CHAPTER 1

General Provisions

**SECTION 41‑1‑10.** Employers shall post certain labor laws.

Every employer shall keep posted in a conspicuous place a printed notice stating the provisions of the law relative to the employment of adult persons and children and the regulation of hours and working conditions. The Director of the Department of Labor, Licensing and Regulation or his designee shall furnish the printed form of such notice upon request.

HISTORY: 1962 Code Section 40‑451; 1952 Code Section 40‑451; 1942 Code Section 3253‑13; 1936 (39) 1615; 1993 Act No. 181, Section 959, eff February 1, 1994; 2010 Act No. 137, Section 1, eff March 31, 2010.

Effect of Amendment

The 1993 amendment substituted “Director of the Department of Labor, Licensing and Regulation or his designee” for “Commissioner of Labor”.

The 2010 amendment deleted “in every room where five or more persons are employed” following “posted in a conspicuous place” in the first sentence.

CROSS REFERENCES

Department of Labor incorporated into Department of Labor, Licensing, and Regulation, see Section 1‑30‑65.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Workplace Safety Section 4:835, Enabling Legislation.

LAW REVIEW AND JOURNAL COMMENTARIES

Labor violence—the judiciary’s refusal to apply the Hobbs Act. 28 S.C. L. Rev. 143.

**SECTION 41‑1‑15.** Establishment of drug prevention program in workplace; confidentiality of information concerning test results.

(A) Notwithstanding any other provision of the law, an employer may establish a drug prevention program in the workplace pursuant to Section 38‑73‑500(B) which shall include:

(1) a substance abuse policy statement that balances the employer’s respect for individuals with the need to maintain a safe, productive, and drug‑free environment. The intent of the policy shall be to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified workplace; and

(2) notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier.

(B) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding.

(C) Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

(1) the name of the person who is authorized to obtain the information;

(2) the purpose of the disclosure;

(3) the precise information to be disclosed;

(4) the duration of the consent; and

(5) the signature of the person authorizing release of the information.

(D) Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

HISTORY: 1997 Act No. 92, Section 2, eff June 10, 1997.

Editor’s Note

The Preamble of 1997 Act No. 92 provides as follows:

“Whereas, the members of the General Assembly recognize the importance of all employers and employees in the State to maintain and operate in a drug‑free workplace, and promote the participation of businesses in drug prevention programs. Through such participation, employers have the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees; and

“Whereas, nationally, the cost of substance abuse in the workplace is estimated at a staggering one hundred billion annually, and this cost is paid by employers in many different ways; and

“Whereas, the intention of the act is to provide incentive for employers to prevent drug use and the tragedies associated with work related accidents and to deter the corresponding losses in the form of workers’ compensation claims, personnel, and economic productivity; and

“Whereas, since workers’ compensation insurers typically provide support services to employer‑clients, the General Assembly believes that insurers will compete for the business of employers participating in drug prevention programs and will provide the appropriate premium credit for various classes of employment with a successful program due to the administrative cost savings in many ways including those from a reduction in work related accidents by employees with substance abuse and litigation expenses;”.

**SECTION 41‑1‑20.** Unlawful discrimination against union members.

Every person who shall discharge or discriminate in the payment of wages against any person because of his membership in a labor organization shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten nor more than fifty dollars or be imprisoned not less than ten nor more than thirty days.

HISTORY: 1962 Code Section 40‑453; 1952 Code Section 40‑453; 1942 Code Section 3237; 1932 Code Section 1299; Cr. C. ‘22 Section 194; Cr. C. ‘12 Section 487; 1909 (26) 15; 1924 (33) 1096; 1934 (38) 1364; 1936 (39) 1615; 1941 (42) 119.

LIBRARY REFERENCES

51A C.J.S., Labor Relations Section 350.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 40:15, Discrimination to Encourage or Discourage Union Membership.

Employment Coordinator Labor Relations Section 62:206, Criminal Offenses.

Guide to Employment Law and Regulation 2d Section 61:1, Labor Relations Act.

**SECTION 41‑1‑25.** Employee benefits, establishment by political subdivisions prohibited; definitions.

(A) For purposes of this section:

(1) “Employee benefit” means anything of value that an employee may receive from an employer in addition to wages. This term includes, but is not limited to, any health benefits, disability benefits, death benefits, group accidental death and dismemberment benefits, paid days off for holidays, paid sick leave, paid vacation leave, paid personal necessity leave, retirement benefits, and profit‑sharing benefits.

(2) “Political subdivision” includes, but is not limited to, a municipality, county, school district, special purpose district, or public service district.

(B) A political subdivision of this State may not establish, mandate, or otherwise require an employee benefit.

(C) This section does not limit the authority of political subdivisions to establish employee benefits in employment relationships to which they are a party.

HISTORY: 2017 Act No. 3 (S.218), Section 1, eff April 5, 2017.

**SECTION 41‑1‑30.** Terminating authorized worker and replacing with unauthorized alien; wrongful termination action by discharged employee.

(A) There is a civil right of action for wrongful termination against an employer who discharges an employee authorized to work in the United States for the purpose of replacing that employee with a person the employer knows or should reasonably know is an unauthorized alien.

