

2) EXAMPLE: Without authorization, an individual enters the company president's office, opens a desk drawer and removes and photocopies trade secrets. Even if the individual decides not to pass along this information to others, the removal and photocopying of trade secrets constitutes harm.

3) EXAMPLE: An employer has a point system for evaluating tardiness and absence. When the worker exceeds the allotted number of points in a particular period, he is subject to discharge. Absences and tardiness always cause harm to the employer, even if a worker is allowed to make up the time. This is because absences and tardiness cause disruption to the general operations of any business. However, even before reaching the question of harm, the worker's reason for tardiness or absence must be reviewed in order to determine if the worker's conduct was willful.

c) damage or injury that could be reasonably foreseen to occur but for the individual being prevented from either carrying out his or her act or continuing to work;

1) EXAMPLE: At the end of her shift, a grocery store checker is stopped at the exit by a security guard. The security guard removes from the checker's purse a can of fruit cocktail and a package of sandwich cookies belonging to the employer. Because the checker was caught, the employer was not deprived of its property. Still, this constitutes harm.

2) EXAMPLE: An individual applies for a job that requires that he have a valid driver's license. On his application, he fails to disclose that his driver's license has been suspended. One year later, the employer learns of the suspension. Although the individual has not yet been involved in any accidents on the employer's premises, it is reasonable to foresee that one may occur and that the employer's insurance company would deny liability because of the individual's omission. The individual's omission on his application constitutes harm.

3) EXAMPLE: Federal law provides that a commercial carrier may not permit its vehicles to be operated by an individual if there is, within the individual's system, the presence of unlawful, controlled substances beyond a particular level. The presence of such a substance during working hours within the system of a commercial driver employed by the carrier constitutes harm to the carrier. To continue to employ the individual as a driver would result in the carrier's violating federal law.

4) EXAMPLE: The individual is driving a forklift truck through the employer's warehouse at excessive speeds. It is reasonably foreseeable that this conduct could result in both injuries and property damage. Even if the conduct is stopped before injuries or damage occur, there is still harm to the employer.

d) It should be noted that harm is only one element of the definition of misconduct and that all of the elements set forth in the Act must be analyzed before a finding of misconduct can be made.

(Source: Amended at 43 Ill. Reg. 6517, effective May 14, 2019)