

## ALERTS

### Labor And Employment Law Alert - Ohio Workers' Compensation Retaliation Cases Possible Without Proof Of Workplace Injury

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On July 21, the Ohio Supreme Court held that an employee plaintiff may establish a prima facie case for workers' compensation retaliation under Ohio Revised Code §4123.90 without proof that they suffered a workplace injury. *Onderko v. Sierra Lobo, Inc.*, Slip Opinion No. 2016-Ohio-5027. The statutory provision, R.C. §4123.90 reads as follows in relevant part:

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.

In this case, the plaintiff, Onderko, was fired for the stated reason of bringing a deceptive workers' compensation claim a month after his benefits claim had been denied by the Ohio Industrial Commission. According to Onderko, he originally began feeling pain in his knee while at work. He left work that day because of the pain and greatly exacerbated the injury by stepping off a curb on his trip home. Allegedly, he did not report the injury as a workplace injury for fear of adverse employment actions due to his employer's concern about their workplace safety record. But, after he was denied light duty and not allowed to work while on pain medicine, he filed a workers' compensation claim.

When the Industrial Commission denied Onderko's claim, he did not appeal the decision because he had returned to work and "wanted the ordeal to be over." He was terminated by the employer for what it termed a "deceptive" attempt to obtain workers' compensation benefits for a non-work-related injury. Following termination, the plaintiff filed a complaint asserting the employer violated R.C. 4123.90 when the employer terminated him for pursuing a workers' compensation claim.

Moving for summary judgment, the employer argued that to establish a prima facie case of retaliation under statute and Ohio Supreme Court precedent, a plaintiff must demonstrate the underlying claim for benefits involved a workplace injury. Further, they argued the employee was barred by res judicata from proving he suffered a workplace injury because the Ohio Industrial Commission determined the employee's injury was not work-related.

The appeals court denied the employer's arguments because of the chilling effect that requiring employees to prove that the injury underlying their workers' compensation claim was work-related would have on filing

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claims. Employees would have to make a risky choice whether to file a claim, knowing that if they fail to prove the cause of the injury was work-related, their employer would be free to terminate their employment simply because the claim was filed.

Accordingly, the Ohio Supreme Court held that the elements of a prima facie case of retaliatory discharge under the statute do not require a plaintiff to prove that the injury occurred on the job. The filing of a workers' compensation claim alone, not the allowance of the claim, triggers statutory protections from discharge. According to the court, the purpose of the statute is "to enable employees to freely exercise their right without fear of retribution from their employers."

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