



# LAW NOTES

from the Law Firm of  
**Kay & Andersen, S.C.**

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## What Every Employer Should Know.....

### *ABOUT TERMINATION OF EMPLOYEES FOR LACK OF ATTENDANCE*

**M**any employers have policies which provide that an employee will be terminated if the employee fails to show up for work for a certain period of time. Employee nonattendance was the issue in a recent Wisconsin Court of Appeals decision, Farm & Fleet of Monroe, Inc. v. LIRC, No. 2006 AP 2152 (Wis. Ct. App. April 26, 2007), available at <http://www.wicourts.gov/ca/opinion/DisplayDocument.html?content=html&seqNo=28805>. In this case, a Farm & Fleet employee was terminated after he failed to show up for work for three days in a row because he was incarcerated following an altercation with the police. Farm & Fleet had an attendance policy providing that it would consider an employee to have voluntarily terminated his or her employment if the employee is absent for a period of three consecutive working days. The employee subsequently applied for unemployment compensation benefits, which were approved on the basis that the termination was not voluntary and that there was insufficient evidence to establish misconduct relating to his employment. An employee will only be ineligible for unemployment compensation benefits if he or she is terminated for misconduct, which is generally defined as "such wilful and wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has a right to expect of its employee." *Id.*, ¶12. The Labor and Industry Review Commission affirmed the decision to award benefits. The case was ultimately appealed to the Court of Appeals, which concluded that Farm & Fleet had not established that the employee's absence constituted misconduct. However, the Court of Appeals remanded the case to LIRC for reconsideration of its decision in light of the employee's subsequent no contest plea to four misdemeanors relating to the incident. This case should serve as a reminder to employers that although employees may be terminated for violating company rules, that may not necessarily preclude the employee from recovering unemployment compensation benefits. Kay & Andersen, S.C. can help employers facing difficult termination decisions and litigation regarding employee terminations and employee benefit disputes.

#### **Kay & Andersen, S.C.**

One Point Place, Suite 201

Madison, WI 53719

Phone: (608) 833-0077

Fax: (608) 833-3901

Web Site: [www.kayandandersen.com](http://www.kayandandersen.com)

E-mail: [law@kayandandersen.com](mailto:law@kayandandersen.com)

Robert J. Kay

Randall J. Andersen

Robert A. Mich, Jr.

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