



## Employee's Termination from Employment Violated ERISA's Anti-Retaliation Provision

A federal district court in Pennsylvania has ruled that a former employee of a trucking company has proven by a preponderance of the evidence that his employer retaliated against him for exercising his right to ERISA-protected benefits, and that it had also interfered with his right to attain future benefits.

The former employee was personally recruited by the trucking company's CEO to serve as the company's vice president of sales in March 2016, and his coverage under the company's self-insured group health plan commenced on the first day of the following month. In October 2016, however, the employee was diagnosed with degenerative arthritis in both hips, and he notified the company that he would need to undergo hip replacement surgery. The employee's first hip replacement surgery took place in November 2017. The group health plan paid the employee's claim, but the amount of the claim caught the attention of the company's CEO because he received regular spreadsheets detailing employees'

claims activity. The spreadsheets did not identify individual employees by name, but they were coded in such a way that it would not be difficult to identify individual employees. In April 2018, prior to the employee's second scheduled hip replacement surgery, his employment was terminated without any advance notice.

The employee sued, alleging that the company retaliated against him for exercising his right to ERISA-protected group health plan benefits, in violation of ERISA Section 510. Under ERISA Section 510, "it shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan ... or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan."

The court noted that, in order to prove ERISA retaliation, the former employee must show -- by a preponderance of the evidence -- that there was a causal connection between his termination and his use of the employee benefit plan. In addition, if the former employee successfully makes a *prima facie* case of discrimination, then the burden shifts to the company to rebut the presumption of discrimination by introducing evidence of a legitimate nondiscriminatory reason for its challenged action. In order to prevail, however the employee must then demonstrate that the company's articulated reason for the termination is pretextual or unworthy of credence.

Here, the court found that the employee successfully presented a *prima facie* case of discrimination, and that the company properly articulated a nondiscriminatory reason for terminating his employment. Specifically, the company said that the employee's position was simply eliminated and was only intended to be temporary. After reviewing the evidence, however, the court found that this explanation was pretextual for a number of reasons.

First, the employee's offer letter made no mention of the fact that the vice president of sales position was only temporary. And given that the company's CEO personally recruited the employee for the position, it was unlikely that the two would have had such a divergent understanding of the scope of the job.

Second, the employee testified that another executive of the company, the CEO's brother, told the employee "your surgery costs are going to make [the CEO] mad, so you better lay low."

Next, the court found that the procedure for the termination was unusual. The CEO did not consult anyone else within the company prior to making the decision to terminate the employee. The court acknowledged that the CEO had the authority to terminate employees, but the only other examples he cited during testimony in which he made a unilateral termination decision were cases involving misconduct or poor performance. Here, there was no claim that the employee committed any misconduct or performed inadequately. In fact, quite the opposite was true. Less than one week before the employee was fired, he received an \$11,000 bonus.

Finally, the company's subsequent staffing decisions undermined its assertion that the employee's position was only temporary. Less than two months after the employee was terminated, the company borrowed a new employee from a sister company to perform some of the fired employee's former tasks.

Taken together, the preponderance of the evidence ultimately showed retaliation for the use of ERISA-protected group health plan benefits. Because the preferred remedy of reinstatement was not available due to the strong animosity between the parties, the court instead awarded front pay in the amount of \$67,500.

[Full text of Kairys v. Southern Pines Trucking, Inc., 2:19-cv-1031 \(W.D. Pa. March 31, 2022\)](#)

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