Retaliatory Discharge Under the Pennsylvania Workers Compensation Act

I. At-Will Employment

A. General rule: employees are at-will, absent a contract, and may be terminated at any time, for any reason or for no reason. Stumpp v. Stroudsburg Municipal Authority, Supreme Court of Pennsylvania, 1891

1. At-Will employment preserves and encourages employers’ managerial prerogatives.
2. It also allows for employees to resign at any time, without notice and without recourse.

B. At-Will is not Absolute

1. Statutory Exceptions
   a. Americans with Disabilities Act
   b. Age Discrimination in Employment Act
   c. Title VII of the Civil Rights Act of 1964 - sex, race, color, national origin, and religion
   d. Pennsylvania Human Relations Act
   e. Family Medical Leave Act
   f. Workers’ compensation Statute

II. The Pennsylvania Workers’ Compensation Act

A. Employees are provided with an exclusive statutory scheme to secure wage loss and medical benefits for work-related injuries in exchange for an employer’s immunity from lawsuits for injuries defined under the Workers’ Compensation Act

B. Schick v. Shirey, Pennsylvania Supreme Court, 1997

1. Schick injured his knee at work (injury was accepted by Shirey under the Workers’ Compensation Act)
2. Disabled from work, underwent surgery, released to return to work
3. Notified Shirey he was available for work on the day released by his doctor
4. Shirey tells Schick he no longer has a job because he pursued workers’ compensation benefits
5. Schick alleges in complaint retaliation for exercising his rights under WC Act - seeks lost wages and lost insurance benefits
6. Shirey defends because no such cause of action exists – there was no contract of employment
7. Lower Court dismisses because Schick is an at-will employee and claim is not recognized
8. Important: Case was dismissed only because allegations, even if presumed true, were not actionable. Claimant had not presented any evidence to support his allegations.
9. After Lower Courts dismiss lawsuit, Supreme Court reverses - Firing an employee because they sought workers’ compensation violates public policy
10. It would upset the balance the Act provides: immediate set of benefits for employees v. immunity from civil liability for employers
11. Important: Court only recognized the cause of action; the employee must still prove the allegations (i.e. that they were fired because they sought workers’ compensation benefits)
12. In 2005, the Pennsylvania Supreme Court expanded Schick v. Shirey to include protecting other employees who were not injured:
   a. Rothrock v. Rothrock Motor Sales – a supervisor was terminated for failing to “dissuade” an injured employee from seeking workers’ compensation
   b. Supervisor was protected by Schick v. Shirey and could maintain a cause of action for wrongful/retaliatory termination.

III. Terminating for Cause; Avoiding Retaliatory Discharge Allegations

Hypothetical:

Phil, a cashier and stockperson at a large, national retail store is not the greatest employee. He has worked there for 10 years and has had several disciplinary actions for being late, having significant discrepancies in his cash drawer, and odd interactions with customers.
Phil slips and falls while on his way to the back of the store to help a customer.
Phil hurts his low back and is out for 5 weeks on total disability.
After seeing both the panel physician and his primary care physician, Phil is cleared to return to work with restrictions – no lifting more than 10 pounds.

Terminating Phil’s Employment

After Phil returns to work, the regional manager is reviewing all of the stores under her control and finds that they are overstaffed. She decides to fire Phil rather than some of his newer coworkers because his rate of pay is higher than their hourly wage and he has been absent and needs modifications (for his work injury).
BE CAREFUL! If Phil can allege/show that the only reason he was let go was due to his work injury, his firing may be considered retaliatory. While a court is not going to substitute their judgment for the employer’s business judgment as long as there is evidence the employer acted in good faith, Phil could argue that the real reason is “retaliation” since he was not fired before his work injury for his past conduct.

Phil’s Bad Behavior Escalates

The regional manager decides to let Phil stay on. However, Phil continues to be a less than ideal employee. After reviewing security footage, the store manager discovers him taking a “five finger discount” – helping himself to some of the store’s more expensive merchandise.
GO AHEAD AND TERMINATE. A court is not going to expect an employer to eat the loss of employee theft just because they happened to have been injured.

Protecting the Employer

Employer must follow their discipline system precisely and not be harsher to workers’ compensation claimants.
The same standards must be applied to all workers.
Be consistent in application – if past conduct was tolerated, subsequent discipline may seem retaliatory, even if the employer had an established and clear policy.

Valid Reasons for Termination
Documented post-injury violations of an employer’s policy or rules unrelated to workers’ compensation claim. The violation would result in any employee being fired, regardless of workers’ compensation status.

**Employee “Violations” under the Workers’ Compensation Act**

Employers cannot couch violations of the Workers’ Compensation Act as violations of the employer’s expected or standards of conduct. The employee’s failure to report an injury within the employer’s time frame cannot be used to terminate the employee as the manner and timing of reporting injuries is set forth in the WC Act.

- Was there a violation? Document it.
- Was there discipline? Document it.
- Double-edged sword: You have to document EVERYONE and AT ALL TIMES, not just the workers’ compensation claimant after they are injured.

**IV. Effect of Termination on Workers’ Compensation Benefits**

**Hypothetical**
- Phil is terminated for a cause unrelated to his work injury (retail theft).

**If Phil’s Benefits Were Suspended**

When he returned to work, Phil was earning the same as he was before the injury. There was no wage loss. Phil’s benefits will not be reinstated. Where the employee was working under a suspension of their workers’ compensation and the only reason he suffered a subsequent loss of earnings is because of the unrelated termination, the employee is not entitled to the resumption of wage loss benefits.

**Phil is Let Go for Purely Economic Reasons**

Phil is not fired for any misconduct, rather the regional manager lets Phil go because they are over staffed – she lays off others as well, including some with more experience than Phil. The layoff is clearly not related to his work injury. If Phil has not yet recovered from his injury, his benefits will continue because his wage loss is through no fault of his own.

**In Closing**

Make certain all employees are treated and disciplined the same.
Document misconduct.
Misconduct must be independent of work injury and the employee’s duties under the Workers’ Compensation Act.

**QUESTIONS?**