(B) An aggrieved employee must show all of the following:

(a) the replacement occurred within sixty days of the date of the employee’s termination;

(b) the replacement worker was an unauthorized alien at the time of the replacement;

(c) the employer knew or reasonably should have known of the replacement worker’s status; and

(d) the replacement worker filled duties and responsibilities the employee vacated.

(C) This section does not create an employment contract for either a public or private employer.

(D) An employee who brings a civil suit pursuant to this section is limited to the following recovery:

(1) reinstatement to his former position;

(2) actual damages; and

(3) lost wages.

(E) A cause of action does not arise against an employer who submits the necessary identifying information for all employees through the Systematic Alien Verification of Entitlement (SAVE) program, the E‑Verify Program or a successor program used for verification of work authorization and operated by the United States Department of Homeland Security.

(F) Any cause of action arising pursuant to this section is equitable in nature and must be brought within one year of the date of the alleged violation.

(G) For any action brought pursuant to this section, the court may award attorney fees to the prevailing party.

(H) The provisions of this section do not apply to a private employer who terminates an employee to comply with the provisions of Chapter 8 of Title 41.

(I) This section takes effect ninety days after the effective date of the act.

HISTORY: 2008 Act No. 280, Section 12, eff 90 days after effective date of act (approved June 4, 2008).

**SECTIONS 41‑1‑40, 41‑1‑50.** Repealed by 2010 Act No. 137, Section 8, eff March 31, 2010.

Editor’s Note

Former Section 41‑1‑40 was entitled “Employers requiring notice from employee quitting work shall post notice of shutdown” and was derived from 1962 Code Section 40‑455; 1952 Code Section 40‑455; 1942 Code Section 7030‑14; 1932 Code Section 1318; Cr. C. ‘22 Section 210; 1912 (27) 750.

Former Section 41‑1‑50 was entitled “Acceptance of payment from relief fund shall be no bar to action for damages” and was derived from 1962 Code Section 40‑456; 1952 Code Section 40‑456; 1942 Code Section 7701; 1932 Code Section 7701; Civ. C. ‘22 Section 4275; Civ. C. ‘12 Section 2808; 1905 (24) 962.

**SECTION 41‑1‑60.** Certain transactions between carriers or shippers and labor organizations prohibited; penalties.

(1) The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) It shall be unlawful for any carrier or shipper of property, or any association of such carriers or shippers, to agree to pay, or to pay, to or for the benefit of a labor organization, directly or indirectly, any charge by reason of the placing upon, delivery to, or movement by rail, or by a railroad car, of a motor vehicle, trailer, or container which is also capable of being moved or propelled upon the highways.

(3) It shall be unlawful for any labor organization to accept or receive from any carrier or shipper of property, or any association of such carriers or shippers, any payment described in item (2) hereof.

(4) Any person who agrees to pay, or who does pay, or who agrees to receive, or who does receive, any payment described in item (2) hereof shall be guilty of a misdemeanor and on conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for a period of not less than thirty days, nor more than one year, in the discretion of the court. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate and distinct offense.

HISTORY: 1962 Code Section 40‑457; 1962 (52) 1739.

CROSS REFERENCES

Bribery of agents, servants or employees, see Section 16‑17‑540.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 15:43, South Carolina.

Employment Coordinator Labor Relations Section 40:62, Featherbedding: Piggyback Agreements.

Employment Coordinator Labor Relations Section 62:206, Criminal Offenses.

**SECTION 41‑1‑65.** Employers granted immunity from liability for disclosure of information.

(A) As used in this section:

(1) “Employer” means any person, partnership, for profit or nonprofit corporation, limited liability corporation, the State and its political subdivisions and their agents that employ one or more employees. As used in this definition, “agent” means any former supervisor or the employer’s designee.

(2) “Employee” means any person employed by an employer.

(3) “Evaluation” means a written employee evaluation which was conducted by the employer and signed by the employee, including any written employee response to the evaluation, before the employee’s separation from the employer and of which the employee, upon written request, shall be given a copy.

(4) “Former employee” means an individual who was previously employed by an employer.

(5) “Job performance” includes, but is not limited to, attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary actions.

(6) “Prospective employer” means any employer to which a prospective employee has made application, either oral or written, or forwarded a resume or other correspondence expressing an interest in employment.

(7) “Prospective employee” means any person who has made an application either oral or written or has sent a resume or other correspondence to a prospective employer indicating an interest in employment.

(B) Unless otherwise provided by law, an employer shall be immune from civil liability for the disclosure of an employee’s or former employee’s dates of employment, pay level, and wage history to a prospective employer.

(C) Unless otherwise provided by law, an employer who responds in writing to a written request concerning a current employee or former employee from a prospective employer of that employee shall be immune from civil liability for disclosure of the following information to which an employee or former employee may have access:

(1) written employee evaluations;

(2) official personnel notices that formally record the reasons for separation;

(3) whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and

(4) information about job performance.

(D) This protection and immunity shall not apply where an employer knowingly or recklessly releases or discloses false information.

HISTORY: 1996 Act No. 281, Section 1, eff May 6, 1996.

Editor’s Note

1996 Act No. 281, Section 2, provides:

“SECTION 2. The provisions of Section 41‑1‑65 of the 1976 Code, as added by Section 1 of this act, shall apply to causes of action occurring on or after the effective date of this act.”

