

## Publications

### **Labor and Employment Alert: Workers' Compensation Retaliation Does Not Require a Workplace Injury Under Ohio Law**

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#### **CLIENT ALERT | 8.2.2016**

Ohio Workers' Compensation law prohibits employers from retaliating against employees who seek workers' compensation benefits. Ohio Revised Code 4123.90 provides that "no employer shall discharge, demote, reassign, or take any punitive action against any employee because the employee filed a claim ... 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." The Ohio Supreme Court recently interpreted this provision and held that an employee may pursue a case of retaliation even if he cannot prove a workplace injury.

In *Onderko v. Sierra Lobo, Inc.*, plaintiff Michael Onderko was terminated for bringing a "deceptive" workers' compensation claim. Onderko had claimed he felt knee pain at work, left work because of that pain, and then exacerbated his injury when stepping off a curb on his way home after having left work. He alleged that he did not report his original knee pain as a workplace injury because his employer was concerned about its safety record and he feared an adverse action for reporting (for insight on how OSHA would view this alleged disincentive to report a work-related injury, read this recent Labor and Employment [Alert](#)). He later filed for workers' compensation after his employer denied him light duty.

The Industrial Commission of Ohio ultimately denied his claim, and he was terminated for his "deceptive" attempt to obtain workers' compensation benefits. Onderko then sued, alleging he was retaliated against in violation of RC 4123.90 for requesting workers' compensation benefits. Sierra Lobo moved for summary judgment, asserting that Onderko must show that he actually incurred a work-related injury to bring such a suit. In rebuttal, Onderko argued that it was unlawful to discharge him for filing a claim for benefits, regardless of whether the claim was found valid. The Supreme Court agreed with Onderko.

The Court explained that "the plain language of the statute" prohibits any punitive action against the employee because he filed for workers' compensation. "The language of the statute hinges on the employer's

response to the plaintiff's pursuit of benefits, not the award of benefits." And thus, "the only relevant question for the trial court is whether a claim was pursued and whether the employee was fired or otherwise punished for doing so."

It has always been perilous for an employer to discipline an employee solely for having made a workers' compensation claim that was denied. This case underscores that fact. Contact your Vorys lawyer if you have questions about workers' compensation retaliation or the Ohio Workers' Compensation Act.