



# Florida EMPLOYMENT

A monthly newsletter designed exclusively for Florida employers

## Law Letter

G. Thomas Harper, Editor  
Harper Gerlach LLC

Vol. 16, No. 1  
March 2004

### UNEMPLOYMENT COMPENSATION

## Can you fire an employee for refusing to let you search his backpack?

*Answer: Yes, but a Florida court has ruled that you'll pay the employee unemployment compensation benefits if your policy isn't in place.*

### Facts

Randall Thomas worked for United Parcel Service (UPS) as a preloader at a Florida distribution center. His manager heard from another employee that he had brought a camera into work in his backpack. The manager reported the information to a UPS security representative, who asked Thomas if he could search the backpack. Thomas declined the request. The security representative again asked if he would allow his backpack to be searched, and he again refused. The security representative ended the incident by telling Thomas that he couldn't take pictures in the workplace, and Thomas responded that he hadn't taken any pictures.

Two weeks later, another UPS employee told Thomas' manager that he had observed Thomas with a camera at work and that he had seen him put it in his backpack. Again, the UPS security representative and the manager called Thomas into an office and asked him if he had a camera. He responded that he didn't. They asked if they could search his bag, and he again refused. He was told that he would receive a warning letter if he refused to submit to a search, but he refused to allow the search anyway. Then the manager told him that he could be suspended if he refused the search. He held firm and said he wouldn't allow a search of his backpack. At that point, the manager fired him for insubordination.

Thomas filed for unemployment compensation, and an appeals referee and the Unemployment Appeals Com-

mission denied the benefits, finding that UPS had a right to protect its proprietary interest in ensuring that its customers' packages were properly handled. A Florida court, however, reversed and awarded Thomas unemployment benefits because it found that UPS had admitted that when Thomas was fired, it had no policy providing that employees and their personal possessions could be searched at work.

### Background on unemployment compensation

In Florida, an employee fired for misconduct connected to work isn't entitled to unemployment benefits. Florida court decisions have defined the term "misconduct" to include (1) "conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his or her employee" or (2) "carelessness or negligence of such a degree or occurrence as to manifest culpability, wrongful

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intent, or evil design or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to his or her employer."

For unemployment compensation, a Florida employer has the burden of proving that the employee was fired for "misconduct connected with work." A number of Florida cases acknowledge that the unemployment law is to be liberally construed in favor of the employee.

### **Back to the case**

The court explained that when a Florida employer has no preset policy with which an employee is required to comply, the employee's refusal to comply with the policy isn't enough to constitute "misconduct connected with work." The court found that the only reason UPS wanted to conduct the search was to determine if Thomas had a camera in his backpack. Although there have been drug-testing cases that have allowed Florida employers to terminate employees when there was reasonable suspicion of illegal drug use, the court found that the same public policy reasons didn't apply to UPS in this case. The court saw the issue as whether UPS was enforcing a policy that wasn't in existence at the time Thomas was *hired*.

The court found that UPS was trying to enforce a policy that didn't exist when Thomas was hired and that his refusal to comply with the policy wasn't sufficient to constitute "misconduct." UPS admitted that it had no written or published search policy. Thus, the court concluded that

Thomas' refusal to submit to the search wasn't a "deliberate violation or disregard of the standards of behavior that UPS had the right to expect." It was all right for UPS to fire Thomas for refusing to allow his bag to be searched, but it wasn't enough to prove misconduct so as to deny him unemployment benefits. *Thomas v. United Parcel Service, Inc.*, 29 Fla.L. Weekly D309 (FL 2nd DCA Jan. 27, 2004).

### **Moral**

Unless you want to pay unemployment benefits to a fired employee, you need to show that the employee violated a rule or policy that was in place at the time he was hired and that he had notice of the policy. Policies that provide for such things as employee searches and drug testing should be thought through in advance, written, and posted or given to employees. In this case, even the Unemployment Appeals Commission found that Thomas had notice of the search policy since the UPS manager warned him in advance that he could be disciplined if he didn't submit to the search. The court, however, said that wasn't enough to prove *misconduct*. For the court, the issue was whether UPS enforced a policy that didn't exist when Thomas was hired.

It's difficult to anticipate all the reasons you would want to fire an employee. It's not practical to have over 200 work rules. Yet with attention to your rules, you can design a reasonable number of broad rules that will cover most situations. Without written policies in place, it may be difficult to prevail in unemployment compensation. What's worse, without written policies you may have difficulty defending a wrongful termination lawsuit.

For a copy of this article, please send an e-mail request to Tom Harper at [gth@HarperGerlach.com](mailto:gth@HarperGerlach.com)

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