

## Retaliatory Discharge Lawsuits Filed By Injured Workers

Article By:

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While injured Illinois workers are entitled to compensation under the Illinois Workers' Compensation Act, employers and their insurance companies should also be aware of the exposure they may face in state court. Situations can arise where an employer desires to terminate or lay off an employee who has been injured or claims to have been injured at work. Discharging an employee after they have reported a work injury can cause the employee to file a retaliatory discharge civil lawsuit against the employer.

In *Clemons v. Mechanical Devices Co.*, 184 Ill. 2d 328, 336 (1998), the Illinois Supreme Court held that to recover for the tort of retaliatory discharge predicated upon the filing of a workers' compensation claim, an employee must prove:

1. That he was an employee before the injury;
2. That he exercised a right granted by the Workers' Compensation Act;
3. That he was discharged; and
4. That the discharge was causally related to his filing a claim under the Workers' Compensation Act.

Further, *Clemons* held that if an employer chooses to come forward with a valid, nonpretextual basis for discharging its employees and the trier of fact believes it, the causation element required to be proved is not met. *Clemons*, 184 Ill. 2d at 336. Concerning the element of causation, the ultimate issue to be decided is the employer's motive in discharging the employee. *Id.*

Importantly, *Clemons* held that in retaliatory discharge cases, an employer is not required to come forward with an explanation for an employee's discharge and that it remains the plaintiff's burden to prove the elements of the cause of action. *Id.* An employer may offer a reason, however, if it chooses. *Clemons* makes it clear that for a workers' compensation retaliatory discharge claim, the burden remains with the plaintiff and the three-tier approach used by federal courts in employment discrimination cases is not applicable.<sup>1</sup> Rather, causes of action for retaliatory discharge based on an employee's filing of a workers' compensation claim should be reviewed using traditional tort analysis where the burden of proof remains with the plaintiff. *Id.* *Clemons* explains that because Illinois law

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allows an employer to discharge an employee-at-will for any reason or no reason (with limited public policy exceptions – one being workers' compensation), the traditional tort analysis is used. *Id.*

A more recent Illinois Supreme Court case from 2014, *Michael v. Precision Alliance Group, LLC*, 2014 IL 117376, reaffirmed the burden of proof established in *Clemons*, and also expanded *Clemons* by holding that the standard of proof analysis applies to retaliatory discharge cases "in anticipation" of filing a workers' compensation case. *Michael*, 2014 IL 117376, ¶ 35. Thus, if the discharged employee did not file a formal Workers' Compensation claim and only reported an injury to his employer, the report of injury is likely enough to trigger a cause of action for retaliatory discharge. Importantly, the employer is not shielded from a retaliatory discharge lawsuit simply because the employee did not file a claim with the Illinois Workers' Compensation Commission.

## Illinois jury instructions on the plaintiff's burden of proof

IPI 250.02 states that the plaintiff has the burden of proving each of the following propositions in a retaliatory discharge claim:

- First, that the plaintiff was an employee of the defendant;
- Second, that the plaintiff was [discharged][fired] from [his][her] employment with the defendant;
- Third, that the plaintiff was [discharged][fired] because [set forth in simple form without undue emphasis or repetition the plaintiff's claimed reason(s) for the discharge];
- Fourth, that the plaintiff sustained damages as a result of [his][her] [discharge] or [firing];
- Fifth, that the reason(s) stated in paragraph three above [was][were] a proximate cause of [his][her] [discharge][firing] and resulting damages.

## When the employer should offer a reason for discharge

In explaining that an employer may offer a reason for discharging the plaintiff, the Court in *Michael* held that an employer's valid reason "does not automatically defeat a retaliatory discharge claim." *Id.* ¶ 36. Offering a valid reason, however, gives the trier of fact the opportunity to consider the reason offered by the employer, and if they believe the reason, then the plaintiff has failed to meet his burden of proving causation. *Id.* If the reason offered by the employer is not believed, the plaintiff still must prove his discharge was caused by the anticipation of the filing of a workers' compensation claim.

