



Code of Alabama [Currentness](#)

Title 25. Industrial Relations and Labor.

[Chapter 5](#). Workers' Compensation. ([Refs & Annos](#))

[Article 1](#). . General Provisions.

→ **§ 25-5-11. 1. Employee not to be terminated solely for action to recover benefits nor for filing notice of safety rule violation.**

No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter or solely because the employee has filed a written notice of violation of a safety rule pursuant to [subdivision \(c\)\(4\) of Section 25-5-11](#).

CREDIT(S)

(Acts 1984, 2nd Ex. Sess., No. 85-41, p. 44, § 11.)

HISTORY

Code Commissioner's Notes

Acts 1984, 2nd Ex. Sess., No. 85-41, § 14 provides: "This act shall become effective immediately upon its passage and approval by the governor [January 9, 1985], or upon its otherwise becoming a law, provided it shall have no effect whatsoever with respect to the right of any injured employee to bring an action with respect to or upon any cause of action which arose or accrued prior to February 1, 1985. Provided further, it shall have no effect on and shall not apply to any accident or exposure to injurious condition occurring before the effective date of this Act."

LIBRARY REFERENCES

American Digest System:

[Labor and Employment](#) [799](#), [805](#).

Law Review Articles:

[The Supreme Court, the Americans with Disabilities Act, and rational discrimination](#). *55 Ala.L.Rev.* 923 (2004).

RESEARCH REFERENCES

ALR Library

[139 ALR, Federal 331](#), When Does Period for Filing Petition for Removal of Civil Action from State Court to Federal District Court Begin to Run Under [28 U.S.C.A. § 1446\(B\)](#).

[36 ALR 6th 203](#), What Constitutes Activity of Private-Sector Employee Protected Under State Whistleblower Pro-

tection Statute Covering Employee's "Report," "Disclosure," "Notification," or the Like of Wrongdoing.

[10 ALR 6th 531](#), What Constitutes Activity of Employee Protected Under State Whistleblower Protection Statute Covering Employee's "Report," "Disclosure," "Notification," or the Like of Wrongdoing--Sufficiency of Report.

[99 ALR 5th 65](#), Judicial Estoppel in Civil Action Arising from Representation or Conduct in Prior Administrative Proceeding.

[86 ALR 5th 397](#), Excessiveness or Adequacy of Damages for Wrongful Termination of At-Will Employee Under State Law.

[32 ALR 4th 1221](#), Recovery for Discharge from Employment in Retaliation for Filing Workers' Compensation Claim.

Encyclopedias

[50 Am. Jur. Proof of Facts 2d 187](#), Discharge from Employment in Retaliation for Filing Workers' Compensation Claim.

Forms

[Alabama Workers' Comp with Forms § 2:8](#), Employee's Action for Wrongful Termination.

[Alabama Workers' Comp with Forms § 6:3](#), Preexisting Causes or Conditions and Subsequent Conduct or Events.

[Alabama Workers' Comp with Forms § 11:2](#), Offenses and Penalties.

Treatises and Practice Aids

[Alabama Law of Damages § 21:1](#), Wrongful Discharge.

[Alabama Law of Damages § 21:10](#), Workers' Compensation Benefits, Injury Required.

[Alabama Law of Damages § 21:14](#), Workers' Compensation Benefits, Retaliatory Discharge.

[Alabama Pattern Jury Instructions Civil, 2d 41.06](#), Retaliatory Discharge.

[Alabama Pattern Jury Instructions Civil, 2d 41.07](#), Action Against Employer for Termination Solely Because the Employee Has Filed a Notice of Violation of a Safety Rule Based on Alabama Code S25-5-11.1.

[Alabama Pattern Jury Instructions Civil, 2d 41.08](#), Wrongful Termination--Constructive Discharge.

[Alabama Personal Injury and Torts § 3:24](#), Immunity--Sovereign Immunity.

[Alabama Personal Injury and Torts § 3:27](#), Releases.

[Alabama Personal Injury and Torts § 11:16](#), State Workers' Compensation Laws--Miscellaneous.

[Alabama Personal Injury and Torts § 11:19](#), Wrongful Termination--Workers' Compensation--Retaliation for Filing

Claims or Reporting Safety Violation.

[Alabama Personal Injury and Torts § 15:29](#), Pleadings--Relation Back of Amendment.

[Alabama Personal Injury and Torts § 16:50](#), Punitive Damages--Amount of Award--Wrongful Termination.

[Alabama Workers' Compensation § 16:42](#), Back Pay.

[Alabama Workers' Compensation § 20:31](#), The Emergence of the Retaliatory Discharge Statute.

[Alabama Workers' Compensation § 20:32](#), Acts Triggering Coverage.

[Alabama Workers' Compensation § 20:33](#), Conduct Prohibited--Termination.

[Alabama Workers' Compensation § 20:36](#), Burden of Proof of Retaliatory Discharge.

[Alabama Workers' Compensation § 20:37](#), The Prima Facie Case of Retaliatory Discharge.

[Alabama Workers' Compensation § 20:39](#), Termination for Employee Deficiencies.

[Alabama Workers' Compensation § 20:41](#), Termination Due to Inability to Perform Work.

[Alabama Workers' Compensation § 20:42](#), Termination for Employee Misconduct.

[Alabama Workers' Compensation § 20:43](#), Termination for Economic Reasons.

[Alabama Workers' Compensation § 20:45](#), Contradictory Evidence.

[Alabama Workers' Compensation § 20:46](#), Evidence of Retaliatory Intent.

[Alabama Workers' Compensation § 20:47](#), Differences Between Workers' Compensation Claims and Retaliatory Discharge Claims--Retaliatory Discharge Action as Tort Action.

[Alabama Workers' Compensation § 20:48](#), Whether Retaliatory Discharge Action Arises Under the Workers' Compensation Laws.

[Alabama Workers' Compensation § 20:49](#), Whether a Release of Claims Arising Under the Workers' Compensation Laws Applies to a Retaliatory Discharge Claim.

[Alabama Workers' Compensation § 20:50](#), Whether the Workers' Compensation Exclusion Applies to Retaliatory Discharge Actions.

[Alabama Workers' Compensation § 20:51](#), Whether a Retaliatory Discharge Action Arises Under the Workers' Compensation Laws Under the Federal Nonremoval Statute.


[Alabama Workers' Compensation § 20:52](#), Procedural Differences Between Retaliatory Discharge Action and Claim for Workers' Compensation.


[Alabama Workers' Compensation § 20:47.50](#), Parties to Retaliatory Discharge Actions.


CASENOTES



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[1](#). Generally

Proximity between the injury and discharge is not sufficient, by itself, to succeed on a retaliation claim under Alabama workers' compensation statute. [Bradford v. Rent-A-Center East, Inc., 346 F.Supp.2d 1203 \(M.D.Ala.2004\)](#), motion to amend denied , motion to amend denied [2004 WL 3203993](#). [Labor And Employment](#) 810

Company is not liable for workers' compensation retaliatory discharge when it terminates worker based on neutral application of attendance policy. [Walker v. DCH Regional Medical Center, 853 So.2d 221 \(Ala.Civ.App.2002\)](#), certiorari denied. [Labor And Employment](#) 806

An employee may lawfully be discharged from his employment, with or without cause or justification, for a good reason, a bad reason, or no reason at all. [Bailey v. R.E. Garrison Trucking Co., 834 So.2d 122 \(Ala.Civ.App.2002\)](#). [Labor And Employment](#) 40(2)

General rule under Alabama law is that employee may be discharged from his employment, with or without cause or justification, for a good reason, a wrong reason, or no reason at all; workers' compensation statute prohibiting employer from terminating employee for filing workers' compensation claim provides exception to general rule. [Golson v. Montgomery Coca-Cola Bottling Co., Ltd., 680 So.2d 304 \(Ala.Civ.App.1996\)](#). [Labor And Employment](#) 40(2); [Labor And Employment](#) 806

An employment contract is generally terminable at will by either party, with or without cause or justification -- for a good reason, a wrong reason, or no reason at all. However, with regard to dismissals based on the filing of worker's compensation claims, the Legislature has carved out an exception to this general rule. [Culbreth v. Woodham Plumbing](#)

[Co., Inc., 599 So.2d 1120 \(Ala.1992\).](#)


2. Legislative intent


This section was enacted to offset the harsh effects of the employment-at-will doctrine. [Morgan v. Northeast Alabama Regional Medical Center, 624 So.2d 560 \(Ala.1993\).](#)


This section was clearly designed to prohibit employers from terminating employees in retaliation for their decision to file a claim for worker's compensation benefits. In order for the beneficent goals of the worker's compensation chapter to be realized, the employee must be able to exercise his right to be compensated for work-related injuries in an unfettered fashion without being subject to reprisal. [McClain v. Birmingham Coca-Cola Bottling Co., 578 So.2d 1299 \(Ala.1991\).](#)

The Legislature's choice of the word "action" in this section was not intended to restrict the cause of action to cases where the employee is terminated in retaliation for his decision to file a lawsuit, as opposed to merely filing a claim, to recover worker's compensation benefits. Viewed pragmatically, such a literal interpretation of this section would not only encourage some employers to terminate injured employees who file claims for worker's compensation benefits, but it would also effectively discourage employees from ever filing a claim in the first place. Such an interpretation also would be unreasonable because it would obviously circumvent the purpose behind this section and ultimately deprive it of any meaningful effect. [McClain v. Birmingham Coca-Cola Bottling Co., 578 So.2d 1299 \(Ala.1991\).](#)

