

UCDMA001B Sanctions
Workbook
Topic 02 - Ceases Work or
Loses Pay through Misconduct

April 2016

Timing

It will take approximately 25 minutes to complete this topic.

Learning Objectives

When you complete this topic you will be able to:

- state what is meant by the term misconduct
- state what level of sanction it is
- state which work-related group it applies to; and
- give examples where misconduct is appropriate and where it is not.

Learning Points

This topic covers the following areas:

- misconduct

Ceases work or loses pay through misconduct

If a claimant ceases work, or loses pay through misconduct, a sanction may be imposed on their Universal Credit payments.

Where a claimant has lost pay through misconduct, a sanction will only be imposed if the loss of pay is permanent and, following the loss of pay, the claimant (and their partner where they are a couple) falls below the lower conditionality threshold.

A sanction can only be imposed if:

- the claimant is entitled to Universal Credit, and
- the claimant acted or failed to act as alleged, and
- those actions amount to misconduct, and
- the claimant ceased work or lost pay as a result of that misconduct

Misconduct will attract a higher level sanction, and only claimants who are subject to all work-related requirements will have a sanction imposed for this failure.

If you cannot determine that the claimant ceased work, or lost pay through misconduct, a sanction cannot be imposed.

Misconduct before a Universal Credit claim

A sanction will not be imposed if the claimant ceases paid work or loses pay through misconduct and the sanction period is shorter than the period between the date of the sanctionable failure and the date of claim.

For example, a 91 day sanction is appropriate, but the period between the date of the sanctionable failure and the date of claim is 95 days.



Sanction periods will be covered in more detail in UC DMA002 Sanction Length Workbook.

Meaning of misconduct

In law and in ordinary language the term misconduct usually implies an act done wilfully with a wrong intention, and conveys the idea of wrongful intention.

Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.

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The exact way in which the employment ended is not relevant. The claimant may:

- be summarily dismissed
- be dismissed with notice
- leave voluntarily; or
- resign as an alternative to probable or possible dismissal

In any of these circumstances, a claimant can be considered to have lost their employment through misconduct. This can also be the case if they choose to resign but their employer might not have dismissed them for the misconduct.

It does not matter that the employer has not described the claimant's actions or behaviour as misconduct. It is for you, as the DM, to determine if the claimant's actions or behaviour are misconduct.

It makes no difference that the claimant was allowed to continue working for some time after the act of misconduct (or the last such act) if there is an adequate explanation.

Examples of this are:

- the misconduct was being investigated
- awaiting results of criminal proceedings
- the employer had not heard of the misconduct
- the employer was awaiting a report.

However, if there is no adequate explanation for the delay it may be reasonable to assume that it was decided at the time not to dismiss the claimant and that the eventual loss of employment was due to some other reason.

Although misconduct is not defined in social security legislation, it has been considered in previous case law. The principles that have been established apply equally to Universal Credit.

It suggests an element of blame on the part of the claimant. However, this does not mean that you have to establish that the claimant did anything dishonest or deliberately did something wrong. Serious carelessness or negligence may be enough to amount to misconduct.

An apology does not excuse a claimant's conduct, nor is it necessarily an admission of guilt.

People sometimes apologise even though they consider themselves unfairly accused.

Evidence

Questions of fact are usually decided on the balance of probabilities. However, in misconduct cases the probability should be high because of the potential effect on the claimant.

Before imposing a sanction you should be substantially satisfied that the allegations that are made are well founded.

In misconduct cases you will usually have statements by the:

- employer describing the claimant's alleged acts or behaviour
- claimant replying to the employer's allegations

It may also be useful to have statements by any witnesses.

If an employer indicates that they are not prepared to, or cannot provide further information, you should decide the case on the available evidence.

Giving the claimant a chance to comment

If a clear allegation of misconduct has been made, the evidence must be put to the claimant for comment before a sanction can be imposed.

However, if there is not enough evidence to prove misconduct, you must not ask the claimant to give further evidence that would help justify a sanction.

Misconduct before the employment began

A sanction cannot be imposed if the claimant's behaviour or actions which led to their dismissal took place before the employment began.

For example, if a claimant gave information on a CV when applying for a job, which the employer later found to be false, the employer will have grounds for dismissal.

However, that would not count as misconduct for social security purposes.

Misconduct outside employment

A claimant's behaviour or actions do not have to take place during working hours for it to count as misconduct. However, there has to be some connection between the misconduct and the claimant's employment.

Some behaviour will always be misconduct, whether or not it is connected with a person's work, if it causes the employer to dismiss them because they no longer trust them. For example, acts of dishonesty.

More than one reason for dismissal

The claimant's misconduct need not be the only cause, or even the main cause, for the loss of employment, provided it is an immediate and substantial reason for the loss at that particular time. It is irrelevant that there are other contributory factors.

For example, a claimant is dismissed for trouble-making and for drunkenness on a customer's premises. He is dismissed when the customer informs his employer about his drunkenness. The claimant has lost his employment through his own misconduct.