CROSS REFERENCES

State human resources regulations, records release, see S.C. Code of Regulations R. 19‑720.03.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 65:35, South Carolina.

LAW REVIEW AND JOURNAL COMMENTARIES

Employer immunity for employment references: Maybe, maybe not. 49 S.C. L. Rev. 1171 (Summer 1998).

Attorney General’s Opinions

Discussion of the College of Charleston’s policies concerning allegations of sexual harassment or misconduct against employees. S.C. Op.Atty.Gen. (Oct. 8, 2013) 2013 WL 5651551.

**SECTION 41‑1‑70.** Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury.

Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.

Damages for dismissal are limited to no more than one year’s salary or fifty‑two weeks of wages based on a forty‑hour week in the amount the employee was receiving at the time of receipt of the subpoena.

Damages for demotion are limited to the difference for one year between the salary or wages based on a forty‑hour week which the employee received before the demotion and the amount he receives after the demotion.

HISTORY: 1986 Act No. 320, eff February 20, 1986 and retroactive to January 1, 1984 (approved by the Governor on February 20, 1986).

CROSS REFERENCES

Employment protection for reports of violations of state or federal law or regulation, see Sections 8‑27‑10 et seq.

RESEARCH REFERENCES

ALR Library

86 ALR 5th 397 , Excessiveness or Adequacy of Damages for Wrongful Termination of At‑Will Employee Under State Law.

Encyclopedias

S.C. Jur. Action Section 9, Determining Whether Action is at Law or in Equity.

Treatises and Practice Aids

Employment Coordinator Benefits Section 14:43, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

NOTES OF DECISIONS

In general 1

1. In general

In an action by a former employee, alleging wrongful termination for her obedience to a summons for jury service in violation of Section 41‑1‑70, the court properly denied the employer’s motion for a directed verdict since a jury question was presented by evidence that the employee was a “good” worker and was discharged immediately on her return from jury service. Connelly v. Wometco Enterprises, Inc. (S.C.App. 1994) 314 S.C. 188, 442 S.E.2d 204, rehearing denied, certiorari denied.

In an action alleging wrongful termination of an employee for obedience to a summons for jury service, in violation of Section 41‑1‑70, the employee’s employment file, although relevant and otherwise admissible, was properly excluded from evidence where the employer failed to offer the file through its custodian or another qualified witness, as required by the Business Records Act (Section 19‑5‑510). Connelly v. Wometco Enterprises, Inc. (S.C.App. 1994) 314 S.C. 188, 442 S.E.2d 204, rehearing denied, certiorari denied.

Punitive damages are not recoverable for a violation of Section 41‑1‑70. Patterson v. I.H. Services, Inc. (S.C.App. 1988) 295 S.C. 300, 368 S.E.2d 215.

**SECTION 41‑1‑80.** Prohibition against retaliation based upon employee’s institution of, or participation in, proceedings under Workers’ Compensation Law; civil actions.

No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers’ Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding.

Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

Any employer shall have as an affirmative defense to this section the following: wilful or habitual tardiness or absence from work; being disorderly or intoxicated while at work; destruction of any of the employer’s property; failure to meet established employer work standards; malingering; embezzlement or larceny of the employer’s property; violating specific written company policy for which the action is a stated remedy of the violation.

The failure of an employer to continue to employ, either in employment or at the employee’s previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.

The statute of limitations for actions under this section is one year.

HISTORY: 1986 Act No. 451, eff May 26, 1986.

CROSS REFERENCES

Employment protection for reports of violations of state or federal law or regulation, see Sections 8‑27‑10 et seq.

LIBRARY REFERENCES

56 C.J.S., Master and Servant Section 42.

RESEARCH REFERENCES

ALR Library

86 ALR 5th 397 , Excessiveness or Adequacy of Damages for Wrongful Termination of At‑Will Employee Under State Law.

32 ALR 4th 1221 , Recovery for Discharge from Employment in Retaliation for Filing Workers’ Compensation Claim.

44 ALR 3rd 629 , Nature of Alternative Employment Which Employee Must Accept to Minimize Damages for Wrongful Discharge.

134 ALR 242 , Presumption and Burden of Proof Regarding Mitigation of Damages.

Encyclopedias

11 Am. Jur. Proof of Facts 2d 679, Reduction or Mitigation of Damages‑Employment Contract.

31 Am. Jur. Trials 317, Wrongful Discharge of At‑Will Employee.

36 Am. Jur. Trials 419, Defending Wrongful Discharge Cases.

131 Am. Jur. Trials 381, Wrongful Discharge of Employee in Retaliation for Workers’ Compensation Claim.

S.C. Jur. Action Section 9, Determining Whether Action is at Law or in Equity.

S.C. Jur. Appeal and Error Section 133.2, by State Agency.

S.C. Jur. Damages Section 66, Employment Contracts.

S.C. Jur. Evidence Section 19, Pleading of Special Matter by Defendant.

S.C. Jur. Limitation of Actions Section 47, Labor and Employment.

S.C. Jur. Master and Servant Section 35, Workers’ Compensation Retaliation.

S.C. Jur. Master and Servant Section 41, Offer of Reinstatement.

