

**RULES
OF
GEORGIA DEPARTMENT OF LABOR
EMPLOYMENT SECURITY LAW**

**CHAPTER 300-2-1
DEFINITIONS**

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300-2-1-.01 Meaning Of Terms Used

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(1) "Law" means the Employment Security Law of Georgia, Official Code of Georgia Annotated (OCGA), Title 34, Chapter 8.

(2) "Commissioner" means the Commissioner of Labor of Georgia. Where appropriate, Commissioner shall also mean any duly authorized representative of the Commissioner.

(3) "Department" means the Georgia Department of Labor.

(4) "Reimbursable Basis" means the method of payment wherein an employing unit has elected to reimburse this department for the amount of benefits chargeable to such unit in lieu of making quarterly contributions to the department.

(5) Total, Part-Total, and Partial Unemployment.

(a) "Total Unemployment" means the unemployment of any individual in any week during which the individual performs no services and with respect to which no wages are payable to the individual.

(b) "Part-Total Unemployment" means any claim week during which an otherwise qualified individual performs services and earns wages not exceeding the weekly unemployment insurance amount plus Non-deductible earnings.

(c) "Partial Unemployment" means any complete pay-period week during which an individual is attached to the individual's regular employer and works less than full-time, due only to lack of work, and earns wages not exceeding the individual's weekly unemployment insurance amount plus Non-deductible earnings. Partial unemployment claims are initiated by the employer.

NOTE: The Georgia Employment Security Law provides for benefit payments to be made in multiples of \$1.00. Therefore, Deductible Earnings must be adjusted to the nearest dollar, i.e., the odd cents .01 through .49 will be adjusted to the next lower dollar; .50 through 99 will be adjusted to the next higher dollar.

(6) Week of Unemployment. Unless otherwise authorized by the Commissioner, a week of unemployment shall be the calendar week beginning on Sunday and ending at midnight the following Saturday.

(7) The following definitions shall apply in the application of the disqualification provisions of OCGA Sections 34-8-194 and 34-8-195:

(a) "Bodily Injury" is physical harm, damage or injury inflicted on an individual by another individual.

(b) "Conscious Neglect" is a failure to use that degree of care which would be exercised by an ordinarily prudent person under the same or similar circumstances. It does not require a willful intent to abuse an employer's business but it does require a showing of disregard for the normal or acceptable consequences of the action or the failure to perform one's job duties. It is to be distinguished from the claimant's inability to satisfactorily perform the duties of the job. A showing by the employer that the claimant failed to perform a task for which the claimant had previously demonstrated a degree or level of proficiency by satisfactorily performing the task in the past will shift the burden of proof to the claimant to show that the individual had an inability to perform the task in question.

(c) "Fault" is a failure to follow rules, orders or instructions, or failure to discharge the duties for which the claimant was employed. Fault which is of a disqualifying nature cannot be a technical failing, a minor mistake or the mere inability to do the job. Rather, a breach of duty to constitute fault must take into consideration such factors as length of service, nature of duties, prior warnings, equal enforcement of all progressive discipline programs and any other factors which might be used to establish reasonable expectations that the discharge was imminent. The claimant must have been aware that a discharge would likely result from the violation of the rule. In the case of a discharge due to a violation of an employer's rule, order or instruction, an employer has the burden of proving that the claimant knew or should have known that the violation of the rule, order or instruction could have resulted in termination.

(d) "Full-time Continuous Employment" for the purposes of OCGA Section 34-8-24 is normally considered to be at least thirty (30) hours of work in a week or such other number of hours as is normal in a particular industry. A claimant who worked full-time during a majority of the weeks of work in the base period shall be expected to look for full-time continuous employment and shall be expected to accept an offer to such work after filing an otherwise valid claim for benefits. A claimant may accept part-time work at any time as long as the part-time work does not unreasonably interfere with the claimant's search for full-time continuous employment, but the claimant must report gross earnings for such work to the Department.

(e) "Intentional Conduct" is that personal behavior or action by an individual which is willful, conscious or deliberate that results in damage to another person's property or results in bodily harm to another individual. A claimant who commits an act which a reasonably prudent person would contemplate to result in damage may be said to intend that result, whether he desired it or not; for every person is presumed to intend the natural consequences of his or her own actions.

(f) "Misconduct" is conduct evincing such willful or wanton disregard of an employer's interest as is found in violation or disregard of standards of behavior which the employer has the right to expect of an employee, or in carelessness or negligence in such degree, or recurrence as to manifest fault, or to show a disregard of the employer's interests or of the employee's duties and obligation to the employer. Misconduct includes but is not limited to a violation of a known work rule which is reasonable and related to the job being performed.

(g) "Part-time Employment" shall be construed to be work which is other than full-time continuous employment as defined above, without regard to whether it is of limited duration as to days, weeks or months. A claimant who worked part-time during a majority of the weeks of work in the base period must be available to work for at least 20 hours per week.

(h) "Physical Assault" is touching the person of another against his/her will with physical force, in an intentional, hostile or aggressive manner.

(i) "Suitable Work" means work in the individual's usual occupation or work for which the individual is reasonably fitted. In determining whether an individual is reasonably fitted for a particular job, the department shall consider the totality of circumstances, including, but not limited to:

1. The degree of risk involved to the claimant's health, safety and morals;
2. The claimant's physical fitness;
3. The claimant's prior training;
4. The claimant's experience;
5. The claimant's prior earnings;
6. The length of the claimant's unemployment;
7. If the work is not directly related to claimant's recent work experience, the claimant's prospects for obtaining local work in such claimant's customary occupation; and
8. The distance and time for commuting.

(j) "Theft" is the taking of an employer's property, or the property of any other employee or the property of any other person while on the employer's premises or otherwise within the scope of the employee's job duties, without the consent of the owner of the property, with the intent to deprive the owner of the value of the property, and to appropriate it for the use and benefit of the person taking the property. The value of the property taken shall be the fair market value at the time of replacement.

(8) "Personal services" mean work performed by an individual for personal remuneration. Work performed by an individual or sole proprietorship is presumed to be personal services unless otherwise exempted by the Employment Security Law or the Rules of the Georgia Department of Labor. Work performed by a corporation or a partnership does not meet the definition of personal services.

(9) "Rate buy down" with respect to voluntary contributions pursuant to OCGA Section 34-8-178 means the payment of such additional amounts in response to notice from the Department as to enable an employer to receive a lower rate of contributions.

(10) Most Recent Employer.

(a) "Most Recent Employer" as defined under OCGA 34-8-43 shall not include an employer subject to the provisions of the federal Railroad Unemployment Insurance Act.

(b) "Most Recent Employer" as defined by OCGA 34-8-43(a) shall mean the last employer for whom an individual worked and was separated.

(c) An entity must be an "Employer", as defined by OCGA 34-8-33, to qualify as an individual's "Most Recent Employer".

(11) "Deductible Earnings" means all wages in excess of \$150.00 each week earned by a claimant for services performed, whether or not received by such claimant. Deductible earnings shall be subtracted from the weekly benefit amount of the claim.

(12) "Non-deductible Earnings" means all wages earned each week by a claimant less than or equal to the amount established by the Commissioner for Deductible Earnings

Authority: O.C.G.A. §§ 34-2-6(a)(4), 34-8-30, 34-8-70, 34-8-190, 34-8-191, 34-8-193(e).