Examples of misconduct

Negligence and inefficiency

Anyone can make a mistake or be inefficient from time to time. Whether negligence or carelessness is misconduct is a matter of degree.

Inefficiency is not misconduct when it is due only to the claimant's natural lack of skill or ability. Similarly, an isolated error of judgement which had no serious consequences may not be misconduct.

If it is deliberate it is misconduct. Otherwise, it depends on the individual's responsibility and skill expected in the job, the seriousness of the negligence or carelessness, and how much the claimant is to blame.

For example, if someone is a naturally slow worker who, despite making every effort, cannot produce the output required by their employer, they are not guilty of misconduct even if their poor performance may justify dismissal.



The following pathway leads to further examples held in Advice for Decision Making (ADM):

DWP Home Page >> A - Z >> A >> Advice for Decision Making >> Universal Credit (UC) Chapters >> K - Universal Credit: Sanctions >> K3: Higher Level Sanctions

Refusing to carry out instructions

If a person refuses to carry out a reasonable instruction or request by their employer, this will usually be misconduct. However, it will not be misconduct if they had a good reason for refusing, or their refusal was due to a genuine misunderstanding.

Example

Andy, a van driver, is told not to drive after he has been involved in an accident. The next day he finds his van waiting, loaded as usual, and takes it out. He is dismissed for disobeying the instruction.

Andy says that he understood he was being taken off driving, but did not understand that this was to happen at once. As he has not wilfully disobeyed the instruction, but acted on a genuine misunderstanding, it is not misconduct.

Failure to follow rules and regulations

Many employers have rules or procedures about work and the way it is done, for example health and safety rules. Breaking such a rule is misconduct, unless it is very trivial. The fact that a rule is often broken does not excuse the breaking of it, or mean that it is not misconduct.

Refusal to work overtime

A refusal to work overtime is usually misconduct if the claimant was required to work overtime when necessary, and the request to do so was reasonable. However, the claimant should have been given adequate notice if possible. Additionally, the amount of overtime required and the time it was to be done should be reasonable for the employment.

Driving offences and road accidents

If a claimant commits a road traffic offence which has a direct effect on their ability to do their job, it is misconduct. This will be the case, even where the offence was committed outside the employment.

Example

Molly, a sales representative, is convicted of a drink-driving offence that happened in her own vehicle and in her own time.

She loses her driving licence and is subsequently dismissed because she can no longer carry out her full role which involves driving to see customers. Although the offence took place in her own time, it is misconduct.

However, if the offence did not have a direct effect on the claimant's ability to carry out their duties, it will not be misconduct. For example, a claimant who used a car to get to work because there was no public transport is disqualified from holding a driving licence.

It is not misconduct if the employer would have continued to employ them if they could have got to work.

If the motoring offence was an isolated and minor act of negligence, or was trivial or merely technical, it will not be misconduct.

Time off work for treatment for certain conditions

A claimant may undergo treatment for drug or alcohol dependency, or for a mental health condition. The treatment can vary widely in length and intensity according to the claimant's individual needs and, in some cases, can require a stay in residential accommodation.

The claimant may be required to undertake this treatment as a result of a court order.

If a claimant is dismissed because their employer would not let them have the time off for the treatment, this may not be misconduct.

You would need to establish when the treatment was due to take place, what efforts the claimant had made with their employer and any relevant authorities to make alternative arrangements so that they could continue in their employment.

Offensive behaviour

Disrespect, quarrelling, scuffling or fighting and other forms of offensive behaviour are misconduct. But it will not be treated as misconduct if the claimant has a mental health condition (for example nervous and depressive attacks) which meant that they were not fully responsible for their actions.

If there was substantial provocation this should be taken into account when deciding if it was misconduct.

Using bad language may also be misconduct, depending on the place and the people present. However, using bad language in conversation with others who are using it and it cannot be overheard, is not misconduct. Yet its use in circumstances when it is known, or might be expected, to give offence to others is misconduct.

Example

Peter works in an office and often uses obscene language, and makes indecent remarks about women employees. His colleagues complain and he is sacked. Peter has lost his employment through his misconduct.

If an employee complains to their employer in reasonable terms about their conditions of employment, it is not misconduct. However, if they refuse to work, or deliberately do their work badly, it will be misconduct.

Criminal Charges

A criminal charge made against another colleague is misconduct if it was known to be false or was made recklessly.

Example

Sally brings a charge against her team leader for assault, but the case is dismissed. There is no allegation of any other misconduct against the claimant but her employer dismisses in the interests of discipline.

Sally has not lost her employment through misconduct because there is no evidence that she knew the charge was false or made it recklessly.

Sexual Misbehaviour

Sexual misbehaviour is not necessarily misconduct. The behaviour must have affected, either directly or indirectly, their suitability for their employment before it can be misconduct, even if the behaviour would amount to misconduct in a social or moral sense.

