

# Utah High Court Says Injured Employees Fired for WC Benefits Can Sue Employers

By Lauren Scholnick, Esq.

In 2002, we received a call from Marilyn Touchard, a former safety manager at the La-Z-Boy plant in Tremonton. She explained that La-Z-Boy had begun a vicious campaign against any employee that seeks workers' compensation benefits. La-Z-Boy was systematically: 1) denying surgeries and other medical treatment for its injured workers, claiming that the injuries were insignificant; 2) refusing to pay workers' compensation benefits in a timely manner; 3) forcing workers assigned light-duty to do demeaning tasks which violated their work restrictions; and 4) firing employees who indicate they will seek benefits or who remained on workers' compensation for more than 120 days.

Several factors seemed to be driving La-Z-Boy's campaign against its injured employees. First, La-Z-Boy was self-insured under the workers' compensation system. By delaying treatment and benefits for its employees and then firing them, it not only kept its workers' compensation costs down for those receiving benefits but also intimidated those injured on the job from even filing for benefits. Second, the company is one of the biggest employers in the area and had many long-term employees who performed repetitive tasks (like lifting heavy La-Z-Boy furniture frames and stapling upholstery onto those frames) over many hours and many years. Due to this repetitive stress, many employees had severe injuries that required surgeries and ongoing physical therapy. Although Ms. Touchard made many suggestions to management about how La-Z-Boy could make small and inexpensive changes to the operations to limit the injuries to its workers, La-Z-Boy either

refused to make those changes or, after making the changes, reverted back to its old practices.

After our investigation, we filed suit on behalf of seven injured employees and Ms. Touchard who was fired after advocating for changes that would limit injuries, encouraging employees to report their on-the-job injuries, and assisting hurt employees in filing for their workers' compensa-

**One factor was the company's intimidating injured employees from filing for benefits.**

tion. But we had a significant legal hurdle to get over before we could make this claim stick against La-Z-Boy: Utah had never before allowed a wrongful termination claim by an employee who was fired for filing for workers' compensation. In order to win the case, we had to establish new law in Utah.

Most employment laws, like the ones that prohibit workplace discrimination or that provide for overtime pay, include non-retaliation provisions which prevent an employer from firing an employee who asserts a claim or complains internally about an illegal employment practice. However, the Utah Workers' Compensation Act does not have such a non-retaliation provision. But, Utah does have a tort claim for wrongful termination in violation of public policy. So, we filed the lawsuit, asserted this wrongful termination claim, and asked the Utah Supreme Court to approve the claim under Utah law. At the time we briefed the case to the high court, 42 states and the District of

Columbia had said that employers could not fire someone just for filing for workers' compensation benefits. Only 2 states (Georgia and Mississippi) had rejected this type of retaliation claim.

On November 17, 2006, the Utah Supreme Court agreed with us and said that all employees in Utah who are fired (or who treated so badly that they have no choice but to quit) simply for trying to get their benefits under the Utah Workers' Compensation Act can sue their former employers, making Utah the 43rd state to recognize the claim.

While this is a great victory, not only for our former La-Z-Boy employees, but for every Utah employee injured at work, it does not mean that every termination of someone on workers' compensation is a valid case. It is a tall order to prove that the employer fired the employee for trying to get benefits, which is illegal, and not because the employee can no longer do their job due to an on-the-job injury, which is not. Factors that any lawyer will look at to determine whether there is a valid claim under this new law include: 1) comments made by supervisors regarding benefits; 2) pattern of harassment or firing of others who have claimed benefits; 3) pattern of delaying treatment of injured workers; 4) increases in an employer's workers compensation premiums; 5) policies requiring quick return to work times; 6) dissuading or intimidating employees from filing; 7) injured employees ability to work either at his/her usual job or on light-duty; and 8) close timing of report of injury to the termination date. While none of these factors are necessary to a claim, the more the better – it makes it easier to show that the employer wanted to fire workers who file for workers' comp!

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I have discussed the minority opinion for several reasons. First, both the majority and minority opinions are not that far apart as is evidenced by the close vote. However, the majority voices its concern that a defendant may not be punished for an injury it caused to a plaintiff without first providing the defendant his day in court. The court expressed its fear that to allow punishment for numerous non-parties would add a limitless multiplier to the damages calculation. The Court adds that it discovered no legal authority that would permit the punishment of a defendant for harming others.

Secondly, it is unfortunate that Mrs. Williams will not be compensated for defendant's reprehensible behavior any time in the near future.

Finally, given the close 5-4 decision, and the fact that the case has been sent back to Oregon for further proceedings, the state Supreme court must now consider the meaning of the highest court's ruling. If it happens that the supreme court reinstates the verdict, look for Philip Morris to appeal again to try to make the supreme court address the question of possible excessiveness of the punitive damages award. But will they?

Stay tuned for Part III.



***“Punitive damages are a sanction for the public harm the defendant's conduct has caused or threatened.”***