

## Should You Terminate an Employee on Workers' Compensation Leave?

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.

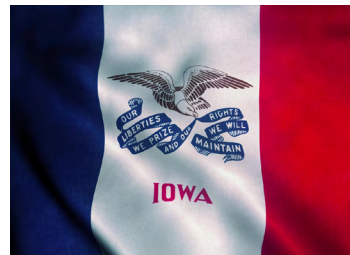
What are those risks? Many states have laws that prohibit the retaliatory termination of workers who file workers' compensation claims. The employee generally must show the termination was a result of filing the workers' compensation claim, but whether the claims must be the direct cause or simply a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

## 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 mangle, 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.

This sample document is only an example and is based on the laws in effect at the time it was written. MRA-The Management Association, Inc. does not make any representations or warranties regarding the appropriateness or prudence of using this information for any particular individual or situation. Your company should add, delete, or modify the content of this document as needed to suit your purposes. This material is for your information only and should not be construed as legal advice. In some circumstances it may be advisable to have legal counsel review final documents prior to implementation.


© MRA – The Management Association, Inc.



Employers must also tread carefully with employees who have returned from leave, but who still have workers' compensation claims pending. Particular care should be taken to ensure any discipline or employment actions taken with regard to such employees are appropriate and well-documented—and are not related to the pending claim.

Terminating an employee who is receiving workers' compensation benefits is rarely a good idea. Terminating a poor performer in this way as a substitute for good disciplinary practices is certainly not a good idea. Performance issues should be handled when the employee has returned to work. Because of the risks involved, employers should consult with their attorneys before taking any employment action against an employee on workers' compensation leave.

### MRA's HR Hotline can help you!

 866-HR-Hotline | 866.474.6854

 [InfoNow@mranet.org](mailto:InfoNow@mranet.org)

 [mranet.org/24-7/hr-hotline](http://mranet.org/24-7/hr-hotline)

# As one of the largest nonprofit employer associations in the nation, MRA:

**Serves 4,000 employers**

covering one million employees worldwide.

Holds more than **2,000 Training** events annually.

**200 HR experts**

with more than 2,000 years of collective knowledge, experience and expertise.

Offers more than **1,000 HR Guides** templates, toolkits, and more.

HR SERVICES



LEARNING & ORGANIZATION DEVELOPMENT



TALENT MANAGEMENT



TOTAL REWARDS



## MRA is Your TotalHR® Resource.

MRA helps you create powerful teams and a safe, successful workplace with talent, tools, and training.



Wisconsin

Minnesota

Illinois

Iowa

[www.mranet.org](http://www.mranet.org) 800.488.4845