Employees in certain professions, for example teachers and social workers, know they are expected to maintain a high moral standard. If they are dismissed for sexual misbehaviour which occurred outside work they are likely to be subject to a sanction.

Timekeeping

Poor timekeeping might amount to misconduct. For example, if a claimant is persistently late they may be guilty of misconduct.

Example

Majid is dismissed because he often arrives late for work without permission. Although he states that he makes up the time by working late, he has lost his employment through his misconduct.

Unauthorised absence

Repeated or lengthy absence from work without permission or justification is usually misconduct. But one short absence may also be misconduct.

It is no excuse that such absence was common practice or that the claimant had not been warned.

Notification of absences

An absence from work which is unavoidable or justified by some reasonable excuse, for example illness or a domestic emergency is not in itself misconduct.

However, a claimant must have complied with the employer's rules about notification of absences.

If there were no such rules, the claimant must have taken all reasonable steps to notify the employer promptly (beforehand if practicable) of the reason for the absence. They should also have kept their employer informed if the absences were long ones. Failure to do so is misconduct.

Dishonesty

Dishonesty in the course of employment is misconduct. Dishonesty outside employment will also be misconduct if it means that the claimant was not a fit person to hold the employment.

For example, a claimant steals money from a colleague on a night out from work and is sacked. This will be misconduct.



The following pathway leads to further examples held in Advice for Decision Making (ADM):

DWP Home Page >> A - Z >> A >> Advice for Decision Making >> Universal Credit (UC) Chapters >> K - Universal Credit: Sanctions >> K3: Higher Level Sanctions

Refusal on grounds of religion or conscience

An employer may try to impose terms or conditions of employment which would restrict a claimant's personal freedom or conflict with a genuinely held belief. If a claimant refuses to comply with such conditions, this will not be misconduct.

The following are examples of religious or conscientious objections:

- where the work involves the handling or supply of alcohol, cigarettes or tobacco
- a religious objection to having to work on a particular day each week
- an objection to employment with something which may be used to destroy life, be it human or animal
- a religious objection to having to work with members of the opposite sex.

Overall misconduct involves something more than mere negligence, error of judgement or innocent mistake. As a DM, you must determine taking into consideration all evidence available, as to whether the claimant ceased work, or lost pay through misconduct.

Zero Hours Contract



A description of a Zero Hours Contract was given in Topic 01 of this workbook.

A claimant can be sanctioned for losing a zero hours contract job through misconduct.

Before imposing a sanction, you should consider the suitability of the job for the claimant, given their particular circumstances and capability.

Gross misconduct

Gross misconduct is not defined in legislation but indicates behaviour or actions that are blatantly wrong or unacceptable.

It is conduct that is so serious that even only one instance of such behaviour would warrant the employer's immediate termination.

You should be able to establish when making a decision to sanction for gross misconduct that it was fair and reasonable in all the circumstances.

Instances of gross misconduct and the seriousness of the conduct will need to be assessed in the light of all the individual particular circumstances having regard to all the relevant facts and evidence.

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Examples of gross misconduct which would normally justify the imposition of a sanction are:

- dishonesty or theft from the employer or colleagues
- fighting in the workplace
- deliberately damaging the employer's property
- endangering the safety of self or others by some deliberate act or omission
- serious incapability through the use of alcohol or illegal drugs

This list is not exhaustive.

Example

Teresa has an argument with her supervisor regarding her standard of work. She storms off and deliberately punches and smashes a glass door panel. She says she needed to let off steam. She is dismissed from her work experience placement. Her actions were deliberate and damaged the employer's property and could have endangered her safety or the safety of others. Her conduct can be regarded as gross misconduct and a sanction imposed.

Repeated instances of minor misconduct such as lack of punctuality or carelessness in performing tasks will not amount to gross misconduct.

Work experience and gross misconduct

Work experience is not defined in Universal Credit legislation. However, it will exist as a work-related activity within the Youth Contract scheme, and in certain work programmes, such as the Work Programme and sector-based work academies.

Participation in a work experience opportunity will be voluntary and claimants who leave or lose a place on such a placement will be treated as having good reason unless they lose the place through gross misconduct.

The claimant will have been notified that, while participation on the placement is voluntary, if their behaviour falls below an acceptable standard a sanction may be imposed on their Universal Credit payments.

Example 1

Surinder is constantly late for his work experience opportunity. He says he finds it hard to get up in the mornings. Although his actions are minor misconduct and he is dismissed from his work experience opportunity they do not amount to gross misconduct and so no sanction would be imposed.

Example 2

John swears at and punches his boss who tells him off for arriving late. He is dismissed from his work experience placement. His actions can be considered as a serious act of insubordination that amounts to gross misconduct and a sanction imposed.

Summary

In this topic you have learned about:

- what is meant by the term misconduct
- what level of sanction it incurs
- which work-related group it applies to
- examples where misconduct is appropriate and where it is not

End of Topic