



## Missouri Changes Interpretation of Discrimination Under Workers' Compensation Law

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Missouri is an at-will employment state, meaning that an employer generally may terminate an employee for any reason, but a number of exceptions to the doctrine exist. For example, Section 287.780 of Missouri's workers' compensation law states: "No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his rights under this chapter. Any employee who has been discharged or discriminated against shall have a civil action for damages against his employer."

The statute prohibits an employer from discharging or discriminating against an employee for filing a workers' compensation claim. (Common discrimination claims involve suspension, reduction in pay or benefits, or change in hours or job duties.) The statute is worded broadly to prohibit discharge or discrimination against an employee "for exercising any of his rights" under Missouri's workers' compensation law, which arguably covers an employee who has made statements to an employer or supervisor about job-related injuries or ailments sufficient to give an employer knowledge that a workers' compensation claim may be filed, even if a claim is not filed.

In April, the Supreme Court of Missouri changed its longstanding interpretation of what an employee must prove to establish wrongful discharge or other discrimination under Section 287.780. Previously, an employee had to demonstrate that his or her exercise of workers' compensation rights was the "exclusive cause" of the employee's discharge or other discrimination. In *Templemire v. W & M Welding, Inc.* (No. SC 93132), the court rejected the "exclusive cause" standard and held that an employee must only show that his or her exercise of workers' compensation rights was a "contributing factor" in the employee's discharge or discrimination.

This new interpretation marks a dramatic shift in the law; now, an employee can state a claim for relief if the employee proves his or her exercise of workers' compensation rights contributed in any way to the termination, even when the employer provides evidence supporting the termination, such as poor job performance, attendance issues or misconduct. A jury now will be instructed to find for the employee if the employee's exercise of workers' compensation rights was a "contributing factor" in the employee's discharge or discrimination. A jury may award the employee actual damages and emotional distress damages, as well as punitive damages if it finds an employer has acted intentionally and maliciously.

Without question, *Templemire* is a pro-employee interpretation of Section 287.780 and should increase the number of discrimination claims under Missouri's workers' compensation law and make it more difficult for an employer to dispose of these claims short of jury trial. *Templemire* should cause employers to take pause and evaluate how to proceed with discharge or disciplinary action in light of the lower causation standard

now applicable to these claims.

The Supreme Court made plain in its opinion that parties dissatisfied with the court's interpretation may seek redress with the legislature. For instance, employers could advocate that the legislature return to the "exclusive cause" standard for these types of claims. The *Templemire* dissent suggested some may go so far as to seek repeal of the private cause of action in Section 287.780 altogether.

Employers should ensure that supervisors know about the change in the law, continue to follow all company policies and procedures, and maintain written documentation on all employee performance issues. Some of the evidence offered at trial against the employer in *Templemire* was that the employer failed to follow its own progressive discipline policy and failed to apply the policy equally to all employees. Failure to document employee performance issues and follow company policies will prove even more costly under the less stringent causation standard set out in *Templemire*.

Before discharging or taking other adverse employment action against an employee who has filed or is preparing to file a workers' compensation claim, an employer should consult legal counsel. The facts of the *Templemire* case suggest that the employer and employee had a verbal exchange and that the employer made certain incriminating statements to the insurance adjuster assigned to the employee's workers' compensation claim, presumably in the moment and without the benefit of legal counsel. While termination or other disciplinary measures against an employee who has filed or is preparing to file a workers' compensation claim may be sensible in some circumstances, employers are advised to strategize with legal counsel before speaking with an employee, a workers' compensation adjuster or anyone else acting on behalf of an employee, especially in light of the *Templemire* decision.

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