Treatises and Practice Aids

31 Causes of Action 2d 511, Cause of Action for Wrongful Discharge from Employment in Retaliation for Exercising Workers’ Compensation Rights.

47 Causes of Action 2d 415, Cause of Action for Injuries Resulting from Horseplay in Workplace Under Workers’ Compensation Statute or in Tort Against Employer.

Employment Coordinator Employment Practices Section 10:82, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

Modern Workers’ Compensation Section 311:2, Common‑Law Tort Actions.

Modern Workers’ Compensation Section 311:3, Anti‑Discharge Statutes.

Modern Workers’ Compensation Section 311:5, Anti‑Harassment Statutes.

Modern Workers’ Compensation Section 311:9, Protected Activities.

Modern Workers’ Compensation Section 311:10, Protected Activities‑Unsuccessful Claims.

Modern Workers’ Compensation Section 311:13, Defenses.

Modern Workers’ Compensation Section 311:14, Defenses‑Unfitness for Work.

Modern Workers’ Compensation Section 311:15, Defenses‑Absence or Tardiness.

Modern Workers’ Compensation Section 311:16, Defenses‑Dishonesty.

Modern Workers’ Compensation Section 311:19, Inability to Work With Others‑Untimeliness of Notice or Claim.

Modern Workers’ Compensation Section 311:23, Judicial Procedure.

Modern Workers’ Compensation Section 311:26, Evidence.

Modern Workers’ Compensation Section 311:30, Reinstatement and Backpay.

Modern Workers’ Compensation Section 321:20, Retaliation.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Workers’ compensation law. 43 S.C. L. Rev. 208 (Autumn 1991).

NOTES OF DECISIONS

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Review 8

1. In general

Under South Carolina “determinative factor” test, employee alleging that employer retaliated against him for filing workers’ compensation claim must establish that he would not have been discharged but for filing claim. Porter v. U.S. Alumoweld Co., Inc. (C.A.4 (S.C.) 1997) 125 F.3d 243. Labor And Employment 810

Under South Carolina law, employee failed to show that employer’s claimed reason for firing him, his refusal to submit to medical examination, was pretext for retaliation after he filed workers’ compensation claim; employee’s numerous previous workers’ compensation claims had not resulted in his termination, doctor who authored extremely cursory letter opining that employee could return to work was not familiar with employee’s exact job duties, and two doctors consulted by employer recommended functional capacity exam after surgery. Porter v. U.S. Alumoweld Co., Inc. (C.A.4 (S.C.) 1997) 125 F.3d 243. Labor And Employment 863(2)

Retaliatory discharge claim under South Carolina law is action in equity and is tried without jury. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Jury 14(1.4); Labor and Employment 851

Firing of an employee in retaliation for filing a workers’ compensation claim is actionable under Section 41‑1‑80, regardless of whether retaliatory act meets the level of outrageous conduct necessary to sustain an action for tort of outrage. Hampton v. Conso Products, Inc., 1992, 808 F.Supp. 1227.

Burden of proving violation of anti‑retaliatory discharge statute provisions of Section 41‑1‑80 is on employee; plaintiff could not prevail on statutory claim because she did not institute workers’ compensation proceedings until 4 months after her termination whereas the section prohibits retaliation against an employee for having instituted compensation proceedings. Elements of a claim under this provision are (1) institution of workers’ compensation proceeding, (2) discharge or demotion, and (3) causal connection between the two; therefore even if provision could be construed in manner advocated by plaintiff to allow relief where compensation proceedings are instituted subsequent to termination, plaintiff’s claim would be fatally deficient because it is undisputed that she was unable to perform duties of job as package delivery driver because of indefinite lifting restrictions placed on her by her physician, and according to plaintiff’s own testimony she was terminated because her job required her to be able to lift packages weighing up to 70 pounds, and nothing in statute prohibits termination under such circumstances. Hines v. United Parcel Service, Inc., 1990, 736 F.Supp. 675.

Workers’ compensation commissioner has discretion to limit or exclude irrelevant testimony, in workers’ compensation proceeding. Smith v. South Carolina Dept. of Mental Health (S.C.App. 1997) 329 S.C. 485, 494 S.E.2d 630, rehearing denied, certiorari granted, affirmed 335 S.C. 396, 517 S.E.2d 694. Workers’ Compensation 1691

Any claims of retaliatory discharge based on workers’ compensation claims or of employer’s obligation to reasonably accommodate any disability are matters that must be resolved in state or federal court, not before Workers’ Compensation Commission. Smith v. South Carolina Dept. of Mental Health (S.C.App. 1997) 329 S.C. 485, 494 S.E.2d 630, rehearing denied, certiorari granted, affirmed 335 S.C. 396, 517 S.E.2d 694. Workers’ Compensation 1090

The amount of lost wages awarded to an employee wrongfully discharged for instituting a workers’ compensation proceeding should have been reduced by the amount the employee earned at alternate employment during the period of his wrongful termination, since the doctrine of avoidable consequences operates in wrongful discharge actions. Chastain v. Owens Carolina, Inc. (S.C.App. 1993) 310 S.C. 417, 426 S.E.2d 834.

