

**PRACTICE FOCUS:
EMPLOYMENT LAW**

Attorney Justin Parafinczuk warns that workers' compensation claims are expensive enough on their own. Managers who harass or retaliate against an injured employee to save the business from a claim are only setting the business up for a costly retaliation lawsuit. [A8](#)



Fighting a workers' comp claim could cost an employer

Commentary by Justin Parafinczuk

From minor slip and falls to more dramatic burns and injuries, on the job accidents happen daily.



Parafinczuk

Almost every business has had an employee injured on the job. While the incidence may be higher in construction and other similar fields, injuries happen everywhere.

Once an employee is injured on the job, the employer typically reports the injury to its workers' compensation insurance

carrier. From there, the employee is either provided worker's compensation benefits or the claim is denied. But what is also important — and very sensitive — is how the employer treats the injured worker throughout this process and after.

PROTECTION

Florida Statute 44.205 is one of the most straightforward laws on the books, and one which all employers and employees should be aware of. The statute provides that "no employer shall discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the workers' compensation law."

Stated in even more plain terms, it forbids an employer from taking retaliatory action when an employee files, or tries to file a workers' compensation claim. This statute has very broad language and casts a wide net over the conduct of employers. Further, the statute gives the employee the right to file a separate lawsuit, outside of his or her workers' compensation claim, in circuit court.

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And this statute affects employers of all kind. In Miami-Dade and Broward County alone, more than 6,800 workers' compensation cases were filed in 2012. Statewide, the numbers are staggering: more than 65,000 claims were filed across all industry sectors in 2012. In 2011, more than \$1.15 billion dollars in claims benefits were filed.

Unfortunately, some employers are not aware that this statute exists. This lack of knowledge can lead to employers exposing themselves to further liability, in addition to the pending workers' compensation claim.

Managers have fired employees after they file worker's compensation claims. Some harass and show abusive behavior toward an injured employee in order to force them to abandon the claim or quit. Managers often may feel that they are doing what is in the business' best interest by preventing a workers' compensation claim, but they are only opening up the company to a retaliation claim.

CONSEQUENCES

The consequences may be costly. If the employee is able to prove, through documentation or testimony, that he or she was terminated merely for the filing of a workers' compensation claim, or was coerced as a result, the ramifications are substantial. The employee may be entitled to past lost wages, future lost wages, emotional damages and punitive damages.

In an effort to avoid retaliation claims, employers should do, at a minimum three things. First, educate management regarding the statute and inform managers that injured employees should never be treated differently from other employees. Next, if there is any way to accommodate the injured employee's work restrictions, all efforts should be made to do so. And finally, if the employer decides to terminate the employee, be sure that there is a valid, documented reason for the termination. The more informed all levels of management are regarding the treatment of injured workers, the fewer workers' compensation retaliation claims businesses will have. Savvy business owners should realize that a workers' compensation claim in and of itself is costly and that should not be compounded by retaliatory conduct.

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