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WORKERS' COMPENSATION

Assessing a Wrongful Termination in the Background of a Workers' Comp Claim

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Special to the Legal

In the aftermath of a contentious allegation of a work-related injury, the relationship between an employer and injured worker, in many instances, inevitably deteriorates during the course of litigation. As interests of the parties diverge, the chasm in the employment relationship often widens, and termination of the relationship can result. An employment termination taking place following a work injury should be a factually specific issue carefully considered by both parties.

Depending on how the relationship parts, a viable wrongful termination action under Pennsylvania law may result. It should be noted this article aims to focus on wrongful terminations due solely to an injured worker's assertion of rights under the Workers' Compensation Act, while other causes of actions may also be viable based on the Family Medical Leave Act, Americans with Disabilities Act and other discrimination laws.

Pennsylvania, being an at-will state, allows either party to the employment relationship, employer or employee, to end the relationship for any reason, unless the reason is illegal or wrongful. While there are a



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multitude of bases for a wrongful termination, Pennsylvania specifically recognizes a cause of action stemming from a termination as a retaliatory measure to a workers' compensation claim. Proving to the seminal case on the issue, the Pennsylvania Supreme Court first recognized a cause of action for wrongful termination associated with a workers' compensation claim in *Shick v. Shirey*, 716 A.2d 1231 (Pa. 1998). David Shick, the employee, filed an action against Donald Shirey, his employer, alleging that he was wrongfully terminated as a result of filing a workers' compensation claim. Shick's work-related injury was accepted identifying a partial tear of the left medial meniscus due to an incident

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in which Shick was injured pushing a cart.

Shick underwent surgery for the injured knee and was subsequently released by his physician, resulting in him contacting Shirey to orchestrate his return to work. In response to Shick's request to return to his position, Shirey terminated him stating the discharge was due to the workers' compensation claim. Shick filed suit against Shirey asserting he was terminated in violation of public policy and sought damages for lost wages, lost insurance benefits and emotional distress. Before the lower courts, the complaint was dismissed following preliminary objections on the prem-

ise that no such action existed for a retaliatory discharge due to an exercise of rights under the Workers' Compensation Act. Upon appeal, the Pennsylvania Supreme Court was forced to grapple with this novel argument. While recognizing Pennsylvania's at-will status, the Supreme Court also noted termination may not be an employer's absolute privilege when it conflicts with public policy.

The Supreme Court held that the compromise struck via the Workers' Compensation Act between employee and injured worker would be violated if an employer could terminate an injured worker for filing a workers' compensation claim. Citing to a holding of the Supreme Court of Indiana, the Pennsylvania Supreme Court found the ability of an employer to terminate an injured worker for asserting a claim undermined public policy. To avert a loss of employment, injured workers would forego filing workers' compensation claims, and employers would therefore avoid their obligations to compensate injured workers under the act. Based upon this premise, a cause of action for wrongful termination stemming from employer retaliation following a workers' compensation claim was born in Pennsylvania.

Pennsylvania further expanded the cause of action established in *Shick* to allow a supervisor, who is terminated for refusing to dissuade a subordinate from filing a workers' compensation claim, to sue his employer. In *Rothrock v. Rothrock Motor Sales*, 883 A.2d 511 (Pa. 2005), a son and father worked for the employer with the father being the son's supervisor. The son alleged a work-related injury to his neck when unloading heavy computer equipment and reported the injury. The president of the company learned of the alleged work injury and contacted the father, asking if he knew about the incident,

and also believed the injury was due to a prior stock-car accident. The president required the father to have his son sign a release of the work injury, threatening to terminate him and his son if the release was not executed. At first, the son agreed to sign the release to preserve his father's position, but his father advised it was not necessary and; ultimately, the son did not sign it. As a result, the president demanded the son to sign the paper, but he refused and both the father and son were fired.

As a result of the termination, the father and son filed wrongful termination suits against the employer. The trial court found the father was wrongfully terminated and awarded compensatory damages. After appeal to the Superior Court, it was determined the concept in *Schick* could be extended to such a situation. The employer appealed to the Pennsylvania Supreme Court arguing no cause of action existed for the father, being a supervisory employee terminated for not coercing a subordinate to waive his workers' compensation claim. Ultimately, the Supreme Court extended the policy of *Shick*, holding an "employer may not seek to have a supervisory employee dissuade a subordinate employee from seeking WC benefits."

In terms of damages available in a wrongful termination action, an injured worker may seek additional recovery not available via the Workers' Compensation Act. In addition to lost wages, an injured worker wrongfully terminated for filing a workers' compensation claim may also seek damages for loss of benefits, pain and suffering due to emotional distress and punitive damages. The wrongful termination action also allows an injured worker to claim full wages, rather than indemnity benefits calculated based on the statutory scheme of the

Workers' Compensation Act. Thus, the cause of action afforded to Pennsylvania employees via *Shick* offers additional recovery to incentivize the filing of a wrongful termination action alongside a claim petition seeking worker's compensation benefits.

As one can see, termination following the allegation of a work-related injury can lead to secondary employment-related lawsuits given the holdings of *Shick* and *Rothrock*. While an injured worker remains an at-will employee following the allegation of a work injury, the parties should carefully monitor the facts leading to a post-injury termination. To this end, the inquiry will be highly fact-specific to determine whether a termination can specifically be linked to an injured worker exercising his rights under the Workers' Compensation Act.

Employers seeking to terminate an injured worker should carefully document the basis for the termination and follow established policy and protocol for retention and discipline of employees. In this regard, employers should adhere to their handbook to establish a clear basis for a post-injury termination, showing the termination is based on cause rather than an allegation of a work injury. As for the injured worker, he should also take note of an employer's actions following an alleged injury. The inquiry will be whether the specific fact leading to the termination appears to be retaliatory in nature, rather than based upon an employer's usual policy and procedure. ●