3. Construction


Workers' compensation retaliatory discharge statute does not require an employer to create a job specifically designed for an injured employee and does not require an employer to provide the employee with special accommodations to allow the employee to perform a job. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied. [Labor And Employment](#) 806


Workers' compensation statute's prohibition against retaliatory discharge did not apply to employee who did not seek workers' compensation benefits in Alabama, but who sought benefits in another state; statute specifies that employee shall not be terminated solely because employee sought benefits under "this chapter" and such language could not be ignored. [Scott Bridge Co. v. Wright, 883 So.2d 1221 \(Ala.2003\).](#) [Labor And Employment](#) 808


Statute providing that no employee may be terminated by employer solely because employee has instituted or maintained any action against employer to recover workers' compensation benefits was enacted in order to ameliorate effect of employment-at-will doctrine in context of employee discharged for filing claim for workers' compensation benefits. [Walker v. DCH Regional Medical Center, 853 So.2d 221 \(Ala.Civ.App.2002\)](#), certiorari denied. [Labor And Employment](#) 806


Because this was remedial legislation, intended to prevent an employee's termination solely because the employee had instituted or maintained an action against the employer to recover worker's compensation benefits, this section would be construed liberally to effect its purposes. [Twilley v. Daubert Coated Products, Inc., 536 So.2d 1364 \(Ala.1988\).](#)


4. Applicability


Parent corporation was not liable for its subsidiary's alleged retaliatory discharge and intentional trespass to subsidiary's employee for filing workers' compensation claim for work-related injury, given that parent did not use subsidiary as its alter ego. [Ford v. Carylton Corp., Inc., 937 So.2d 491 \(Ala.2006\).](#) [Corporations](#) 1.6(13)

If a company is engaged in a bona fide reduction in workforce, and if an employee who has previously filed a workers' compensation claim is subject to being laid off as part of that reduction in workforce, and if that employee is separated from active employment and then recalled to active employment in accordance with the company's layoff policy, then that employee has suffered no injury as a result of his filing a claim for workers' compensation benefits and, thus, may not recover for retaliatory discharge. [Webb Wheel Products, Inc. v. Hanvey, 922 So.2d 865 \(Ala.2005\)](#), rehearing denied. [Labor And Employment](#) 810


Statute providing that no employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits does not require the formal commencement of a specific form of civil action, i.e., one seeking the recovery of workers' compensation benefits, as a prerequisite to recovery for retaliatory discharge. [Hexcel Decatur, Inc. v. Vickers, 908 So.2d 237 \(Ala.2005\)](#). [Labor And Employment](#) 808

Although state statute immunized municipality from liability for intentional torts, municipality was not immune from employee's claim that he was wrongfully terminated in retaliation for filing workers' compensation claim, since statute immunizing state from liability was general statute relating to general topic, while provisions of Workers Compensation Act extending protection to municipal employees were specific statutes relating to specific subjects. [Dollar v. City of Ashford, 677 So.2d 769 \(Ala.Civ.App.1995\)](#), rehearing denied, certiorari denied. [Municipal Corporations](#) 218(10)


Fact that company terminated worker before she filed her claim for workers' compensation benefits does not comport with the necessary requirement for establishing retaliatory discharge claim; that is, worker filed workers' compensation claim and because she sought workers' compensation benefits, she was dismissed from her employment. [Allen v. Albrecht Enterprises, Inc., 675 So.2d 425 \(Ala.Civ.App.1995\)](#), rehearing denied, certiorari denied [675 So.2d 428](#). [Labor And Employment](#) 810

Former employee could not recover from former coemployees for claim of discharge in retaliation for filing workers' compensation claim. [Clark v. Liberty Mut. Ins. Co., 673 So.2d 395 \(Ala.1995\)](#), rehearing denied. [Labor And Employment](#) 857

5. Relation to other laws

Claim of retaliatory discharge for filing workers' compensation claim under Alabama law "arose under" workers' compensation law and was barred from removal to district court by federal statute expressly making state workers' compensation claims nonremovable. [Lackey v. Gateway Homes, Inc., 944 F.Supp. 870 \(N.D.Ala.1996\)](#). [Removal Of Cases](#) 3

Federal Occupational Safety and Health Act does not preempt Alabama statute forbidding termination of employee solely because employee has filed written notice of safety rule violation, as statute falls within OSHA's saving clause, [29 U.S.C.A. § 653\(b\)\(4\)](#). [Phillips v. General Elec. Co., 881 F.Supp. 1553 \(M.D.Ala.1995\)](#).

Workers' Compensation Act did not provide for a retaliatory-discharge cause of action for wife of temporary-employment agency employee who filed a workers' compensation claim, and thus wife could not maintain her retaliatory-discharge claim as being made pursuant to the Workers' Compensation Act, but under a theory derived from the Americans with Disabilities Act. [Chambers v. Advanced Processing Systems, 853 So.2d 984 \(Ala.Civ.App.2002\)](#). [Labor And Employment](#) 857

Former employee failed to state claim upon which relief could be granted against employer under Workers' Compensation Act provision, pursuant to section providing mechanism for employees to report violation of employer's specific written safety rule by coemployee in order to preserve possible future cause of action against coemployee for

injury resulting from violation of safety rules by coemployee; employee was hired by employer to act as security, fire and safety watch officer at corporation and employee's reporting of safety violations at corporation was merely performance of job duties and was not type of situation anticipated by provision. [Maro v. Sizemore Sec. Intern., Inc., 678 So.2d 1127 \(Ala.Civ.App.1996\)](#).

While employee's "Requested Jury Charge No. 1" may have been a correct statement of Texas law, which prohibits the discharge of, or discrimination against, an employee because the employee had filed a workers' compensation case in good faith, it was not a proper charge under Alabama law, which prohibits an employer from terminating an employee solely because the employee has instituted or maintained an action against the employer to recover worker's compensation benefits. [Chesser v. Mid-South Electrics, Inc., 652 So.2d 240 \(Ala.1994\)](#). [Workers' Compensation](#) 1728

Retaliatory discharge claim made by an employee, who claimed she was discharged for filing a worker's compensation claim, was in the nature of a traditional tort, albeit one that was applied in the specialized circumstances of a worker's compensation claim, and thus did not arise "under" workers' compensation law for purposes of the general liability insurance provision. [Jackson County Hosp. v. Alabama Hosp. Ass'n Trust, 619 So.2d 1369 \(Ala.1993\)](#). [Insurance](#) 2278(12); [Workers' Compensation](#) 2088

Because Alabama's Workers' Compensation Act and Alabama statute prohibiting discharge for service on empaneled jury are both retaliatory-discharge statutes with similar statutory language, Alabama case law interprets those statutes interchangeably. [Boutwell v. Federal Mogul Corp., 2009, 342 Fed.Appx. 541, 2009 WL 2518475](#), Unreported. [Labor and Employment](#) 753

Former employee's cause of action, claiming retaliatory discharge for filing a claim under the Alabama Workmen's Compensation Act, arose under the Act, and thus, [28 U.S.C.A. § 1445\(c\)](#) barred defendants from removing it to federal court. [Pettaway v. Wayne Poultry Co., a Div. of Continental Grain Co., 791 F.Supp. 290 \(M.D.Ala.1992\)](#).

6. "Termination"

Employee who was separated from his employment after suffering work-related back injury was not "terminated" and, thus, was precluded from recovering under retaliatory discharge provision of the Workers' Compensation Act, where employer was engaged in bona fide reduction in workforce resulting from a slowdown in business at the time employee returned to work, employee's seniority and job position made him subject to layoff, and employee, after being separated from employment, was subsequently recalled from layoff in accordance with employer's layoff policy. [Webb Wheel Products, Inc. v. Hanvey, 922 So.2d 865 \(Ala.2005\)](#), rehearing denied. [Labor And Employment](#) 810

An employee is "terminated" for purposes of a workers' compensation retaliatory discharge claim if he or she is either fired or constructively discharged. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied. [Labor And Employment](#) 806

Former employee was collaterally estopped by decision in her unemployment compensation claim from relitigating issue of whether she was terminated from her employment in order to establish prima facie case of retaliatory discharge; administrative finding in former employee's unemployment compensation claim, that worker had voluntarily quit her employment, was necessary to administrative decision on retaliatory discharge claim, in that it necessarily determined that former employee was not terminated, and proving that former employee had been terminated was indispensable element of retaliatory discharge. [Avery v. Beverly Health & Rehabilitation Services, Inc., 902 So.2d 704 \(Ala.Civ.App.2004\)](#), certiorari denied. [Unemployment Compensation](#) 301

Former employee established elements of retaliatory-discharge in claim employee brought against employer alleging

that it had terminated her employment in retaliation for her filing workers' compensation claim; employee was employed by employer, employee suffered on-the-job injury, employer was given notice of injury, and by virtue of letter employer sent to employee stating she was eligible for rehire and could reapply if opening occurred that, no employment relationship existed since employee could not return to her previous position upon being released from doctor's care. [Mercy Medical v. Gray, 864 So.2d 354 \(Ala.Civ.App.2002\)](#), opinion after remand, certiorari denied. [Labor And Employment ¶807](#)