An employee wrongfully discharged for instituting a workers’ compensation proceeding was not required to mitigate his damages by taking on a second job paying $200 per week, even though the employer had been paying him this amount to work an additional 20 hours per week, where no evidence was adduced that such work was available, or that such sum would have been paid. Chastain v. Owens Carolina, Inc. (S.C.App. 1993) 310 S.C. 417, 426 S.E.2d 834. Labor And Employment 868(4)

The amount of lost wages awarded to an employee wrongfully discharged for instituting a workers’ compensation proceeding properly included an amount attributable to the employee’s “bonus program,” even though the bonus was conditioned on the lack of errors in his work, where the employee had received the bonus almost without fail for the 8 years of his employment. Chastain v. Owens Carolina, Inc. (S.C.App. 1993) 310 S.C. 417, 426 S.E.2d 834.

A master‑in‑equity hearing a claim that an employer terminated an employee in retaliation for filing a Workers’ Compensation Claim is not required, under Rule 41(b), SCRCP, to view the evidence in the light most favorable to the employee before granting the employer’s motion for dismissal at the end of the employee’s case, but rather may weigh the evidence at this point since a retaliatory discharge claim, as an equity action, is tried without a jury and thus the master may dismiss the action even though the employee has established a prima facie case. Johnson v. J.P. Stevens (S.C. 1992) 308 S.C. 116, 417 S.E.2d 527.

A retaliatory discharge claim brought by an employee, who claimed to have been dismissed in retaliation for filing a Workers’ Compensation Claim, was properly dismissed at the close of his case where the employee admitted that the reasons given by his employer for his discharge ‑ excessive absenteeism and blackout spells making him unsafe for forklift work ‑ were valid and permissible, and the record was devoid of any evidence of a retaliatory motive other than the proximity between the injury and the termination. Johnson v. J.P. Stevens (S.C. 1992) 308 S.C. 116, 417 S.E.2d 527. Labor And Employment 863(2)

An employee’s action alleging retaliatory termination for filing a Workers’ Compensation claim was not subject to dismissal on the ground that the claim was not filed until after the employee’s termination, since Section 41‑1‑80 does not require the formal filing of a claim, and the purpose of the statute can not be avoided by firing an injured employee before he or she files a claim. Johnson v. J.P. Stevens (S.C. 1992) 308 S.C. 116, 417 S.E.2d 527.

The court of appeals correctly held that an employer’s articulated reason for discharging an employee who had filed a workers’ compensation claim was pretextual, even though the employee could no longer do the work for which he had been hired, where the employer’s records showed that the employee was terminated 10 days after his injury and they bore the notation “Workers’ Comp Lay‑off.” Horn v. Davis Elec. Constructors, Inc. (S.C. 1992) 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

Section 41‑1‑80 does not implicitly mandate a reasonable period of time for the rehabilitation of an employee from a work related injury before his employer may discharge him for inability to meet established employer work standards, since the purpose of the section is to prohibit the termination of an employee because he institutes a workers’ compensation proceeding. Horn v. Davis Elec. Constructors, Inc. (S.C. 1992) 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

Although an employer in an action alleging retaliatory termination for filing a workers’ compensation claim has the burden of proving the affirmative defenses asserted, it does not have the burden of proving that the affirmative defense is causally related to the complained‑of discharge, since the ultimate burden of proof under Section 41‑1‑80 is on the employee. Horn v. Davis Elec. Constructors, Inc. (S.C. 1992) 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

The circuit court did not err in finding that an employer’s reason for terminating an employee was not retaliatory where (1) upon employment the employee stated that he had no previous back problems and signed an acknowledgement that false statements would be cause for dismissal, (2) the employee began work, within 7 months injured his back in a work accident and made a workers’ compensation claim, (3) the employee failed to report for “light duty” after being released by his physician, (4) it was subsequently discovered that the employee had injured his back 3 months prior to stating that he had no previous back problems, and (5) the only evidence suggesting a retaliatory motive was the proximity of the claim to the discharge. Marr v. City of Columbia (S.C. 1992) 307 S.C. 545, 416 S.E.2d 615, rehearing denied.

A state employee was collaterally estopped from relitigating issues concerning a claim of retaliatory discharge where the employee had filed a grievance challenging the discharge, the grievance had been denied by the State Employee Grievance Committee, and the employee did not appeal the Committee’s decision, but instead brought a civil action under Section 41‑1‑80 concerning the same parties, facts and issues; the Committee has the exclusive right to decide these issues for state employees, and is subject only to an appeal for judicial review. Bennett v. South Carolina Dept. of Corrections (S.C. 1991) 305 S.C. 310, 408 S.E.2d 230.

The Court of Appeals properly held that an action, wherein an employee sued under Section 41‑1‑80 and alleged that he was discharged in retaliation for filing a Workers’ Compensation claim, was an action in equity since reinstatement is equitable relief, and the payment of lost wages are deemed restitution; additionally, the court had jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Wallace v. Milliken & Co. (S.C. 1991) 305 S.C. 118, 406 S.E.2d 358.

In an action for reinstatement and lost wages which was based on the allegation that an employee was discharged in retaliation for filing a Workers’ Compensation claim, the appropriate test of causation under Section 41‑1‑80 was the determinative factor test, wherein the employee must establish that he would not have been discharged “but for” the filing of the claim. Wallace v. Milliken & Co. (S.C. 1991) 305 S.C. 118, 406 S.E.2d 358.

