

CASE SUMMARIES

By Jeffery Ortinau, J.D., Legal Advisor

Civil Law: /Public Employer and Retaliatory Discharge

Illinois Supreme Court Holds Public Employer Not Immune From Retaliatory Discharge Claims.

Summary: An employee was fired shortly after returning to work from a work-related injury. The employee sued his employer, Waukegan Park District, for retaliatory discharge. The employer claimed 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, holding that there is no immunity protection available when a public employer discharges an employee in retaliation for filing a workers' compensation claim. The Workers' Compensation Act makes it unlawful for any employer to discharge an employee for the exercise of his or her rights under that Act. By virtue of that mandatory prohibition, the immunity applicable to discretionary decisions found the Tort Immunity Act does not apply to a retaliatory discharge claim when an employee's discharge is allegedly based upon his or her filing of a worker's compensation claim because there is no discretion that can be lawfully exercised in that scenario. Additionally, because a retaliatory discharge claim can only be brought against an employer, and not its agents or employees, the Court concluded that a public employer also cannot invoke provisions of the Tort Immunity Act that relieve a public entity from liability for certain acts or omissions of its employees. *Smith v. Waukegan Park District*, No. 104960 (Ill. S. Ct., Apr. 17, 2008).