

Proof of Workplace Injury Not Required for Workers' Compensation Retaliation Claim in Ohio

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Proof of a workplace injury is not required to state a *prima facie* claim of retaliatory discharge under Ohio's workers' compensation statute, the Ohio Supreme Court has ruled, resolving a split among the Ohio Courts of Appeal. *Onderko v. Sierra Lobo, Inc.*, Slip Opinion No. 2016-Ohio-5027 (July 21, 2016).

Background

The plaintiff, Michael Onderko, was an engineering tech with Sierra Lobo, Inc., when he suffered an injury to his knee and was prescribed prescription pain medications to aid in his recovery. After Onderko's request for light duty work was denied, he filed a workers' compensation claim.

The parties disputed whether the injury occurred at work, and when Onderko's claim was eventually denied by the Ohio Bureau of Workers' Compensation on the grounds that the injury did not occur in the course of his employment, he did not appeal the decision as he had already returned to work.

Onderko was fired on December 12, 2012, for filing a deceptive workers' compensation claim. He subsequently filed a complaint alleging retaliatory discharge under Ohio's workers' compensation statute (R.C. 4123.90).

The trial court granted summary judgment to the employer on the grounds that Onderko had not suffered a workplace injury. The Sixth District Court of Appeals reversed, holding that a workplace injury was not required to state a claim of workers' compensation retaliation.

Workplace Injury Not Required

The Ohio Supreme Court affirmed the Sixth District's decision. The Court held that the plain language of the statute requires only that an employee file a workers' compensation claim or institute, pursue, or testify in a workers' compensation proceeding, but does not require an actual workplace injury.

R.C. 4123.90 states:

No employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the workers' compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer.

The Court reasoned that requiring an employee to prove he or she had suffered a workplace injury undermined the basic purpose of the workers' compensation statute: to allow employees to exercise their rights without fear of retribution. Interpreting the statute in a manner that may leave employers free to discipline any employee who brought an unsuccessful workers' compensation claim, the Court said, may produce a chilling effect on employees.

Thus, the Court made clear that the *prima facie* case of a claim for retaliatory discharge requires only that a plaintiff prove that he or she was discharged, reassigned, demoted, or otherwise disciplined in retaliation for filing a workers' compensation claim or instituting, pursuing, or testifying in a workers' compensation proceeding.

As proof of a workplace injury is not required under the statute, the Court also rejected the employer's argument that failure to appeal the denial of workers' compensation benefits foreclosed a plaintiff's

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retaliation suit.

In response to the dissent's concerns that the Court's decision will encourage fraudulent workers' compensation claims, the five-judge majority stated that employees who bring false claims or make misleading statements in an attempt to receive workers' compensation benefits are subject to criminal penalties under Ohio law.

Following *Onderko*, employers should proceed with caution when disciplining an employee who has filed a workers' compensation claim, even if the claim was unsuccessful, unless the employer has other, independent justification for taking disciplinary action.

Please contact Jackson Lewis if you have any questions about *Onderko* and other workplace laws.

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