An employee is "terminated," within the meaning of the statute forbidding the termination of an employee solely because he sought workers' compensation benefits, if he is either fired or constructively discharged. [Ex parte Breitsprecher, 772 So.2d 1125 \(Ala.2000\)](#), on remand [772 So.2d 1131](#). [Labor And Employment ¶806](#)

Employee failed to establish retaliatory discharge for obtaining workers' compensation benefits, absent substantial evidence of termination or constructive termination of employee; although employer told employee that his temporary light-duty job had been eliminated, employer continued to provide medical coverage, offered cash settlement if employee would resign, and later offered him another light-duty position which employee refused to take. [Hammock v. Ryder Dedicated Logistics, Inc., 716 So.2d 215 \(Ala.Civ.App.1998\)](#). [Labor And Employment ¶825](#); [Labor And Employment ¶826](#)

Employee was not terminated when he was escorted off his employer's premises after being informed that he could not work until he obtained and presented doctor's prescription for back brace he was wearing, and, thus, he could not bring retaliatory discharge claim for filing workers' compensation claim, where employer continued to cover him on its employees' group health insurance policy, to pay for his insurance, and to list him as employee until he announced that he would not return to work. [Kent Corp. v. Hale, 699 So.2d 954 \(Ala.1997\)](#). [Labor And Employment ¶825](#)

Employee's belief that someone was threatening her, thus making her afraid, and her reaction to co-workers' comments that she was being fired when she knew that co-workers were joking were unreasonable and were insufficient to be considered a constructive discharge, for purposes of workers' compensation retaliatory discharge claim. [Haygood v. Wesfam Restaurants, Inc., 675 So.2d 1312 \(Ala.Civ.App.1996\)](#). [Labor And Employment ¶826](#)

Employee was not terminated by employer, and thus could not maintain action for termination in retaliation for seeking workers' compensation benefits; employer continued to offer employee employment on "as needed" basis and guaranteed her at least 40 hours per week, employee testified that her refusal to return to work was due to medical problems unrelated to workers' compensation claim, and employee refused first full-time position that became available. [Troup v. Springhill Memorial Hosp., 671 So.2d 721 \(Ala.Civ.App.1995\)](#), rehearing denied. [Labor And Employment ¶825](#)

Employee was not constructively terminated by employer when she returned to work on "as needed" basis following injury, and she thus could not maintain action for termination in retaliation for seeking workers' compensation benefits; employee suffered no reduction in salary, whether she would have suffered detriment as result of change in fringe benefits was speculative, she was not required to relocate or to change her job duties, and she admitted that she was not treated badly or mistreated after returning to work. [Troup v. Springhill Memorial Hosp., 671 So.2d 721 \(Ala.Civ.App.1995\)](#), rehearing denied. [Labor And Employment ¶826](#)

Employee-at-will of a private employer, suffered no loss of employment that could reasonably be construed as a partial termination of employment, so as to trigger application of this section. [White v. Midtown Restaurant Corp., 632 So.2d 1330 \(Ala.1994\)](#).

The word "termination" in this section is broad enough to include a "constructive termination." [Twilley v. Daubert Coated Products, Inc., 536 So.2d 1364 \(Ala.1988\)](#).

6.5. “Instituted or maintained any action”

Workers' compensation statute providing cause of action for retaliatory discharge, which statute prohibits discharge solely because the employee “has instituted or maintained” any action against the employer to recover workers' compensation benefits, contemplates that a workers' compensation claim has been filed before the employee is discharged; it is insufficient that the employee is discharged in anticipation of filing a workers' compensation claim. [Falls v. JVC America, Inc., 7 So.3d 986 \(Ala.2008\)](#), rehearing denied. [Labor and Employment](#) 808

7. “Constructive discharge”

In order for an employee to establish a claim of “constructive discharge” in a workers' compensation retaliatory discharge action, he or she must present substantial evidence that his or her employer deliberately made the employee's working conditions so intolerable that the employee was forced into an involuntary resignation. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied. [Labor And Employment](#) 826

Employee injured in mine explosion was not “constructively discharged” for seeking workers' compensation benefits and thus did not have a retaliatory discharge claim, where employee never resigned, job was still available to employee if employee's physicians released him to work underground again, employee continued to be covered by employer's health-insurance program, and employee continued to receive vacation and holiday pay. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied. [Labor And Employment](#) 826

Temporary-employment agency employee was not constructively terminated from his employment with agency's client in retaliation for filing a workers' compensation claim, following an injury at client's workplace; employee sought workers' compensation benefits only from agency and did not file a claim seeking to recover benefits from agency's client, and failure to file a claim against client precluded employee from suing the client on the basis of a retaliatory discharge, as filing such a claim was an essential element of a retaliatory-discharge cause of action. [Chambers v. Advanced Processing Systems, 853 So.2d 984 \(Ala.Civ.App.2002\)](#). [Labor And Employment](#) 808

8. Ability or willingness to work

Farm truck driver failed to establish requisite element of retaliatory discharge claim against farm, absent any evidence that she was willing and able to return to work at time of alleged termination; farm had presented evidence of workers' compensation complaint stating worker was totally and permanently disabled, and interrogatory responses stating her back injury resulted in inability to lift, bend, stoop, climb, walk significant distances, or sit for prolonged periods. [Mowrey v. J & L Farms, Inc., 25 F.Supp.2d 1340 \(M.D.Ala.1998\)](#). [Labor And Employment](#) 807

The willing-and-able to return to work doctrine does not establish an element of a workers' compensation claimant's prima facie case of retaliatory discharge, but the question whether the claimant is willing and able to return to work is relevant to the employer's opportunity to establish a defense to a claim alleging retaliatory discharge or to eliminate or reduce the damages recoverable for lost wages. [Bleier v. Wellington Sears Co., 757 So.2d 1163 \(Ala.2000\)](#). [Labor And Employment](#) 806; [Labor And Employment](#) 862; [Labor And Employment](#) 871

Genuine issue of material fact existed as to whether former employee could have performed necessary and essential function of her job after recovering from work-related injury had she not been terminated, precluding summary judgment in retaliatory discharge action brought by former employee against former employer. [Morell v. Tennessee Valley Press, Inc., 752 So.2d 493 \(Ala.Civ.App.1998\)](#), rehearing denied, certiorari quashed. [Judgment](#) 181(21)

Employee terminated after suffering work-related injury could not prove that he was willing and able to return to work, as required to establish retaliatory discharge claim against employer; before employee was terminated, his doctors told him he had reached maximum medical improvement and that his condition would continue indefinitely, and employee testified after his termination that he was still physically unable to do any job for employer. [Chapman v. Boise Cascade Corp., 726 So.2d 729 \(Ala.Civ.App.1999\)](#). [Labor And Employment](#) 807

Former employee, who was unable to return to her former position due to her total disability, was estopped and barred from proving that she was willing and able to return to work as essential element of her retaliatory discharge claim, where employee had applied for and received long term disability benefits, Social Security disability benefits and workers' compensation disability benefits. [Alexander v. Pace Industries, Inc., 710 So.2d 450 \(Ala.Civ.App.1997\)](#), rehearing denied, certiorari denied. [Social Security And Public Welfare](#) 142.20; [Workers' Compensation](#) 1791

Evidence of inability to return to her job following her work-related injury precluded workers' compensation claimant from maintaining retaliatory discharge claim against employer. [Bailey v. Walker Regional Medical Center, 709 So.2d 35 \(Ala.Civ.App.1997\)](#).

Injured employee who was terminated when he did not return to work after one year leave of absence failed to show that he was willing and able to return to his employment as essential element of his retaliatory discharge action alleging that he was terminated for filing workers' compensation claim, where claimant testified that he was unable to return to his former position due to physician's restrictions when he was terminated. [Rice v. Bruno's Inc., 705 So.2d 486 \(Ala.Civ.App.1997\)](#). [Labor And Employment](#) 807

Claimant's application for social security disability benefits, in which she alleged under oath that she was permanently and totally disabled, negated required element of retaliatory discharge claim that claimant was willing and able to return to work, precluding her retaliatory discharge action against employer. [Whatwood v. White Consol. Industries, Inc., 699 So.2d 210 \(Ala.Civ.App.1997\)](#). [Labor And Employment](#) 807


In retaliatory discharge action, evidence that former employee had successfully applied for Social Security disability benefits based on his claim that he was unable to work negated former employee's claim that he could perform necessary functions of his job at time of his alleged constructive discharge, and therefore former employee failed to establish necessary element of claim that he was discharged in retaliation for filing workers' compensation claim. [Consolidated Stores Inc. v. Gargis, 686 So.2d 268 \(Ala.Civ.App.1996\)](#), rehearing denied, certiorari denied [686 So.2d 278](#). [Labor And Employment](#) 807

9. Release of claims

General release agreements signed in settlement of workers' compensation claims preclude retaliatory discharge claims which are filed because of perceived backlash in reaction to filing a workers' compensation claim, and the retaliatory discharge claim can be justifiably deemed to have arisen from the same injury because, but for the workers' compensation claim, the retaliatory discharge claim would not have been filed. [Brown v. B and D Plastics, Inc., 873 F.Supp. 1511 \(M.D.Ala.1994\)](#).