An employer sued under Section 41‑1‑80 for allegedly discharging an employee because the employee filed a Workers’ Compensation claim, failed to prove the affirmative defense of violating a specific written company policy where the employee, an industrial machine operator, injured his hand while operating a “calendar” machine and the employer alleged that the employee’s placing his hands in an operating piece of machinery was a violation of company policy; however, the employer did not have the burden of proving that it discharged the employee for this violation of policy. Wallace v. Milliken & Co. (S.C. 1991) 305 S.C. 118, 406 S.E.2d 358.

Sufficient evidence established that retaliation for filing a Workers’ Compensation claim was the determinative factor in the discharge of an employee who injured his hand in a “calendar” machine, received temporary total and permanent disability benefits, was hospitalized and had several operations, returned for light duty work 3 months later, and was then terminated where the record established that (1) the employer’s decision to fire the employee was purportedly made shortly after the accident for safety reasons, but was not disclosed until the employee returned, (2) company procedures for cleaning the machine were vague, and (3) the training the employee received on the machine was patently inadequate. Wallace v. Milliken & Co. (S.C. 1991) 305 S.C. 118, 406 S.E.2d 358.

An employee presented a prima facie case of retaliatory discharge where the discharge occurred within 10 days after the employee’s injury, the evidence indicated that but for the injury and his compensation claim the employee was qualified to perform his job at the time of discharge, and several documents completed by the employer suggested that the reason for the employee’s discharge was the filing of a worker’s compensation claim. Horn v. Davis Elec. Constructors, Inc. (S.C.App. 1990) 302 S.C. 484, 395 S.E.2d 724, affirmed as modified 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

Section 41‑1‑80 does not explicitly address the situation where an employer fails to continue to employ an employee who has a partial permanent disability. However, the statute does provide an affirmative defense to an employer of failure to meet established employer work standards. An employer may prove as an affirmative defense that an employee failed to meet established work standards because he or she could not perform the physical requirements of the job. Discharge for failure to meet work standards may be established as a bona fide defense if an employee is so disabled as not to be able to carry out the duties of the job. Horn v. Davis Elec. Constructors, Inc. (S.C.App. 1990) 302 S.C. 484, 395 S.E.2d 724, affirmed as modified 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

While an employer may discharge an employee who is not permanently totally disabled for inability to perform duties for which he or she was hired, the employer must afford the employee a reasonable period of time to demonstrate that he or she will be able to perform the duties of the job after an injury. Thus, an employer’s claim that an employee did not meet work standards at the time of termination, which occurred 10 days after the employee was injured, was a pretext where there was evidence of retaliatory motive and evidence indicating that 10 days was not a reasonable period of time to require the employee to return to work. Horn v. Davis Elec. Constructors, Inc. (S.C.App. 1990) 302 S.C. 484, 395 S.E.2d 724, affirmed as modified 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

Reinstatement is not mandatory under Section 41‑1‑80. Reinstatement is an equitable remedy and therefore a court must exercise its discretion in determining whether to order reinstatement. Horn v. Davis Elec. Constructors, Inc. (S.C.App. 1990) 302 S.C. 484, 395 S.E.2d 724, affirmed as modified 307 S.C. 559, 416 S.E.2d 634, rehearing denied.

A release executed by an employee upon settlement of her workers’ compensation claim did not bar the employee’s retaliatory discharge action, where the release was limited to claims that the employee might have had at common law or under the Workers’ Compensation Act, since a claim for retaliatory discharge fits neither category. Campbell v. Bi‑Lo, Inc. (S.C.App. 1990) 301 S.C. 448, 392 S.E.2d 477. Workers’ Compensation 1135

Generally, if a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to the statutory limit. Thus, a plaintiff was not entitled to future earnings or punitive damages under Section 41‑1‑80, since the statute allows a wrongfully discharged employee to recover only lost wages and reinstatement. Campbell v. Bi‑Lo, Inc. (S.C.App. 1990) 301 S.C. 448, 392 S.E.2d 477.

A retaliatory discharge action brought under Section 41‑1‑80 is an equitable action and, therefore, the standard of review is the one used in equity cases tried by a single judge. Wallace v. Milliken & Co. (S.C.App. 1990) 300 S.C. 553, 389 S.E.2d 448, affirmed as modified 305 S.C. 118, 406 S.E.2d 358. Appeal And Error 847(1)

In order for a claimant to prevail in a retaliatory discharge action brought under Section 41‑1‑80, the claimant must prove by a preponderance of the evidence that his or her instituting of a workers’ compensation proceeding was a substantial factor in bringing about his or her discharge. The claimant need not show that the employer discharged him or her “solely” because of the workers’ compensation claim. Since it is highly unlikely that an employer will declare retaliation as the motive for discharge, the claimant must ordinarily rely on circumstantial evidence. Wallace v. Milliken & Co. (S.C.App. 1990) 300 S.C. 553, 389 S.E.2d 448, affirmed as modified 305 S.C. 118, 406 S.E.2d 358.

