

Ohio Supreme Court Delays Start of 90-Day Notice Period For Some Employees Claiming Workers' Compensation Retaliatory Discharge

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A Human Resources E-Alert

Under R.C. 4123.90, an Ohio employee has a 90-day period to give his or her employer a written notice of a workers' compensation retaliatory discharge claim. According to the statute, the 90-day period begins to run immediately following the employee's "discharge." In [Lawrence v. Youngstown](#), the Ohio Supreme Court recently created a narrow exception to this statutory period. As a result, employers should reconsider how they notify employees of their discharge, especially in a situation where the employee is not working at the time of the discharge.

When the city of Youngstown discharged Keith Lawrence, Lawrence's personnel file contained a discharge letter that indicated the letter had been sent to him, various city offices and departments, and to his union. Lawrence denied receiving the letter and claimed that he did not learn of his discharge until almost six weeks after the date of discharge. Lawrence notified the city of his claim within 90 days of the date that he became aware of the discharge but not within 90 days of the date of discharge. The Court examined whether the 90-day period under R.C. 4123.90 begins to run on the effective date of discharge or on the date the employee receives notice of the discharge.

The Court held that generally, the 90-day period must be counted from the actual discharge date. This general rule applies when an employer provides reasonably prompt notice of a discharge to an employee or when an employer does not communicate the discharge to the employee within a reasonable time, but the employee nonetheless knows, or should have known, of his discharge within a reasonable time in the exercise of due diligence.

However, the Court created a narrow exception to this rule. When an employee: (1) does not become aware of his or her discharge within a reasonable time after the discharge occurred and (2) could not have learned of his or her discharge within a reasonable time in the exercise of due diligence, then the 90-day period commences on "the date that the employee becomes aware of the discharge or the date the employee should have become aware of the discharge," whichever is earlier.

As a best practice, employers that reasonably anticipate a workers' compensation retaliatory discharge claim should be prepared to demonstrate reasonably prompt notice of discharge. We recommend that such notice be provided to the employee in person, by certified mail, or by some other form of delivery that can be tracked.

Authors
