

# Can I FIRE the Bum?

An employee has recently come back from a work related injury leave. The employee was never a good employee to begin with and we want to fire him. How long do we have to wait to fire him?

As a Subscriber: (You have Workers' Compensation)

Texas law does not require employers to retain an employee merely because a workers' compensation claim has been filed. Under the employment-at-will doctrine, absent an employment agreement, employers are free to terminate employees for a good reason, a bad (but not unlawful) reason, or for no reason at all. However, even though an employer has the right to discharge an under-performing employee, an employer can nonetheless be faced with a wrongful termination lawsuit. An employer faces potential litigation when it terminates an employee that is on workers' compensation leave, or who recently returned from such leave.

Chapter 451 of Texas' Labor Code, provides an employee who has been terminated or otherwise discriminated against with a potential cause of action if his discharge or treatment was related to the prosecution in good-faith of a workers' compensation claim. (You fired him/her because he/she filed a claim, he/she can sue you). Chapter 451 also protects employees who have been constructively discharged, i.e., where an employer makes conditions so intolerable that the employee feels compelled to resign.

Although there are no laws that expressly prohibit employers from terminating employees who are, or have been, on workers' compensation leave, employers must have proper documentation to support the decision to discharge. Even if there is ample documentation that supports an employer's decision to discharge an employee, employers should balance the desire to discharge the employee near the time of the workers' compensation leave with the potential of the employee filing a retaliatory discharge lawsuit. Merely because an employer has the right to terminate an employee does not mean that it is necessarily the proper business decision. Accordingly, it is recommended that any decision to terminate an employee who is, or has been on workers' compensation leave, be made in consultation with the Human Resources Department and/or Legal counsel.

(Hey – I left out the information about all the cases cited by Mr. Londa. I am NOT a lawyer. If you want all that information go look up the article or look up Mr. Londa. Thanks, Ed)

Excerpts from an article written by Jeff Londa of Ogletree, Deakins, Nash, Smoak & Stewart P.C.. Published in the March 2003 Texas Business Report of the Texas Association of Business.

As a Non-Subscriber: (You don't have Workers' Compensation)