An employee established by a preponderance of the evidence that retaliation for the employee’s exercise of his rights under the Workers’ Compensation Act was an important factor motivating his discharge, even though the employer filed the employee’s workers’ compensation claim for him, where the employee injured his hand on September 10, 1986, the employer fired him on December 15, 1986 which was his first day back to work, and between those dates, the employee, who owned an unblemished safety and disciplinary record before he was injured, was accorded workers’ compensation benefits. An employer’s filing of a claim for an injured employee does not preclude the employee from bringing an action under Section 41‑1‑80. A proceeding under the Workers’ Compensation Act is “instituted” where the employer’s workers’ compensation insurance carrier pays for the employee’s medical expenses and pays the employee his or her average weekly wage in accordance with the provisions of the Act before he or she is discharged. Wallace v. Milliken & Co. (S.C.App. 1990) 300 S.C. 553, 389 S.E.2d 448, affirmed as modified 305 S.C. 118, 406 S.E.2d 358.

A trial judge did not err in requiring an employer to prove by a preponderance of the evidence that it discharged an employee for violating a safety rule where the employer pled as a separate defense to the employee’s retaliatory discharge claim that the employee “was discharged for violation of specific written company policies for which discharge is an available remedy,” since this defense is expressly designated by Section 41‑1‑80 as an “affirmative defense,” and a party who pleads an affirmative defense, irrespective of whether the party identifies it as such in his or her pleadings, has the burden of proving it. Wallace v. Milliken & Co. (S.C.App. 1990) 300 S.C. 553, 389 S.E.2d 448, affirmed as modified 305 S.C. 118, 406 S.E.2d 358.

The 16‑day proximity in time between an employee’s institution of workers’ compensation proceedings and his firing, when coupled with evidence of his satisfactory work performance, was sufficient to enable the employee to establish a prima facie case and to avoid summary judgment in the employer’s favor on the employee’s claim for retaliatory discharge under Section 41‑1‑80. Lattie v. SHS Enterprises, Inc. (S.C.App. 1990) 300 S.C. 417, 389 S.E.2d 300.

1.4. Institution of proceedings

Chicken processing plant employees’ receipt of treatment for their injuries from on‑site nurse’s offices, combined with their requests to visit company doctor or nurse’s representation to them that they had to see private doctor, and employees’ submission of documentation to their employer showing that they had sought medical care for their injuries was sufficient to constitute institution of workers’ compensation proceedings for purposes of employees’ workers’ compensation retaliatory discharge claims under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Chicken processing plant’s payment of employee’s medical care was sufficient to constitute institution of workers’ compensation proceedings for purposes of employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Chicken processing plant employee’s receipt of medical treatment by company doctor was sufficient to constitute institution of workers’ compensation proceedings for purposes of employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Each case alleging workers’ compensation retaliatory discharge under South Carolina law must be analyzed individually, and court does not seek to delineate single factor which would signify institution of workers’ compensation proceeding. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 806

While mere seeking and receiving of medical treatment is not sufficient to constitute institution of workers’ compensation claim, an employee’s seeking or receiving of medical treatment from employer accompanied by circumstances which would lead employer to infer that workers’ compensation claim is likely to be filed is sufficient to institute workers’ compensation proceeding for purposes of South Carolina’s workers’ compensation retaliatory discharge statute. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Purpose South Carolina’s workers’ compensation retaliatory discharge statute cannot be avoided by firing injured employee before he or she files claim. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 753

Proving claim for workers’ compensation retaliatory discharge under South Carolina law does not require formal filing of workers’ compensation claim. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 806

Chicken processing plant employee’s receipt of treatment for his injuries from on‑site nurse’s office, combined with his requests to visit company doctor, and his notification to his employer showing that he had sought medical care for his injuries was sufficient to constitute institution of workers’ compensation proceedings for purposes of employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Chicken processing plant employee’s receipt of treatment for her injuries from on‑site nurse’s office, combined with her requests to visit company doctor, and her submission of documentation to her employer showing that she had sought medical care for her injuries was sufficient to constitute institution of workers’ compensation proceedings for purposes of employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

Chicken processing plant employee’s notification of her supervisor of her injury combined with her request to visit company doctor and her submission of documentation to her employer showing that she had sought medical care for her injuries was sufficient to constitute institution of workers’ compensation proceedings for purposes of employee’s workers’ compensation retaliatory discharge claims under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 808

1.5. Rehabilitation

South Carolina’s workers’ compensation retaliatory discharge statute does not provide an employee with right to reasonable period of time to rehabilitate from injury and demonstrate the ability to perform his job duties; however, where employer sets forth employee’s inability to perform his job duties as employer’s reason for terminating employee, evidence that employer had policy of accommodating employees with workers’ compensation injuries, coupled with employer’s failure to accommodate employee may support employee’s assertion that employer’s proffered reason for termination was mere pretext. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

South Carolina’s workers’ compensation retaliatory discharge statute does not singularly accord to an employee right to reasonable period of time for rehabilitation to demonstrate ability to perform his former employment. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 806

2. Burden of proof

Employee bears burden of proving claim for workers’ compensation retaliatory discharge under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 861

While employer has burden of proving its affirmative defenses to charge of workers’ compensation retaliation under South Carolina law, burden of persuasion never shifts and employee bears burden of persuasion that reason given for termination was pretextual. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 861

