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Employment Law
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Supreme Court helps workers who are fired for complaining

Once again, the U.S. Supreme Court has made it easier for workers to go to court and claim that they were fired in retaliation for asserting their rights.

In recent years, the Court has decided a number of cases that made it easier for workers to sue if they were fired for complaining about discrimination.

But what if a worker was fired for complaining about something else? What if a worker was fired (or otherwise punished) after making a comment about the way the employer allocates tips? Or about unsafe equipment? Or overtime practices?

In the case before the Court, a Wisconsin factory worker was fired after he complained about where the company's time clocks were located in the building. The time clocks were located such that workers had to punch in *after* they had put on their mandatory protective equipment, and punch out before they took the equipment off. As a result, the workers didn't get paid for the time they spent putting on and taking off their gear.

The worker sued under a federal law called the Fair Labor Standards Act, which governs wages and hours. This law requires that hourly employees be paid for all the time they spend at work, that they get overtime pay for extra hours, and so on.


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The law prohibits employers from retaliating against an employee who has "filed any complaint" about possible wage-and-hour violations.

The company argued that this rule didn't apply here because the worker never "filed" anything with anyone – he just made a verbal complaint.

But the Court said that didn't matter. It said a verbal complaint is good enough, as long as a reasonable employer could understand that the worker thought his rights were being violated.

That means that even a "water cooler" comment could qualify, as long as management was aware of it and the comment was about an alleged violation of the law.

The case is important because a number of other federal laws

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Employer could require a doctor's note after sick leave

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A city didn't violate its employees' right to medical confidentiality by making them provide a doctor's note when coming back from sick leave, a federal appeals court ruled recently.

The city of Columbus, Ohio had adopted a policy demanding that police department employees who took sick leave give supervisors a physician's note stating the "nature of the illness" and whether the worker could return to regular duty.

Several employees sued, arguing that the policy violated patient confidentiality rules under the Americans with Disabilities Act.

But the court said a request for a general diagnosis or a statement about the "nature" of an illness was okay, and didn't create the same sort of confidentiality concerns as asking about specific prescription medications, past illnesses, or other disabilities.

This is a very tricky area. Employers should generally speak with an employment law attorney before adopting such a policy, and employees should also talk with an attorney if they feel they're being compelled to disclose medical data that could be embarrassing or hurtful.

Employers may need to tell workers they can form a union

The National Labor Relations Board recently proposed a rule that would require employers to post a notice in the workplace informing employees of their right to form a union.

The rule hasn't been adopted yet, but if it is, employers who fail to comply could be fined or sued for unfair labor practices.

Such a notice could conceivably have an effect in smaller workplaces – such as those with 10 or 15 workers – where a union could form quickly if a majority of employees agree to organize.

Company sued for 'pressuring' employee on medical leave

A company can be sued if it "pressures" an employee who is on medical leave by repeatedly calling to find out when the employee plans to return to work.

That's the message of a new case from a federal court in Arkansas.

In that case, a woman took leave from her housekeeping job at a hospital to recover from back surgery. She claimed that while she was out, her immediate supervisor called her every week to ask when she was coming back.

In one conversation, she asked if her job was in jeopardy, and the supervisor responded by telling her that she should return to work as soon as she could.

The court said that the employer could be sued under the Family and Medical Leave Act if its repeated phone calls had a "chilling" effect on the employee's ability to exercise her rights.

This is a tough situation, because employers have to plan to get work done and need to know when employees will return, and employees are also required to return to work as soon as they no longer need time off for a legitimate reason.

In general, both sides should be very careful how they communicate with each other over the extent of medical leave.

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also protect workers who have "filed" a complaint. For instance, OSHA – which governs workplace safety – protects workers who "file" a complaint, so it's likely that workers can no longer be retaliated against for making verbal complaints about equipment and safety issues.

This is a huge benefit for employees. The workers who are protected by these laws tend to be hourly employees, workers who handle dangerous equipment, and others who might be upset about their pay or conditions but have no idea how or where to file a written grievance about them.

The Court's ruling will also benefit workers whose English is limited, and who would have particular difficulty producing a written complaint.

The decision is a warning to employers to take worker complaints seriously, no matter how informal they may seem, and if possible to document them in writing along with any steps taken in response. And of course, employers shouldn't take disciplinary steps against a worker who has made a complaint without first speaking with an employment attorney.

