

## **Fired for Claiming Workers' Compensation Benefits? You May Have a Claim for Wrongful Discharge.**

If you have been fired in retaliation for seeking or receiving workers' compensation benefits you may be able to sue your employer. Most states have statutes that allow an employee to go to court, or at least have a judicial hearing, when fired for simply asserting their rights under workers' compensation laws. In the states that do not have a statute prohibiting retaliatory behavior and that allow an employee to sue many courts have recognized that, even in the absence of a statute, an employee has this right.

When the employee has the right to challenge their termination of employment there are certain elements they must show in order to prevail.

### **Typical factors considered in a claim of wrongful discharge**

- You were an employee within the meaning of your state's worker's compensation laws
- You exercised rights under your states workers compensation laws
- You were discharged from employment
- You were fired either solely because you exercised your rights under workers compensation, or your exercise of rights under workers' compensation was a significant factor in the firing

Factors considered vary by state. In many states that require workers compensation to be a significant factor in an employment action, courts ask whether the employer's action was rooted "substantially or significantly in the exercise of right under workers' compensation laws."

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