Employee's action for wrongful discharge filed after the employee released employer from all claims arising out of Worker's Compensation Act was barred by the release; there was no allegation of fraud and no evidence of fraud, and therefore, the settlement of the employee's claim under the Workers' Compensation Act was conclusive of any other claims she might have had except for future medical benefits claim which she had expressly reserved. [Ex parte Aratex Services, Inc., 622 So.2d 367 \(Ala.1993\)](#), on remand [622 So.2d 369](#).

10. Notice

Former employee established elements of retaliatory-discharge in claim employee brought against employer alleging that it had terminated her employment in retaliation for her filing workers' compensation claim; employee was employed by employer, employee suffered on-the-job injury, employer was given notice of injury, and by virtue of letter employer sent to employee stating she was eligible for rehire and could reapply if opening occurred that, no employment relationship existed since employee could not return to her previous position upon being released from doctor's care. [Mercy Medical v. Gray, 864 So.2d 354 \(Ala.Civ.App.2002\)](#), opinion after remand, certiorari denied. [Labor And Employment](#) 807

Evidence supported finding of retaliatory discharge where employer had not given injured employee notice of its policy of terminating employees following exhaustion of nine month medical leave of absence, had not adhered to policy by requiring employee to fill out forms necessary to obtain leave, had not warned employee that she had been placed on medical leave or that her employment might be terminated at its conclusion, and had continued her employment, despite its policy, for eight months after her leave expired, until she sought workers' compensation benefits. [Gold Kist, Inc. v. Griffin, 657 So.2d 826 \(Ala.1994\)](#), rehearing denied.


Requirement of notice of a safety violation pursuant to this section does not incorporate all the strict requirements of § 25-5-11(c)(4). [Morgan v. Northeast Alabama Regional Medical Center, 624 So.2d 560 \(Ala.1993\)](#).


Where employee's written complaint to Occupational Safety and Health Administration (OSHA) prompted OSHA to investigate employer's facilities, and where OSHA provided employer with a written copy of the formal complaint, although it appears that OSHA may not have informed employer of who filed the complaint, this written complaint that was submitted to employer, together with the evidence of the repeated oral complaints by employee was sufficient evidence of notice to the employee defendants to invoke the protection of § 25-5-11. 1. [Morgan v. Northeast Alabama Regional Medical Center, 624 So.2d 560 \(Ala.1993\)](#).

11. Removal


Action brought under section creating claim for retaliatory discharge is nonremoveable. [Subra v. CMS Therapies, 900 F.Supp. 407 \(M.D. Ala.1995\)](#).


Employee's action under Alabama statute barring retaliation by employer for filing workers' compensation claims arose under Alabama's workers' compensation laws, and removal of action to federal court thus was barred by federal jurisdictional statute; Alabama statute, which increased employees' willingness to file workers' compensation claims and thus encouraged prompt and thorough medical attention to workplace injuries, was integral to Alabama's workers' compensation scheme. [Reed v. Heil Co., 2000, 206 F.3d 1055](#).

Employee's action under Alabama's retaliatory discharge statute alleging that employer discharged him for filing a workers' compensation claim was an action "arising under" state workers' compensation laws, and therefore, action could not be removed to federal court. [Brooks v. Wireless One, Inc., 43 F.Supp.2d 1294 \(M.D.Ala.1999\)](#). [Removal Of Cases](#) 3


Claim for retaliatory discharge under Alabama statute prohibiting employers from terminating employees for claiming workers' compensation benefits "arises under" Alabama's workers' compensation laws and, therefore, is not removable to federal court; Alabama's workers' compensation laws created cause of action for retaliatory discharge, as retaliatory discharge statute would not exist without general workers' compensation scheme. [Lewis v. Rhodes, Inc., 968 F.Supp. 633 \(N.D.Ala.1997\)](#). [Removal Of Cases](#) 3

The 30-day period for employer to remove employee's claims to federal court began to run on day employee amended her workers' compensation claim to add tort claims of outrageous conduct and retaliatory discharge, rather than later

date on which state court severed workers' compensation claim from tort claims. [Cashman v. Waffle House Co., Inc., 951 F.Supp. 1012 \(M.D.Ala.1997\)](#). [Removal Of Cases](#) 79(1)


Claim that employee was discharged in retaliation for filing workers' compensation claim arose under Alabama law, and thus claim could not be removed to district court. [New v. Sports & Recreation, Inc., 947 F.Supp. 453 \(S.D.Ala.1996\)](#), dismissed [114 F.3d 1092](#). [Removal Of Cases](#) 3


Action involving retaliatory discharge under § 25-5-11. 1 is not barred from removal to federal court by statute prohibiting removal of cases involving state workmen's compensation laws, since retaliation statute does not arise under state's workmen's compensation laws, as evidenced by statutory allowance of general tort damages and customary view that claims under workmen's compensation laws typically involve occupational diseases and accidental injuries. [Moreland v. Gold Kist, Inc., 908 F.Supp. 898 \(N.D.Ala.1995\)](#).


Employer waived right to arbitrate claim of unlawful termination based on violation of workers' compensation statute, where employer responded to employee's claim by removing case to federal court, parties' attorneys formulated discovery plan to govern litigation in federal court, two months later employer first advised employee of its intention to seek enforcement of arbitration agreement instead of going to trial, and thereafter, more than 4 1/2 months after action was initiated, employer filed its answer pleading as affirmative defense for first time that cause of action was barred by arbitration agreement. [Ex parte Hood, 712 So.2d 341 \(Ala.1998\)](#). [Workers' Compensation](#) 1731


Plaintiff's claim for relief or cause of action for retaliatory discharge "arises under" Alabama's Workmen's Compensation Act and is therefore barred by federal statute from removal to federal court. [Kilpatrick v. Martin K. Eby Const. Co., Inc., 708 F.Supp. 1241 \(N.D.Ala.1989\)](#).

12. Prima facie case

Under Alabama law, former employee alleging that he was terminated for recovering workers' compensation benefits must establish prima facie case of retaliatory discharge by proving: (1) employment relationship, (2) on-the-job injury, (3) knowledge on part of employer of on-the-job injury, and (4) subsequent termination of employment based solely upon employee's on-the-job injury and filing of workers' compensation claim. [Smith v. CPI, Corp., 417 F.Supp.2d 1253 \(M.D.Ala.2006\)](#). [Labor And Employment](#) 806

In order to establish a prima-facie case of actionable retaliation under Alabama workers' compensation statute, employee must show: (1) an employment relationship, (2) an on-the-job injury, (3) knowledge on the part of the employer of the on-the-job injury, and (4) subsequent termination of employment based solely upon the employee's on-the-job injury and the filing of a workers' compensation claim. [Bradford v. Rent-A-Center East, Inc., 346 F.Supp.2d 1203 \(M.D.Ala.2004\)](#), motion to amend denied , motion to amend denied [2004 WL 3203993](#). [Labor And Employment](#) 806

An employee who has not been discharged, either actually or constructively, has failed to present a prima facie case of retaliatory discharge for maintaining a workers' compensation benefit action, and the employer would be entitled to a judgment as a matter of law (JML) on that claim. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied , certiorari denied. [Labor And Employment](#) 806

In order to establish a prima facie case of retaliatory discharge for filing a workers' compensation claim, the plaintiff must present substantial evidence that he was terminated solely for seeking workers' compensation benefits. [Wal-Mart Stores, Inc. v. Hepp, 882 So.2d 329 \(Ala.2003\)](#). [Labor And Employment](#) 806

Former employee failed to establish a prima facie case of retaliatory discharge under the Workers' Compensation Act

based on her complaints of poor working conditions and harassment by co-employees, where employee did not leave job under duress, but, according to her own testimony, employee's supervisor, not her employer in general, fired her, and there was no evidence indicating that employee's supervisor had knowledge of employee's workers' compensation claim, which was concluded some 20 months before date of her termination. [Tyson Foods, Inc. v. McCollum](#), 881 So.2d 976 (Ala.2003), rehearing denied. [Labor And Employment](#) 809

A plaintiff must prove a causal connection between the workers' compensation claim and the subsequent discharge in order to establish a prima facie case of retaliatory discharge. [Alabama Power Co. v. Aldridge](#), 854 So.2d 554 (Ala.2002), rehearing denied. [Labor And Employment](#) 810

The trial court, when faced with an employer's motion for a summary judgment in an action involving a retaliatory-discharge claim, must determine if the employee established a prima facie case of retaliatory discharge. [Carter v. Marc Steel Co., Inc.](#), 828 So.2d 929 (Ala.Civ.App.2001), rehearing denied. [Judgment](#) 185.3(13)

In deciding whether to enter a summary judgment against employee in a retaliatory-discharge case, trial court should view all evidence in light most favorable to employee and ask whether employee has shown: (1) an employment relationship; (2) an on-the-job injury; (3) notice to employer of on-the-job injury; and (4) subsequent termination of employment, for employee who presents substantial evidence of all four elements has established a prima facie case of retaliatory discharge. [Dunn v. Comcast Corp.](#), 781 So.2d 940 (Ala.2000), rehearing denied. [Judgment](#) 185(2); [Labor And Employment](#) 806

Worker alleging retaliatory discharge can establish prima facie case by showing that he filed workers' compensation claim for on-the-job injury; that his injury prevented him from working for a period of time; and that when he returned from work he was informed that he no longer had a job. [Carroll v. A.J. Gerrard & Co.](#), 684 So.2d 128 (Ala.Civ.App.1995), rehearing denied, certiorari dismissed. [Labor And Employment](#) 806


Former employee presented prima facie case of retaliatory discharge, where he presented evidence that he filed workers' compensation claim and was out of work for a period of time, and when he returned to work he was told that his employment was terminated. [Beaulieu of America, Inc. v. Kilgore](#), 680 So.2d 288 (Ala.Civ.App.1996). [Labor And Employment](#) 807


Employee's discharge was not in retaliation for filing a workers' compensation claim but was for violating attendance policies set out in the collective bargaining agreement. The employer presented sufficient evidence to make a prima facie showing that the employee was terminated for a legitimate reason, and the employee failed to rebut that showing by presenting sufficient evidence that the employer's reason was a mere pretext for an otherwise impermissible termination. [Smith v. Dunlop Tire Corp.](#), 663 So.2d 914 (Ala.1995), rehearing denied.


