

SENATE BILL REPORT

SB 5416

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 4, 1994

Brief Description: Clarifying what constitutes retaliation for filing a workers' compensation claim.

SPONSORS: Senator Prentice

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, McAuliffe, Pelz, Sutherland, Vognild and Wojahn.

Staff: David Cheal (786-7576)

Hearing Dates: February 25, 1993; March 2, 1993; February 3, 1994; February 4, 1994

BACKGROUND:

Employers are prohibited from discharging or discriminating against an employee in any way because the employee files an industrial insurance claim, indicates an intent to file a claim or exercises any other rights under workers' compensation law.

An employee who believes he or she has been discharged or discriminated against because he or she filed a claim or exercised any other right may file a complaint with the director. The director must then investigate and bring an action in superior court if the director determines a violation has occurred.

If the director determines no violation has occurred, the employee may institute an action on his or her own behalf.

SUMMARY:

Termination or other adverse personnel action against an employee within 120 days following these events is presumed retaliatory: (1) filing an industrial insurance claim; (2) indicating an intent to file a claim; (3) the exercise of any other right under workers' compensation law; or (4) a worker returns to work following recovery from a covered injury or illness.

The presumption of retaliation may be rebutted by evidence that the termination or other adverse action was not retaliatory. The rebuttal could be that the adverse action was in furtherance of a valid business purpose, or that it was

based on poor performance, of which the employee had been advised.

A valid business purpose is defined in part as a non-arbitrary written reduction in force procedure, the impracticality of maintaining the employee's job during the recovery period, and the absence of any other suitable job for the injured worker.

"Valid business purpose" does not include the fact that the employee has filed previous claims, a determination that the employee is accident prone unless the employee has failed to observe health or safety standards, and the fact that an employee has exercised rights under a collective bargaining agreement or other law designed to protect employee rights, health or safety.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR:

The current system is ineffectual. The employer has all the information in their control as to why they took the adverse action. They should be forced, by way of a presumption to demonstrate why they terminated an injured worker. If they have a business-related reason, they will not have any trouble.

TESTIMONY AGAINST: None

TESTIFIED: John Main (pro)