

June 2008 - Article Published in Lifestyles Magazine

Illinois Supreme Court Allows Public Employees to Sue for Retaliatory Discharge

by: Joette S. Doran, J.D.

The Illinois Supreme Court recently held that a public employer was not immune from a suit for retaliatory discharge. Retaliatory discharge is a state law claim available to an employee who has been terminated as a result of asserting a worker's compensation claim. In that case, an employee sued his park district employer for retaliatory discharge when he was terminated shortly after returning to work from a work-related injury. The park district moved to dismiss the suit on the basis that it was immune from suit under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act). The Illinois Supreme Court rejected that argument finding that when a public employer discharges an employee in retaliation for filing a workers' compensation claim no immunity protection is allowable. It is unlawful under the Illinois Workers' Compensation Act for any employer to discharge an employee for the exercise of their rights under that Act. As such, the Court held that the immunity applicable to discretionary decisions found under the Tort Immunity Act does not apply to a retaliatory discharge claim when an employee's discharge is based upon filing of a worker's compensation action since no discretion exists that can be lawfully exercised based on that type of discharge. The Court further held that a public employer cannot use the provisions of the Tort Immunity Act which relieves liability to a public employer for certain acts or omissions of its employees because a retaliatory discharge claim can only be brought against an employer and not its agents or employees. For additional employment information, please visit our web site at www.joettedoran.com.

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

MS. DORAN IS LICENSED IN ILLINOIS, ALL ILLINOIS FEDERAL COURTS AND IS A MEMBER OF THE FEDERAL TRIAL BAR. SHE IS THE PAST CHAIRPERSON OF THE EMPLOYMENT LAW COMMITTEE FOR THE NORTHWEST SUBURBAN BAR ASSOCIATION, A PAST PRESIDENT OF BARRINGTON AREA PROFESSIONAL WOMEN AND A MEMBER OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION.