

WATCH OUT FOR THE WORKER'S COMPENSATION RETALIATION CLAIM!

By Robert S. Halagan, Halagan Law Firm, Ltd.

One of the “growth” areas in employment litigation is retaliation claims, and in particular retaliation claims relating to worker’s compensation. Close ties between organizations representing employees in worker’s compensation claims and attorneys who handle plaintiffs’ employment retaliation claims, make it very likely that if you terminate an employee with an outstanding worker’s compensation claim, you will be getting a letter or a lawsuit from a lawyer claiming retaliation.

Worker’s compensation claims are a big industry. Oftentimes, there are very close connections between physicians, care providers, claims handlers, rehabilitation specialists and the lawyers who file these claims. It is not unusual to see similar “groups” of “professionals” working together to represent different plaintiffs on a repeated basis. There are significant dollars to be made by all of these parties and they are very good at coordinating to maximize the value of a claim.

You can now add to that “group” the retaliation lawyer. It is a regular feature of a worker’s compensation claim for an attorney handling that claim to immediately send out a letter warning the employer not to retaliate against the employee for filing a claim. Should the employee then be subject to any adverse employment action, layoff, demotion or termination, the retaliation lawyer springs into action. The warning letter then serves as the basis for claiming the retaliation was “willful.” Most troubling has been the rise of claims from employees who either (1) resign and then claim they were forced to quit; or (2) engage in misconduct that forces the employer to take adverse action, but who then sue anyway understanding the cost to the employer of defending has a value they can try to capture.

This new layer to worker’s compensation makes it critically important that an action relating to the job status of an employee who has filed a worker’s compensation claim be carefully reviewed and documented. If an employee with a claim quits, make sure that you confirm the resignation in writing and make clear to the employee that there is a job available for them if they want it. Have your Harassment Policy updated and make sure every employee has a copy so that there is a well established and communicated policy on reporting harassment related to injuries or physical limitations. If you do need to terminate an employee with a claim, make sure you have your decision reviewed by legal counsel to minimize the potential liability that you could face.

The organizations representing employees with claims are well-organized. Make sure you are prepared to withstand their scrutiny.