In *Clemons*, the employer offered a reason for firing the employee which turned out to also be an illegal reason. The employee alleged that he was fired in retaliation of reporting a work injury. The employer asserted at trial that it fired the employee because of a dispute over payment of vacation days. As it turned out, the employer had violated the Illinois Wage payment statute. Nevertheless, *Clemons* held that whether the employer provided a legal or illegal reason for firing the plaintiff was not relevant to his wrongful discharge lawsuit for filing a workers' compensation claim. The Court held:

The alleged illegality of defendant's explanation for plaintiff's discharge is not relevant here

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and does not preclude the employer from offering that reason as a defense to plaintiff's action. The burden remains on the plaintiff to establish the elements of his cause of action, which here involved the discrete claim that the defendant wrongfully discharged plaintiff in retaliation for seeking recovery under the Workers' Compensation Act.

*Clemons*, 184 Ill. 2d at 336-337.

Ultimately, while the employer was allowed to assert an illegal reason for discharging the plaintiff, the plaintiff was later allowed to amend his Complaint to include a count related to the illegal reason for the discharge. Thus, if the reason for terminating the employee is illegal, any legal repercussions will not fall under a cause of action for a workers' compensation retaliatory discharge if that illegal reason was not related to the work injury.

In *Michael*, the plaintiff argued that even if the defendant had a legitimate reason for discharging the plaintiff, the defendant could still remain liable because there can be more than one proximate cause in an action for retaliatory discharge. The Court disagreed and held that Illinois law "clearly provides that if the trier of fact finds the employer's proffered reasons for the employee's discharge to be valid and nonpretextual, the employee has failed to show causation, one of the necessary elements of a retaliatory discharge claim." *Michael*, 2014 IL 117376, ¶ 38. Therefore, employers will typically want to assert a reason for discharging an employee, assuming they have a legitimate reason unrelated to the reported injury. If the trier of fact believes the reason offered by the employer is legitimate, the plaintiff's claim for wrongful discharge fails.

## **Considerations to be made before discharging an employee**

Employers should keep in mind the following when they contemplate discharging an employee who has reported a work injury or is pursuing medical treatment or other benefits under the Illinois Workers' Compensation Act:

1. Even though at-will employees can be terminated without cause, they cannot be terminated for a reason that violates public policy. Terminating an employee because he has exercised his rights under the Illinois Workers' Compensation Act is a violation of public policy.
2. While employers are not required to do so, they may assert a valid reason for discharging the employee in defense of a retaliatory discharge lawsuit. When considering discharging an employee who has reported a work injury, it is important to document the valid reason for discharge. Likewise, employers should document any negative or problematic issues that may arise over the course of an individual's employment, not just at termination.
3. Understand that the employer's motive in discharging the employee is the ultimate issue concerning causation. Before discharging an employee after a reported work injury, fully evaluate the motivation for the discharge, as it will be heavily scrutinized by a jury.
4. Punitive damages can be awarded in a retaliatory discharge claim. "Punitive damages may be awarded where retaliatory discharge has been committed with fraud, actual malice, deliberate violence or oppression, or when the defendant has acted willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others."

*Holland v. Schwan's Home Service, Inc.*, 2013 IL App (5th) 110560, ¶ 228.

If you have any questions about retaliatory discharge liability related to a work injury, please feel free to contact any of our workers' compensation attorneys across the state.

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<sup>1</sup> In Title VII claims brought in federal court, once a plaintiff establishes a prima facie case against the defendant, the defendant has the burden of rebutting the prima facie case with evidence of a legitimate, nonretaliatory reason for discharging the plaintiff. If the defendant meets this burden, the plaintiff must then prove that the nonretaliatory reason asserted by the employer is pretextual. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792,

802-804 (1973).

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National Law Review, Volumess VI, Number 32

Source URL: <https://natlawreview.com/article/retaliatory-discharge-lawsuits-filed-injured-workers>