Employee did not establish prima facie case of retaliatory discharge when she showed that her employment was terminated after she filed workers' compensation claim because evidence also showed that she had left her job without authorization before her shift ended and that employer had policy that any employee leaving job without authorization was subject to termination. [Terry v. Lee Apparel Co., Inc.](#), 656 So.2d 811 (Ala.Civ.App.1994), rehearing denied, certiorari denied.


Plaintiff's affidavit established a prima facie case of retaliatory discharge where he filed a worker's compensation claim for a work-related injury; the injury prevented him from working from November 2, 1989, to November 15, 1989; he subsequently returned to work; and upon his return he was informed that he no longer had a job. [Culbreth v. Woodham Plumbing Co., Inc.](#), 599 So.2d 1120 (Ala.1992). [Labor And Employment](#) 807


13. Business reason for termination


Under Alabama law, employer's stated basis for discharging employee is sufficient as matter of law to rebut presumption that discharge was in retaliation for employee's receipt of workers' compensation benefits when underlying facts surrounding stated basis for discharge are undisputed and there is no substantial evidence indicating that: (1) stated basis has been applied in discriminatory manner to employees who have filed workers' compensation claims, (2) stated basis conflicts with express company policy on grounds for discharge, or (3) employer has disavowed stated reason or has otherwise acknowledged its pretextual status. [Smith v. CPI, Corp., 417 F.Supp.2d 1253 \(M.D.Ala.2006\)](#). [Labor And Employment](#) 861


Employee's satisfactory evaluations of his job performance were irrelevant to his claim for retaliatory discharge for filing workers' compensation claim because employee's alleged dishonesty in asking physician to back-date work-release slip for him, not poor job performance, was the basis employer relied upon for terminating employee. [Coca-Cola Bottling Co. Consol. v. Hollander, 885 So.2d 125 \(Ala.2003\)](#), rehearing overruled [2004 WL 179354](#). [Labor And Employment](#) 862

Former employer fired former employee for insubordination, not in retaliation for filing workers' compensation claim, and thus former employee could not maintain retaliatory discharge action, where former employee received certified letter from former employer requiring him to return to work on certain date, and former employee did not return to work on that date or inform former employer that he was in the hospital for tests on that date. [Carter v. Marc Steel Co., Inc., 828 So.2d 929 \(Ala.Civ.App.2001\)](#), rehearing denied. [Labor And Employment](#) 809

Evidence supported verdict that employer impermissibly terminated workers' compensation claimant in retaliation for filing claim, despite explanation that claimant was terminated for having unexplained absences for two consecutive days in violation of employer's policy; claimant testified that she had told employer about her appointment with physical therapist and her continued symptoms, and employer's handbook only required that absences be reported and explained, not that the explanation meet any particular guidelines. [Syncro Corp. v. Suttles, 814 So.2d 873 \(Ala.Civ.App.2000\)](#), certiorari quashed. [Labor And Employment](#) 863(2)

Evidence did not support allegation that claimant was terminated in retaliation for filing workers' compensation claim; claimant was laid off along with rest of work crew in accordance with typical reduction in force, only the union had power to refer claimant for employment by employer after he was laid off, and union did not refer claimant back to employer. [G.U.B.MK. Constructors v. Carson, 812 So.2d 1175 \(Ala.2001\)](#), rehearing denied. [Labor And Employment](#) 863(2)

Former employee, who did not show up for work on date he was supposed to after his suspension and did not contact employer during suspension, failed to establish that he was discharged from employment in retaliation for filing claim for workers' compensation benefits, and thus former employee could not maintain retaliatory discharge action against former employer; former employer presented evidence that he terminated employee because of his attitude, his sloppiness, his failure to keep clean workplace, his "dragging" around on the job, his disregard for certain safety rules, and his tardiness, and former employee presented no evidence that employer made overt statements to employee regarding his injury. [Turner v. Shorty's Truck and Railroad Car Parts, Inc., 723 So.2d 1279 \(Ala.Civ.App.1998\)](#). [Labor And Employment](#) 810

Issues of material fact existed as to whether employee made threats to destroy employer's building and trucks, precluding summary judgment as to whether employer had legitimate reason to terminate employee, in employee's action for wrongful discharge in retaliation for seeking workers' compensation benefits. [Bird v. Nail Air Freight, Inc., 690 So.2d 1216 \(Ala.Civ.App.1996\)](#), rehearing denied, certiorari denied [690 So.2d 1219](#). [Judgment](#) 181(21)

Worker failed to establish that he was terminated in retaliation for filing workers' compensation claim against employer; employer had at least six previous opportunities to terminate worker for filing workers' compensation claims

yet chose not to, worker's disqualification/termination was in his best interest as it would prevent him from reinjuring himself, and if employer had acted otherwise, it would have demonstrated almost total lack of concern for worker's safety. [Noble v. AAA Plumbing Pottery Corp., 677 So.2d 765 \(Ala.Civ.App.1995\)](#), rehearing denied , certiorari denied. [Labor And Employment](#) 807

Former worker in grocery deli presented substantial evidence that company discharged her for filing worker's compensation claim, thus precluding grant of directed verdict or judgment n.o.v. for company in worker's retaliatory discharge suit, though company maintained that worker was never fired but simply failed to return to position, and that worker was not rehired because of business decision to reduce number of deli employees, where worker testified that comanager of store told her the company had fired her, and where she presented evidence that deli had same number of employees after she was injured, and that she frequently asked to be rehired but company, instead of hiring her, posted a "help wanted" sign. [S & D Griner, Inc. v. Colwell, 671 So.2d 690 \(Ala.Civ.App.1995\)](#), rehearing denied , certiorari denied. [Labor And Employment](#) 863(2)

Former employee did not establish she was terminated in retaliation for filing workers' compensation claim against employer; evidence indicated that employee's termination was caused by employer's reduction in staff and that it was unrelated to workers' compensation claim, and employee presented no evidence to rebut employer's prima facie showing that it discharged her for reason unrelated to claim. [Yates v. U.S. Fidelity & Guar. Ins. Co., 670 So.2d 908 \(Ala.1995\)](#). [Labor And Employment](#) 810

Employee failed to show that she was terminated for filing a worker's compensation claim. Record showed that employee had failed to adequately do the job to which she was assigned and that when she was going to be given another job she voluntarily left her employment; nothing in the record indicates that any of the warnings given to the employee were meritless and were given solely to induce her to leave. [Keystone Foods Corp. v. Meeks, 662 So.2d 235 \(Ala.1995\)](#), rehearing denied.

Employee established that his firing was in retaliation for filing a workers' compensation claim where the employee rebutted evidence that firing was for other reasons by showing that the reasons given by the employer were a mere pretext and that the employer implemented a plan to create infractions in order to justify the termination. [Heil Co. v. Crowley, 659 So.2d 105 \(Ala.1995\)](#).

Employee's discharge was not on account of his filing workers' compensation claim where there was evidence that superior responsible for termination was not aware of claim and that employee was terminated for poor work performance and excessive absences. [Beaulieu of America, Inc. v. Dunn, 658 So.2d 454 \(Ala.Civ.App.1994\)](#), rehearing denied , certiorari quashed.

Evidence was not sufficient to demonstrate that employee had suffered retaliatory discharge where she established prima facie case that she had been fired for seeking workers' compensation, employer then presented evidence that she had instead been fired due to reduction in available work and her request for flexible hours and full time position and employee had failed to offer evidence creating genuine issue of material fact as to whether reasons offered by employer were simply pretext for impermissible termination. [Bullion v. JMBL, Inc., 657 So.2d 834 \(Ala.1995\)](#).

