



Ohio Supreme Court Recognizes Common Law Public Policy Claim for Wrongful Discharge In Retaliation for Reporting Workplace Injury

On June 9, 2011, in *Sutton v. Tomco Machining, Inc.*, the Ohio Supreme Court held that R.C. 4123.90, the workers' compensation retaliation statute, expresses a clear public policy "prohibiting retaliatory employment action against injured employees, including injured employees who have not filed, instituted or pursued a workers' compensation claim."

In *Sutton*, the plaintiff was terminated within one hour of reporting a workplace injury to his employer, but before he initiated a workers' compensation claim. The plaintiff asserted a statutory claim for unlawful retaliation pursuant to R.C. 4123.90 and a tort claim for wrongful discharge in violation of public policy. After the trial court granted judgment on the pleadings to the employer on both claims, the appellate court reversed the judgment against the plaintiff on the public policy claim. The Ohio Supreme Court affirmed the appellate court's reversal.

The Ohio Supreme Court remanded the case for a determination of the fact-based elements of the common law claim: (1) whether the plaintiff's dismissal was retaliatory and (2) whether the employer lacked an overriding business justification for the retaliatory action.

The practical implications of *Sutton* are compelling. Employers should be cautious when taking adverse employment actions against employees who have suffered workplace injuries between the time of the injury

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and the time in which the employee institutes or files a workers' compensation claim.

For more information on *Sutton v. Tomco* or the Squire Sanders labor and employment practice, please contact your principal Squire Sanders lawyer or one of the lawyers listed in this Alert.

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