

Law Bulletin

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RETALIATORY DISCHARGE: WHEN YOU CANNOT BE FIRED FROM YOUR JOB by: *Philip E. Miles*

Have you been hurt on the job, reported a worker's compensation injury, and then fired? If so, you may be entitled to damages for your loss. Under Alabama law, it is illegal for an employer to fire an employee just because they have made a worker's compensation claim. Many times, long-term employees find themselves in that unfortunate situation. This is even more painful following a worker's compensation claim because worker's compensation does not pay your full wages while you are out recovering from your injury. When you are well enough to go back to work, it is indeed most unjust to find that you no longer have a job in order to support your family and yourself. You may be entitled to damages for lost wages, emotional distress, and additional damages to punish your employer, and convince other employers not to take the same action against their employees.

If you think you have been mistreated following a worker's compensation claim, or have been fired, here are some signs that the action may be retaliatory:

- **Once complimented, you find that you no longer can do anything right.**
- **Your wages have been cut.**
- **If you have been fired, you are unable to find work of equal pay, or work at all.**
- **Knowledge of the worker's compensation claim by those doing the firing.**
- **Expression of a negative attitude toward your injured condition.**

- **Your employer did not follow its own policy with regard to firing of employees.**
- **Discriminatory treatment between employees who have filed worker's compensation claims and those who have not.**
- **Unfair changes in your work performance evaluations following a worker's compensation claim.**
- **Evidence that the stated reason for firing you was not true.**

Please remember that if you give your employer a legitimate reason for discharge, you cannot recover under Alabama law. You must be able to show that the only reason for being fired was the worker's compensation claim. Also, if you file for unemployment compensation benefits and you believe that you have been terminated because you made a worker's compensation claim, then be sure to tell the Department of Industrial Relations when you are filling out your paperwork for unemployment compensation. Also under Alabama law, you must attempt to lessen your damages by seeking other jobs following your firing. Be sure to keep a list of those employers from whom you have inquired about employment.

Unfortunately, Alabama remains an "at-will" state, which means that an employer can fire you for a good reason, a bad reason, or no reason at all. One of the few exceptions under Alabama law is that an employer cannot fire you for getting hurt on the job and making a worker's compensation claim. Please remember that if you get hurt on the job and your employer pays your medical expenses, even though you are not out of work, you have made a worker's compensation claim. Please visit our website at www.alabamatortlaw.com for more information on worker's compensation benefits and employment discrimination.

Philip Miles graduated from the University of Alabama School of Law in 1991, where he served as Research Editor for the Law & Psychology Review, and has been honored to be a drafter of *Wrongful Employment Termination in Alabama Tort Law* (2d, 3d, & 4th eds.) published by LEXIS.

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