The bare fact that the only three helpers who filed workers' compensation claims were the ones selected for termination was not enough evidence to rebut employer's proffered business reasons for their termination. [Rickard v. Shoals Distributing, Inc., 645 So.2d 1378 \(Ala.1994\)](#), rehearing denied. [Labor And Employment](#) 863(2)

Under Alabama Workers' Compensation Act, "pretext" may be shown by presenting evidence indicating that (a) stated basis has been applied in discriminatory manner to employees who have filed workers' compensation claims, (b) stated basis conflicts with express company policy on grounds for discharge, or (c) employer has disavowed stated reason or has otherwise acknowledged its pretextual status. [Boutwell v. Federal Mogul Corp., 2009, 342 Fed.Appx.](#)

[541, 2009 WL 2518475](#), Unreported. [Labor and Employment](#) 809

13.5. Affirmative defenses

Employer's defense against retaliatory discharge claim, that it had fired workers' compensation claimant for leaving work after a purported compensable accident without first seeking medical attention in violation of a supervisor's instructions and employer's policy, was not an affirmative defense, and thus, employer could not challenge trial court's striking of the defense through a petition for writ of mandamus. [Ex parte Gadsden Country Club, 14 So.3d 830 \(Ala.2009\)](#). [Labor and Employment](#) 855; [Mandamus](#) 53

14. Burden of proof

Plaintiff claiming wrongful termination because he or she sought workers' compensation benefits must first establish prima facie case by showing that he or she was fired for that reason; defendant must then provide evidence of legitimate reason for discharge, and plaintiff must then show that reason was pretextual. [Williams v. Harco Drugs, Inc., 896 F.Supp. 1150 \(S.D.Ala.1994\)](#), affirmed [107 F.3d 25](#). [Labor And Employment](#) 861

Employee failed to prove a prima facie case of retaliatory discharge, even though employer had knowledge of employee's on-the-job injury, where employee failed to provide evidence that he had filed a workers' compensation claim. [Phillips v. Sentinel Consumer Products, Inc., 945 So.2d 450 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied [945 So.2d 457](#). [Labor And Employment](#) 808

Plaintiff must prove a causal connection between workers' compensation claim and the subsequent discharge in order to establish a prima facie case of retaliatory discharge. [Webb Wheel Products, Inc. v. Hanvey, 922 So.2d 865 \(Ala.2005\)](#), rehearing denied. [Labor And Employment](#) 810

In order for an employee to establish a prima facie case of retaliatory discharge for maintaining a workers' compensation benefit action the employee must show: (1) an employment relationship; (2) an on-the-job injury; (3) knowledge on the part of the employer of the on-the-job injury; and (4) subsequent termination of employment based solely upon the employee's on-the-job injury and the filing of a workers' compensation claim. [Jim Walter Resources, Inc. v. Riles, 920 So.2d 1093 \(Ala.Civ.App.2004\)](#), rehearing denied, certiorari denied. [Labor And Employment](#) 806



In order to establish a prima facie case for retaliatory discharge based on filing of workers' compensation claim, the plaintiff must demonstrate, by substantial evidence, a direct and distinct causal link between one having knowledge of the plaintiff's workers' compensation claim and the termination. [Coca-Cola Bottling Co. Consol. v. Hollander, 885 So.2d 125 \(Ala.2003\)](#), rehearing overruled [2004 WL 179354](#). [Labor And Employment](#) 861

An employee, for purposes of a retaliatory discharge claim, has the burden of presenting sufficient evidence indicating that employee was discharged because he or she filed a claim for workers' compensation benefits, but if there is uncontradicted evidence of an independently sufficient basis for the discharge, then the employer is entitled to a judgment as a matter of law. [Alabama Power Co. v. Aldridge, 854 So.2d 554 \(Ala.2002\)](#), rehearing denied. [Labor And Employment](#) 806; [Labor And Employment](#) 861


In action for retaliatory discharge based on employee's claim for workers' compensation benefits, employer met its burden of supporting its assertion that employee was terminated for a legitimate reason, which then required employee to produce rebuttal evidence showing that employer's given reason was a pretext; employer produced evidence that male employee sexually harassed female coworker, that his conduct violated company's sexual harassment policy, and that policy clearly stated that any offender could face termination. [Ex parte Usrey, 777 So.2d 66 \(Ala.2000\)](#), on remand [777 So.2d 78](#). [Labor And Employment](#) 863(2)


After the defendant has met his burden of coming forward with evidence of a legitimate reason for termination, the plaintiff then has the burden of going forward with rebuttal evidence showing that the defendant's stated reasons for terminating the plaintiff are not true. [Culbreth v. Woodham Plumbing Co., Inc., 599 So.2d 1120 \(Ala.1992\)](#).


Plaintiff does not have to “prove” that the employer's stated reason is not true unless the defendant's evidence is sufficiently certain, without more evidence from the plaintiff, to support a directed verdict. If the plaintiff's prima facie case is strong, and the defendant's evidence of an asserted reason is weak or equivocal, the jury might simply disbelieve the defendant. [Culbreth v. Woodham Plumbing Co., Inc., 599 So.2d 1120 \(Ala.1992\)](#).


An employee may establish a prima facie case of retaliatory discharge by proving that he was terminated because he sought to recover workmen's compensation benefits, which would be an impermissible reason. The burden would then shift to the defendant employer to come forward with evidence that the employee was terminated for a legitimate reason, whereupon the plaintiff would have to prove that the reason was not true but a pretext for an otherwise impermissible termination. [Twilley v. Daubert Coated Products, Inc., 536 So.2d 1364 \(Ala.1988\)](#). [Labor And Employment](#) 806; [Labor And Employment](#) 861

15. Sufficiency of evidence

Under Alabama law, former employee asserting that he was terminated in retaliation for receiving workers' compensation benefits may use circumstantial evidence to show causal link between workers' compensation claim and discharge. [Smith v. CPI, Corp., 417 F.Supp.2d 1253 \(M.D.Ala.2006\)](#). [Labor And Employment](#) 863(2)

Former employee failed to present substantial evidence that indicated he was terminated solely for filing a workers' compensation claim, after former employer presented evidence that established employee was terminated for using foul and inappropriate language in reference to a supervisory or managerial employee, and thus, former employer was entitled to judgment as a matter of law (JML) on former employee's retaliatory discharge claim. [Black Creek, Inc. v. Wood, 2009 WL 2343162 \(Ala.Civ.App.2009\)](#). [Labor and Employment](#) 810

Employee who alleged claim of retaliatory discharge failed to present substantial evidence indicating that employer's decision to discharge him was motivated solely by his filing a workers' compensation claim; employee was not discharged until seven months after he filed his workers' compensation claim, employer's stated reason for discharge was the expiration of employee's leave of absence, and the timing of the discharge and the assignment of maximum medical improvement (MMI) around the same date appeared to have been nothing but a coincidence. [Hatch v. NTW Inc., 2009 WL 1716967 \(Ala.Civ.App.2009\)](#). [Labor and Employment](#) 810

Former employee failed to present rebuttal evidence showing that former employers' stated reason for termination of his employment, which former employers claimed was based on former employee's refusal to drive a cement truck when he was asked to do so immediately before he was discharged, was pretextual and that the real reason for the termination of his employment was based solely on his injury and his having filed a worker's compensation claim, and, thus, former employers were entitled to judgment as a matter of law on former employee's retaliatory-discharge claim; former employee never disputed that he would not agree to resume driving a cement truck when given the ultimatum that he do so or be discharged. [Blue Circle Cement Inc. v. Phillips, 989 So.2d 1025 \(Ala.2007\)](#). [Labor and Employment](#) 809


Employee presented substantial evidence to refute employer's proffered legitimate reason for terminating his position several months after employee filed claim under Workers' Compensation Act, thus precluding summary judgment in favor of employer on employee's claim for retaliatory discharge; shop foreman testified that he did not follow company procedure when he terminated employee, and employee presented testimony of co-employee to show that employer intended to terminate employee's position after employee returned on a full-time basis. [Buzbee v. Alabama](#)

[Waste Services, Inc., 709 So.2d 61 \(Ala.Civ.App.1998\). Judgment](#)  [185.3\(13\)](#)

Evidence was sufficient to support verdict that the employee was constructively discharged by the employer in retaliation for filing a workers' compensation claim. Evidence was sufficient to show that employee's demotion and subsequent resignation were due to his filing a workers' compensation claim. [National Sec. Ins. Co. v. Donaldson, 664 So.2d 871 \(Ala.1995\)](#), rehearing denied.


Where the plaintiff's claim of retaliatory discharge constituted "other improper conduct" for which proof of the defendant's pattern and practice is admissible, there was no abuse of discretion in the trial court's permitting five pattern and practice witnesses to testify that they received worker's compensation and were subsequently terminated by employer. [Continental Eagle Corp. v. Mokrzycki, 611 So.2d 313 \(Ala.1992\)](#).


16. Summary judgment


Genuine issue of material fact existed regarding whether employer's reason for employee's discharge was a pretext for an impermissible termination of employment in retaliation for filing workers' compensation claim, precluding summary judgment in favor of employer on employee's claim under Alabama workers' compensation statute. [Bradford v. Rent-A-Center East, Inc., 346 F.Supp.2d 1203 \(M.D.Ala.2004\)](#), motion to amend denied, motion to amend denied [2004 WL 3203993. Federal Civil Procedure](#)  [2497.1](#)


Plaintiff alleging retaliatory discharge must debunk demonstration made by defendant seeking summary judgment that plaintiff was terminated for legitimate reason. [Williams v. Champion Intern. Corp., 899 F.Supp. 565 \(M.D.Ala.1995\)](#).


