

PA Federation of Injured Workers

Terminated “At Will” Employees May Have Legal Recourse



An Injury To One,
Is An Injury To ALL



In Pennsylvania and many other jurisdictions, employers can terminate employees at any time for any reason, unless the employee is covered by a contract, collective bargaining agreement or other exception to the general rule. Such employee are considered to be “at will” employees.

The employer’s rights, however are not unlimited. Terminated employees may be able to collect unemployment compensation benefits and may have other legal recourse against the employer if the termination was “wrongful or otherwise unlawful.”

Unemployment compensation benefits are available to most workers where the loss of a job is not due to “willful misconduct”. The law places the burden of proving “willful misconduct” on the employer. In cases where the worker voluntarily leaves the employer (quite or resign), benefits may be allowed if the worker can demonstrate that he/she left for reasons that were “compelling and necessitous”.

Because the determination of eligibility for benefits in these cases is often complex and fact-specific, a terminated worker should consider seeking legal advice for applying for unemployment compensation benefits.

Employers may also be liable to an employee if the termination was “wrongful” or unlawful. For example, the law provides specifically that an employer may not terminate a worker because he/she served on jury duty or testified as a victim witness in a criminal case. An employer may not discharge a worker in retaliation for filing a worker’s compensation claim, an unemployment compensation claim, A Wage payment and Collection Law claim, or a Pennsylvania Human Relations Act Law Claim.

Pennsylvania’s Whistleblower Law may protect workers who are discharged for reasons that offend public policy.

State and Federal laws such as the Pennsylvania Human Relations Act, Title VII of the Civil Rights Act, the American With Disabilities Act, the Fair Labor Workers Benefits Protection Act, the Federal Rehabilitation Assistance Act, the Equal Pay Act, the Pregnancy Discrimination Act, the Family and the Worker Adjustment and Retraining Notification



Act (“WARN” Act) provide additional protections to workers who are terminated or otherwise subject to adverse employment action.



These laws contain strict filing deadlines and are often complex. For this reason, obtaining prompt, competent legal counsel is strongly recommended.

Scenario:

A worker gets injured on the job, and receives medical treatment for that injury but is unable to return back to work on the time schedule of the employer and is fired for failure to return to work. There were many letters sent to the injured worker warning that employment would be terminated if the injured worker did not return back to work on a specific date even though the injured worker was advised by the treating physician, who was the employers panel physician, not to return back to work until medical treatment was completed.

The injured work has no apparent claim under this scenario. There was no Title VII based discrimination (race, religion, creed, ethnicity, gender) nor age discrimination. The injured worker was merely an employee at will. The injured work was not fired in retaliation for filing a worker’s comp claim, which is one of a few state law exceptions to the doctrine of termination at will.

As to a disability, if a person has a bona fide physical or mental disability such as diabetes, lupus, Tur- rets, a physical handicap, hearing impairment, etc..., then the employer must make reasonable accommodations, if that person still has the essential ability and qualifications to do the job. But if the condition prevents the injured worker from being able to perform the task for the job, then the American Disability Act, (ADA) affords no protection.



The ADA does not require an employer to give or guarantee a job to someone not qualified, it guarantees that someone who is qualified must be given the job if only a relatively minor or modest accommodation (such as a special work station, chair, screen, filtration system) need be done to make that person able to do it.