

Ohio High Court Eases Employee Requirement to Notify Employer of Workers' Comp Retaliatory Discharge Claim

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The Ohio Supreme Court has recognized a limited exception to the state's general rule that a discharged employee must notify his former employer within 90 days of termination of the employee's intent to file a retaliatory discharge lawsuit under Ohio's workers' compensation act (R.C. 4123.90). Resolving a conflict among the state's appellate courts, it held that courts may delay the running of the 90-day notification period if the employee did not know that he had been discharged "within a reasonable time" after the employment action. *Lawrence v. Youngstown*, Slip Opinion No. 2012-Ohio-4247 (Sept. 20, 2012). The case now returns to the lower court for further proceedings.

Background

Keith Lawrence was a City of Youngstown employee when he was suspended from his job duties, without pay, on January 7, 2007. On January 9, 2007, the City placed a notice in Lawrence's personnel file indicating he had been terminated. The file also contained a copy of a letter to Lawrence dated January 9, 2007, stating that he had been terminated as of that date. The letter indicated it was sent to Lawrence, to certain City offices and departments and to Lawrence's union. The letter was not sent to Lawrence by certified mail or given to him in person. Lawrence denied receiving the January 9 letter and asserted he did not learn of the termination until February 19, 2007.

Lawrence's attorney sent the City a letter on April 17, 2007, notifying it of Lawrence's intent to file suit alleging his termination was retaliation for his having filed workers' compensation claims while employed with the City.

Notice Requirement

Under Ohio's workers' compensation act (R.C. 4123.90), an employer is prohibited from discharging or taking any other adverse employment action against an employee because the employee filed a claim or participated in a proceeding under the act.

The law also provides that no retaliation claim may be maintained unless the employer receives written notice of the alleged violation of the statute from the employee within 90 days immediately following the discharge.

Lower Courts: Notice Untimely

Granting summary judgment to the City, the trial court ruled that the 90-day notification period began to run on January 9, 2007, and ended on April 9, 2007. Therefore, it held Lawrence's notification of his intent to sue was eight days late and untimely. The appellate court agreed with the trial court and affirmed the ruling. However, it also certified that its decision on the issue was in conflict with other appellate courts.

Limited Exception

A majority of the Ohio Supreme Court adopted a limited exception to the 90-day employer-notice provision that would be "in keeping with the statute's purpose." Writing for the majority, Justice Robert R. Cupp noted that a

general provision of the workers' compensation statute (R.C. 4123.95) demands that the law "shall be liberally construed in favor of employees."

Justice Cupp wrote:

R.C. 4123.90, when viewed in conjunction with R.C. 4123.95 and read in *pari materia* [together], places *an implicit affirmative responsibility on an employer* to provide its employee notice of the employee's discharge within a reasonable time after the discharge occurs in order to avoid impeding the discharged employee's 90-day notification obligation under R.C. 4123.90. [Emphasis added.] A reasonable time for an employer to inform an employee of a discharge is an inquiry dependent on the facts of each situation. A delay of several days would not prevent the 90-day period for the employer to receive notification from the employee from commencing to run on the discharge date.

Thus, as long as the employer communicated the discharge to the employee (e.g., by personal notification, hand delivery of notice, or a certified letter) within a reasonable time, the 90-day period still would begin to run on the actual discharge date.

Explaining the law "anticipates the employee's awareness of the employee's discharge," the Court held that a limited exception to the general 90-day rule for employer notice would be "in keeping with the statute's purpose." Justice Cupp continued, "[P]rerequisites for this exception are that an employee does not become aware of the fact of his discharge within a reasonable time after the discharge occurs and could not have learned of the discharge within a reasonable time in the exercise of due diligence. When those prerequisites are met, the 90-day time period for the employer to receive written notice of the employee's claim that the discharge violated R.C. 4123.90 commences on the earlier of the date that the employee becomes aware of the discharge or the date the employee should have become aware of the discharge."

In *Lawrence*, the employer could not prove Lawrence was notified of his termination within a reasonable time. Therefore, the Court held the letter alleging retaliatory discharge from Lawrence's attorney to the employer was timely.

Justice Judith Ann Lanzinger, joined by Justice Paul E. Pfeifer, concurred in the majority's judgment, but wrote that no "limited exception" is necessary. If the Court adopted the "knew or should have known" standard, they explained, the 90-day period would not begin to run until the former employee knew or should have known of the discharge.

Justice Terrence O'Donnell dissented, finding the majority and concurring opinions "stretch far to perform the work of the General Assembly..." He said a plain reading of the statute would call for upholding summary judgment for the employer.

Jackson Lewis attorneys are available to answer questions about this decision and other workplace developments.

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