Employer of worker terminated for being unable to perform essential job duties after injury on job was entitled to summary judgment on worker's claim that he had been fired in retaliation for seeking to recover workers' compensation benefits. [Cheatwood v. Roanoke Industries, 891 F.Supp. 1528 \(N.D.Ala.1995\)](#).


Genuine issue of material fact existed regarding whether reason given by employer for employee's termination was pretext for an impermissible retaliatory discharge, precluding summary judgment in employee's retaliatory discharge claim; employee alleged employer fabricated series of poor work-performance reports in order to justify its termination of his employment in retaliation for his filing a claim based on his workplace injury, and employee denied his supervisors' allegations of poor work performance, and stated that he never received any prior warnings concerning his work performance. [Bailey v. R.E. Garrison Trucking Co., 834 So.2d 122 \(Ala.Civ.App.2002\). Judgment](#)  [185.3\(13\)](#)


When an employer makes a summary judgment motion and properly supports the motion with evidence of a legitimate reason for terminating an employee, the employee must present substantial evidence not only establishing a prima facie case of retaliatory discharge pursuant to the Workers' Compensation Act, but also showing that the employer's stated reason for termination was a pretext. [Wal-Mart Stores, Inc. v. Smitherman, 743 So.2d 442 \(Ala.1999\). Judgment](#)  [185\(5\)](#)

Evidence that grocery store retaliated against employee for seeking workers' compensation benefits, that reasons proffered by store for termination were pretextual, and that employee's "reassignment" from manager to cashier cost him both lost work hours and considerable income, precluded entry of summary judgment against employee on his retaliatory discharge claim based on constructive discharge, even though he was working consistent schedule when he resigned and had reached settlement of his workers' compensation claim. [Barlow v. Piggly Wiggly Dixieland, Inc., 680 So.2d 297 \(Ala.Civ.App.1996\). Judgment](#)  [185.3\(13\)](#)

Discharged employee presented substantial evidence creating genuine issue of material fact on whether reason offered by his employer for his termination was pretext for impermissible termination in retaliation for seeking workers' compensation benefits, thus precluding summary judgment for his employer. [Langford v. Tyson Foods, Inc., 678 So.2d 1124 \(Ala.Civ.App.1996\)](#). [Judgment](#)  185.3(13)


Where employer's proffered reasons for dismissing employee appeared to be unrelated to his filing of a workers' compensation claim, employee was required to respond to employer's motion for summary judgment, both 1) by presenting evidence establishing a prima facie case of retaliatory discharge and 2), because employer had made a showing of a legitimate reason that, if unrefuted, would entitle employer to a summary judgment, by presenting evidence refuting that reason. [Rickard v. Shoals Distributing, Inc., 645 So.2d 1378 \(Ala.1994\)](#), rehearing denied. [Judgment](#)  185.3(13)


Where employee was required to respond to employer's motion for summary judgment, employee presented a prima facie case of retaliatory discharge by his showing that he filed a workers' compensation claim, that his injuries prevented him from working for a period of time, and that upon his return to work he was informed that he no longer had a job. [Rickard v. Shoals Distributing, Inc., 645 So.2d 1378 \(Ala.1994\)](#), rehearing denied. [Labor And Employment](#)  807


To withstand a motion for summary judgment, a plaintiff claiming retaliatory discharge under § 25-5-11. 1 must present substantial evidence that he or she was terminated for seeking worker's compensation benefits, and that the reasons proffered by the employer for the termination are not true, but are a pretext for an otherwise impermissible termination. [Continental Eagle Corp. v. Mokrzycki, 611 So.2d 313 \(Ala.1992\)](#). [Judgment](#)  185(2)

In the context of summary judgment, if the defendant has supported a summary judgment motion with evidence of a legitimate reason for terminating the plaintiff, the plaintiff must then refute that showing with his own prima facie case; of course, the plaintiff has no burden to produce evidence before trial until the defendant has made and properly supported a motion for summary judgment. [Culbreth v. Woodham Plumbing Co., Inc., 599 So.2d 1120 \(Ala.1992\)](#).

17. Damages

Award of punitive damages to former employee was warranted in retaliatory discharge action; employee showed that before his injury he was a well liked, hard-working employee, who performed his job satisfactorily, and that after he returned to work, employer began to harass employee by creating intolerable work environment in order to force employee to voluntarily quit. [Montgomery Coca-Cola Bottling Co., Ltd. v. Golson, 725 So.2d 996, 86 A.L.R.5th 755 \(Ala.Civ.App.1998\)](#). [Labor And Employment](#)  870

High degree of reprehensibility of employer's conduct supported significant punitive award on employee's claim of wrongful termination, based on evidence that management employees threatened to terminate plaintiff if he did not fire his lawyer and drop his workers' compensation claim, that management acted on these threats, in concert, and with knowledge that they were violating the law, that company employees lied about and attempted to hide their actions, and that company managers were likely to attempt similar coercive conduct against other employees seeking workers' compensation. [Leak Stop, Inc. v. Keenon, 705 So.2d 479 \(Ala.Civ.App.1997\)](#). [Labor And Employment](#)  870

Although retaliatory discharge provision of Workers' Compensation Act does not expressly provide for damages as remedy for its violation, damages for such violation can be awarded in accordance with general law of torts. [Gates Rubber Co. v. Cantrell, 678 So.2d 754 \(Ala.1996\)](#). [Labor And Employment](#)  866

Award of \$40,000 for lost wages and mental anguish to employee who was discharged in retaliation for workers' compensation claim was not contrary to great weight of evidence, where employee did suffer some loss of wages and wanted to continue employment. [Motion Industries, Inc. v. Pate, 678 So.2d 724 \(Ala.1996\)](#). [Labor And Employment](#)

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Trial court properly submitted issue of punitive damages to jury in retaliatory discharge action in which worker alleged she was terminated for filing worker's compensation claim, where worker presented ample evidence that employer made conscious and deliberate efforts to mislead her about the availability of her former position. [S & D Griner, Inc. v. Colwell, 671 So.2d 690 \(Ala.Civ.App.1995\)](#), rehearing denied, certiorari denied. [Damages](#) 208(8)

Employee who has suffered retaliatory discharge is entitled to recover lost wages under Ala. § 25-5-11. 1 to extent that her damages had not already been compensated by workers' compensation where it appeared that she was still employable in some capacity at time of discharge. [Gold Kist, Inc. v. Griffin, 657 So.2d 826 \(Ala.1994\)](#), rehearing denied.

Punitive damages award of \$100,000 to employee due to retaliatory discharge was not excessive for there was evidence that employer acted with a wrongful intent when it fired her from her job. [Lozier Corp. v. Gray, 624 So.2d 1034 \(Ala.1993\)](#). [Labor And Employment](#) 870

Where employer contended that the jury's compensatory damages award was void and contrary to the law and evidence because the award was based on employee's wages lost as a result of his on-the-job injury rather than on his wages lost as a result of his alleged termination and where the record indicated, that even after his back surgery, employee could have worked for employer at the same rate of pay he was making before he injured his back, evidence supported an inference that employee's loss in earnings capacity was proximately caused by employer's wrongful termination. [Continental Eagle Corp. v. Mokrzycki, 611 So.2d 313 \(Ala.1992\)](#).

Where punitive damages award was less than compensatory damages award, \$100,000 punitive damages award was not excessive. [Continental Eagle Corp. v. Mokrzycki, 611 So.2d 313 \(Ala.1992\)](#).

Although this section omits specific reference to damages for violation of its provisions, damages can be awarded in accordance with the general law of torts. [Caraway v. Franklin Ferguson Mfg. Co., 507 So.2d 925 \(Ala.1987\)](#).

The absence from this section of a provision for damages is not a basis for dismissing a plaintiff's complaint for wrongful dismissal on the grounds that she has failed to state a claim upon which relief can be granted. The cause of action is clearly established by this section. [Caraway v. Franklin Ferguson Mfg. Co., 507 So.2d 925 \(Ala.1987\)](#).

