Employers often want to know whether they can terminate the employment of an employee who has sustained a workplace injury. The succinct answer is that it is generally not a good idea to terminate an employee who is collecting workers' compensation benefits since it may expose the employer to significant risk of a legal claim.

The desire to terminate the injured employee may grow out of a number of circumstances. The employer may feel the employee is not legitimately injured or is abusing workers' compensation benefits. The employer may determine it can get along without someone in the employee's position. While the employee is absent, the employer may uncover some previous employee wrongdoing or rule violation. The most common reason given, however, is that the employee is a poor performer and the workers' compensation claim is simply the last straw.

Workers' compensation leave should not be viewed as a way to rid the workplace of individuals with long-standing performance problems that have not been appropriately handled through the disciplinary process. Doing so denies the employee the benefit of being coached through the disciplinary process, including an opportunity to improve, and subjects the employer to greater risk than if it had properly terminated the employee for poor performance.

What are those risks? Many states have laws that prohibit the retaliatory termination of workers who file workers' compensation claims. The employee generally must show the termination was a result of filing the workers' compensation claim, but whether the claims must be the direct cause or simply a factor in the termination varies from state to state.

Minnesota Statute 176.82 states “Any person discharging or threatening to discharge an employee for seeking workers' compensation benefits or in any manner intentionally obstructing an employee seeking workers' compensation benefits is liable in a civil action for damages incurred by the employee.”

Section 4(h) of the Illinois Workers' Compensation Act provides, “It shall be unlawful for any employer to coerce or discriminate against, harass, refuse to rehire or recall, fire or threaten to fire or force to resign” any worker in retaliation for filing a Workers' Compensation claim.

The Iowa Supreme Court has determined that discharge in retaliation for filing a workers' compensation claim clearly violates Iowa's public policy.

Section 102.35(3), Wis. Stats. states, “Any employer who without reasonable cause refuses to rehire an employee who is injured in the course of employment, where suitable employment is available within the employee's physical and mental limitations, upon order of the department and in addition to other benefits, has exclusive liability to pay to the employee the wages lost during the period of such refusal, not exceeding one year's wages.”

Should You Terminate an Employee on Workers’ Compensation Leave?
Family and Medical Leave Act (FMLA)
FMLA issues may be raised when an employer runs FMLA and leave for workers’ compensation concurrently. Terminating the injured employee while he or she still has a serious health condition and has not exhausted his or her FMLA entitlement, can expose the employer to additional damages.

Americans with Disabilities Act (ADA)
ADA issues may arise if the work-related injury is a disability, as defined by the ADA. Or it may be too early to determine the extent and permanence of the injury when the termination decision is made, so the risk is unknown. By terminating the employee, instead of allowing an appropriate healing period and evaluating his or her need for accommodation, the employer may be exposed to all the penalties provided under the ADA.

Terminating employees on Workers’ Compensation
Furthermore, workers who are terminated while they are on workers’ compensation leave continue to receive workers’ compensation benefits. Because they no longer have a job to return to, they often lack motivation to get better and may malingering, resulting in increased workers’ compensation benefits costs for the former employer.

There may be circumstances when it is acceptable to terminate an employee on leave for a work-related injury or illness. These are often situations where it is discovered an employee committed a terminable offense, such as theft or falsification of company records, prior to the leave.

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