Medical marijuana law doesn't preempt workplace drug policy

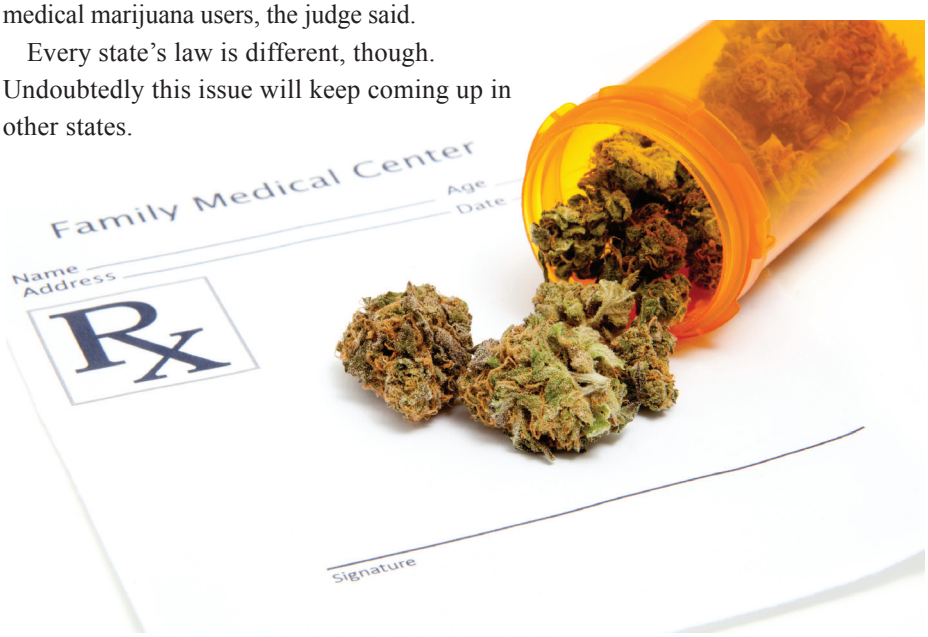
Many states have passed laws in recent years allowing people to use marijuana for medical reasons.

But while these laws may protect users against the police, they won't necessarily protect them against their employers.

For example, a Wal-Mart employee in Michigan recently sued the company for firing him under its drug-use policy when he tested positive for marijuana. The employee claimed he was wrongfully fired because he used marijuana after work for medical reasons.

But a federal judge ruled that Michigan's medical marijuana law didn't prevent a company from disciplining a worker under its drug policy. The law doesn't require companies to accommodate medical marijuana users, the judge said.

Every state's law is different, though. Undoubtedly this issue will keep coming up in other states.



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Company's 'one strike' drug-testing policy is okay

An employer can have a "one-strike" drug-testing policy that permanently disqualifies applicants who have previously flunked a drug test, according to a federal appeals court in California.

In this case, an employer rejected an applicant for a longshoreman job when he failed a pre-employment drug screening.

Some time afterward, the man allegedly stopped using drugs, but when he reapplied, the employer rejected him again under its one-strike rule.

He sued, claiming that the one-strike policy violated the Americans with Disabilities Act. That law prohibits employers from discriminating against rehabilitated drug users.

But the court said that while the law would prohibit a company from discriminating against a new applicant simply because the person was a recovered drug addict, it didn't prohibit a company from discriminating against someone who was a *current* drug user when he first applied for a job.

It's okay to disqualify such people permanently, the court said.

New mother is exempt from physical ability test

A woman who recently had a baby and was denied a job as a security guard after failing a physical-fitness test could sue the company for pregnancy discrimination, a federal judge in Alabama ruled.

The test required job applicants to perform 29 sit-ups in two minutes.

The woman claimed she was unable to complete enough sit-ups because her stomach muscles were weak from childbirth several months earlier. She sued the employer under the federal Pregnancy Discrimination Act.

The employer argued that because the woman's doctor had cleared her to take the test, she couldn't claim that she had a childbirth-related condition that exempted her.

But the court said the doctor's note merely indicated that the woman could safely take the test. It didn't mean that she didn't have a physical condition related to childbirth, or that she wasn't protected by the law.

A woman who failed a physical ability test shortly after childbirth could sue for pregnancy discrimination, even though she was no longer pregnant.

Employees can sue for 'cat's paw' discrimination


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In an old French fable, a sneaky monkey talks an unwary cat into grabbing roasting chestnuts from a fire. The cat burns its paw and drops the chestnuts, and the monkey walks off with them.

From this fable comes the phrase "cat's paw," meaning an innocent person who's used as a tool for someone else's dirty work.

In the employment world, a "cat's paw" situation is one where a supervisor is prejudiced against a worker, but rather than firing the worker for an illegal reason, he or she persuades a higher-up manager to fire the worker for some trumped-up but legitimate-sounding reason.

This raises the question of whether a worker who is the victim of such a scheme can sue the company for discrimination…even though the person who actually made the firing decision had no intent to discriminate.

The U.S. Supreme Court recently allowed such a claim.

In that case, a hospital terminated an Army reservist for a series of minor infractions. The reservist claimed that his immediate supervisors, who resented his military service, drummed up and fabricated these infractions to persuade the hospital management to fire him.

The Court ruled that the hospital could be held liable for discrimination.

The Court was applying a law that covers discrimination against the military, but it seems likely that the same idea would apply to any other type of discrimination.

For instance, a federal appeals court in Chicago recently allowed a white city worker who was fired by a white upper-level manager to sue. The worker claimed that her black direct supervisor was prejudiced against whites, and had used the white upper-level manager as a "cat's paw" to get rid of her.

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