18. Related proceedings

Worker's prior action against former employer for retaliatory discharge allegedly resulting from his pursuit of workers' compensation claim did not judicially estop worker from claiming in a subsequent action that the workers' compensation statute did not apply to give immunity to physician and clinic for allegedly breaching a contract of confidentiality in releasing his medical records to employer; worker did not take a position in present action that was inconsistent with his position in previous action. [Hollander v. Nichols, 19 So.3d 184 \(Ala.2009\)](#). [Estoppel](#) 68(2)

Former employee's retaliatory discharge claim against former employer following workers' compensation claim was barred by collateral estoppel due to unemployment-compensation benefits action in which it was determined misconduct was reason for termination; parties were same in benefits action, misconduct issue was issue litigated, referee in benefits action declared that termination was due to misconduct, which necessarily rejected wrongful-termination claim, and former employee had ample opportunity to litigate issue, including hearing with opportunity to present testimony and evidence. [Wal-Mart Stores, Inc. v. Hepp, 882 So.2d 329 \(Ala.2003\)](#). [Unemployment Compensation](#) 301

19. Practice and procedure

Claim former employee brought against employer alleging that it had terminated her employment in retaliation for her filing workers' compensation claim was not barred by doctrine of collateral estoppel, on grounds that basis for employee's discharge from employment had been determined in unemployment-compensation hearing before appeals referee; even though there was identity of parties, employer conceded that appeals referee did not consider retaliatory-discharge issue, and cause for employee's discharge was not determinative issue. [Mercy Medical v. Gray, 864 So.2d 354 \(Ala.Civ.App.2002\)](#), opinion after remand , certiorari denied. [Unemployment Compensation](#) 301

Material issue of fact as to whether employer discharged employee for filing workers' compensation claim precluded employer's motion for judgment as matter of law (JML). [Six v. Sunshine Homes, Inc., 765 So.2d 674 \(Ala.Civ.App.2000\)](#). [Judgment](#) 181(21)

In retaliatory discharge action in which employee alleged that he was fired for filing workers' compensation claim, employee is not required to show that he missed time from work as result of his injury. [Rothenberger v. Cast Products, Inc., 716 So.2d 1220 \(Ala.Civ.App.1997\)](#), rehearing denied , certiorari denied. [Labor And Employment](#) 806

In employee's action against employer for wrongful discharge in retaliation for filing workers' compensation claim, in which employee alleged that restaurant manager terminated her as result of being pressured to reduce workers' compensation costs, employee was entitled to discovery of manager's work performance evaluations, profit and loss statements issued to manager, and statements reflecting bonus payments to manager, where such requests were limited to time just before employee's injury through the present. [Ex parte Bean, 703 So.2d 329 \(Ala.1997\)](#). [Pretrial Procedure](#) 378

A complaint alleging retaliatory discharge does not relate back to the date of the filing of the original complaint for workers' compensation benefits. [ConAgra, Inc. v. Adams, 638 So.2d 752 \(Ala.1994\)](#), rehearing denied.

Even if trial court considered the verdict in injured employee's wrongful termination action while determining workmen's compensation claim, the error was harmless where there was ample evidence produced at trial which supported trial court's determination to deny employee's claim. [Watson v. Presbyterian Retirement Corp., 615 So.2d 624 \(Ala.Civ.App.1992\)](#), certiorari denied.

An action for wrongful termination is of a sort that has traditionally been tried to a jury, even though it may have arisen out of a workmen's compensation factual setting. [Twilley v. Daubert Coated Products, Inc., 536 So.2d 1364 \(Ala.1988\)](#).

20. Particular circumstances

Employer's termination of employee for subordination was not pretext for retaliation for employee's receipt of workers' compensation benefits, despite employee's contention that she had no reason to perform certain tasks because they were not her responsibility, where employee failed to identify any other employee who was insubordinate or underperformed, who did not seek workers' compensation benefits, and was not fired, insubordination was coded reason for termination on employer's personnel documents, employee was progressively disciplined, and employer did not change its story for termination. [Smith v. CPI, Corp., 417 F.Supp.2d 1253 \(M.D.Ala.2006\)](#). [Labor And Employment](#) 809

Employer's knowledge that employee is receiving care for injury and is seeking compensation from workers' compensation carrier is insufficient to support claim of retaliatory discharge under Alabama law; there must be some evidence that employee's workers' compensation claim motivated termination. [Knox v. Brundidge Shirt Corp., 942 F.Supp. 522 \(M.D.Ala.1996\)](#), affirmed [116 F.3d 1493](#). [Labor And Employment](#) 806

Temporary-employment agency employee's wife could not prevail on her retaliatory-discharge claim against agency, where wife was required to show that her employment with agency was terminated due to a filing against it for workers' compensation benefits, but employee, not wife, had filed such a claim. [Chambers v. Advanced Processing Systems, 853 So.2d 984 \(Ala.Civ.App.2002\)](#). [Labor And Employment](#) 857

Fact that employee handbook did not require doctor's excuse to substantiate absence that employee claimed was related to on-the-job injury was not substantial evidence that employer's termination of employee for unexcused absences was pretextual, as required to support workers' compensation retaliatory discharge claim, where employer required employees to supply doctor's excuse for any absence related to on-the-job injury. [Walker v. DCH Regional Medical Center, 853 So.2d 221 \(Ala.Civ.App.2002\)](#), certiorari denied. [Labor And Employment](#) 863(2)

Employer's failure to strictly follow its termination policy was not substantial evidence in workers' compensation retaliatory discharge action that employer's alleged termination of former employee for unexcused absences was pretext for impermissible termination; employer's leniency toward former employee by not suspending her until she had three unexcused absences, instead of after two, proved that employer was not attempting to terminate former employee, but was genuinely seeking to retain her services. [Walker v. DCH Regional Medical Center, 853 So.2d 221 \(Ala.Civ.App.2002\)](#), certiorari denied. [Labor And Employment](#) 863(2)

Evidence of an employee's continued employment despite the employee's violation of a stated company policy and termination of that employee's employment upon the violation only after the employee seeks workers' compensation benefits is proper evidence from which a jury can infer that the stated reason for termination was a mere pretext and that the employee was terminated for seeking workers' compensation benefits. [Gold Kist, Inc. v. Hood, 773 So.2d 1031 \(Ala.Civ.App.1999\)](#), rehearing denied. [Labor And Employment](#) 861; [Labor And Employment](#) 873

Employee presented substantial evidence so as to allow his workers' compensation retaliatory discharge claim to be submitted to jury; employer did not immediately state what it now claimed were its reasons for terminating employee, employer hired another worker even though it had said that it dismissed employee because of a lack of work, and employer's president was upset at having to pay employee workers' compensation benefits. [Waldrip Wrecker Service, Inc. v. Wallace, 758 So.2d 1110 \(Ala.Civ.App.1999\)](#), rehearing denied. [Labor And Employment](#) 873

Workers' compensation claimant was not discharged in retaliation for seeking workers' compensation benefits; claimant was not terminated in that he was offered other jobs by employer after he was prevented from working in certain areas due to health problems, and claimant presented no evidence that employer made his working conditions so intolerable that he was forced to resign. [Avondale Mills, Inc. v. Weldon, 680 So.2d 364 \(Ala.Civ.App.1996\)](#). [Labor And Employment](#) 825

Evidence that former employee would have been terminated after he was shot and had two and one-half month recuperation period was admissible to cut off his ability to recover lost wages in workers' compensation retaliation action; record did not establish that former employee would have been fired for being absent after he was shot, but rather, that underlying circumstances would have been considered. [Beaulieu of America, Inc. v. Kilgore, 680 So.2d 288 \(Ala.Civ.App.1996\)](#). [Labor And Employment](#) 862

Employee presented substantial evidence to refute employer's proffered legitimate reason for dismissing him. The only three helpers who filed workers' compensation claims were the ones selected for termination. In addition, employee stated in his affidavit that sometime in 1989 employer offered him a promotion to the position of swing driver. He also stated that in December 1989 he received an award as "route assistant of the year." He stated that when he returned to work after his medical leave in late May, he fully expected to become a swing driver. However, he was instead discharged. [Rickard v. Shoals Distributing, Inc., 645 So.2d 1378 \(Ala.1994\)](#), rehearing denied.

Although plaintiffs, who were employed as helpers at beer distributorship, presented prima facie cases of retaliatory discharge, the affidavit of employer set forth legitimate reasons for firing both workers; beer distributorship began plans to implement a new distributing plan, called the “peddle-upgrade system,” in lieu of its prior peddle system, and plaintiffs had been employed as helpers under the old peddle system, and their jobs involved riding with the driver of a beer truck and assisting the driver in loading and unloading beer from the truck, the drivers were paid partially on a commission basis and were responsible for selling the beer to the customers, and under the new peddle-upgrade system, the drivers would be assisted by merchandisers, who would travel ahead of the drivers and set up displays and otherwise make room for the beer, and this new system required fewer helpers, because the drivers would have more time to unload the beer. [Graham v. Shoals Distributing, Inc., 630 So.2d 417 \(Ala.1993\).](#)

Cited in [Hoffman-La Roche, Inc. v. Campbell, 512 So.2d 725 \(Ala.1987\)](#); [Irons v. Service Merchandise Co., 611 So.2d 294 \(Ala.1992\)](#); [Overton v. Amerex Corp., 642 So.2d 450 \(Ala.1994\)](#); [Provo v. Continental Eagle Corp., 650 So.2d 881 \(Ala.1994\)](#); [Wright v. Dothan Chrysler Plymouth Dodge, 658 So.2d 428, 129 Lab. Cas. \(CCH\) ¶ 57861 \(Ala.1995\)](#); [Musick v. Goodyear Tire & Rubber Co., 81 F.3d 136, 9 Fla. L. Weekly Fed. C 1047 \(11th Cir. Ala.1996\)](#); [Alexander v. Jitney Jungle Stores of Am., 673 So.2d 402, 132 Lab. Cas. \(CCH\) ¶ 58156 \(Ala.1995\)](#); [Alexander v. Jitney Jungle Stores of Am., 673 So.2d 402, 132 Lab. Cas. \(CCH\) ¶ 58156 \(Ala.1995\)](#); [Roberts v. Beaulieu of Am., 950 F.Supp. 1509 \(N.D.Ala.1996\).](#)

Ala. Code 1975 § 25-5-11. 1, AL ST § 25-5-11. 1

Current with amendments ratified through December 1, 2008.

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