SFM Legal Advisory
The Work Comp Experts®
Minnesota
Prepared by SFM's in-house legal firm, Lynn Scharfenberg & Hollick

Penalty for failure to return an injured employee to work

In the 1995 amendments to the Minnesota Workers' Compensation Act, the Legislature created a penalty against employers who refuse to return an injured employee to work. Another 1995 amendment abolished the two-tier system of permanent partial disability benefits—a system which encouraged return to work by providing employers an economic incentive to offer suitable positions to injured employees. The new penalty provision seems to be an alternative approach to the two-tier system by the Legislature to promote the goal of return to work.

Minnesota Statute Section 176.82, subdivision 1 provides a civil action for treble damages arising out of a wrongful discharge relating to a workers' compensation claim or an employer's intentional obstruction of a workers' compensation claim. Treble damages consist of the actual damages found by a jury, tripled in amount. SFM's insurance policies do not provide coverage for actions brought under this provision. This "retaliatory discharge" provision is not new.

In subdivision 2 of this same statute section, the new return-to-work penalty adds another basis for a lawsuit that is brought separately from claims for workers' compensation benefits. Pursuant to the amendment, an employer who "without reasonable cause refuses to offer continued employment to its employee when employment is available within the employee's physical limitations" shall be liable in a civil action for up to one year's wages (up to a maximum of $15,000). The penalty would be payable in the same amount and at the same interval as the pre-injury wages. The amendment became effective on October 1, 1995, and applies only to injuries occurring on or after that date. The amendment applies to employers with more than 15 employees.

The amendment specifically states that the penalty may not be covered by insurance. The statute allows the employee to sue the employer directly for damages. The penalty claim will be enforced in the civil courts, like the claims for retaliatory discharge discussed above.

The employer does have some defenses to claims under the new penalty provision. The amendment provides that, "in determining the availability of employment, the continuance in business of the employer shall be considered and written rules promulgated by the employer with respect to seniority or the provisions of any collective bargaining agreement shall govern." Exactly what that language means will become clearer as cases are litigated and courts issue decisions that clarify the meaning of the amendment.

Conclusion

Creating a penalty against employers who refuse to return an injured employee to work certainly provides additional motivation for employers to develop light-duty positions for employees with restrictions. SFM has always emphasized return to work, and we remain committed to assisting employers in their return-to-work efforts.

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SFM Companies
3500 American Blvd. West, Suite 700
Bloomington, Minnesota 55431

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