If employer articulates legitimate, non‑retaliatory reason for termination, proximity in time between work‑related injury and termination is not sufficient evidence to carry employee’s burden of proving causal connection, as element of workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

A plaintiff may satisfy burden of proving workers’ compensation retaliatory discharge under South Carolina law either by persuading court that discharge was significantly motivated by retaliation for her exercise of statutory rights, or indirectly by showing that employer’s proffered explanation is unworthy of credence. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 806

While the employer has the burden of proving its affirmative defenses to claim of retaliatory discharge under Workers’ Compensation Act, the employer does not have the burden of establishing that affirmative defenses are causally related to the discharge; ultimate burden is, throughout, upon the employee. Hinton v. Designer Ensembles, Inc. (S.C. 2000) 343 S.C. 236, 540 S.E.2d 94. Labor And Employment 861

Ultimate burden of persuading the trier of fact that the employer retaliatorily discharged the employee for exercising statutory rights under Workers’ Compensation Act remains at all times with employee; burden of persuasion never shifts and employee bears burden of persuasion that reason given for termination was pretextual, and employee may succeed in this, either directly by persuading the court that the discharge was significantly motivated by retaliation for her exercise of statutory rights, or indirectly by showing that the employer’s proffered explanation is unworthy of credence. Hinton v. Designer Ensembles, Inc. (S.C. 2000) 343 S.C. 236, 540 S.E.2d 94. Labor And Employment 861

If the employer articulates a legitimate, nonretaliatory reason for the termination, the proximity in time between the work‑related injury and the termination is not sufficient evidence to carry the employee’s burden of proving a causal connection for purposes of his workers’ compensation retaliatory discharge claim. Hinton v. Designer Ensembles, Inc. (S.C. 2000) 343 S.C. 236, 540 S.E.2d 94. Labor And Employment 863(2)

3. Elements of claim

In order to prove claim for workers’ compensation retaliatory discharge under South Carolina law, a plaintiff must establish three elements: (1) institution of workers’ compensation proceedings, (2) discharge or demotion, and (3) causal connection between first two elements. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 806

To prove workers’ compensation retaliatory discharge claim, a plaintiff must establish three elements: (1) institution of workers’ compensation proceedings; (2) discharge or demotion; and (3) a causal connection between the first two elements. Hinton v. Designer Ensembles, Inc. (S.C. 2000) 343 S.C. 236, 540 S.E.2d 94. Labor And Employment 806

3.1. Pretext

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating employee, who initiated workers’ compensation proceedings, namely, that employee walked off production line, was pretext for retaliation, as supported employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating employee, who initiated workers’ compensation proceedings, namely, that employee took excessive breaks, was pretext for retaliation, as supported employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating employee, who initiated workers’ compensation proceedings, namely, that employee quit by not returning to work with doctor’s note and had excessive attendance points, was pretext for retaliation, as supported employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating employee who initiated workers’ compensation proceedings, namely, excessive attendance points, was pretext for retaliation, as supported employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating employee who initiated workers’ compensation proceedings, namely, that employee had missed too many days without providing notes from doctor, was pretext for retaliation, as supported employee’s workers’ compensation retaliatory discharge claims under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

Chicken processing plant’s proffered legitimate, non‑retaliatory reason for terminating three employees who initiated workers’ compensation proceedings, namely, employees’ failure to secure doctor’s notes permitting them to return to work without restrictions, was pretext for retaliation, as supported employees’ workers’ compensation retaliatory discharge claims under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

3.2. Legitimate, non‑retaliatory reason

Chicken processing plant’s articulated legitimate, non‑retaliatory reason for terminating employee, who initiated workers’ compensation proceedings, namely insubordination, was not pretext for retaliation under South Carolina’s workers’ compensation retaliatory discharge statute. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

4. Causation

To establish causation under South Carolina’s workers’ compensation retaliatory discharge statute, an employee must show that he would not have been discharged “but for” institution of workers’ compensation claim. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Chicken processing plant employee’s termination from employment was not causally related to his filing of workers’ compensation claim, as would support his workers’ compensation retaliatory discharge claim against plant under South Carolina law; employee’s work‑release program, rather than plant, prohibited employee from returning to plant after his suspension for not wearing safety glasses ended. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Chicken processing plant’s termination of employee’s employment was not causally related to his filing of workers’ compensation claim, as would support employee’s workers’ compensation retaliatory discharge claim under South Carolina law; employee chose not to return to work at plant after he anticipated that he would be late one evening, and he never returned to work at plant. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Chicken processing plant employee who was purportedly terminated from her employment for accumulating five attendance points under plant’s attendance policy failed to show that she would not have been terminated “but for” her initiation of workers’ compensation proceedings, as would support her workers’ compensation retaliatory discharge claim under South Carolina law; it appeared that employee would have accumulated five attendance points in spite of her work‑related injury. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Chicken processing plant employee, who was purportedly terminated from her employment for committing two safety violations within one year, failed to show that her initiation of workers’ compensation proceedings was “but for” cause of her termination, as would support her workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Employee of chicken processing plant, who was purportedly terminated for failing to notify his supervisor that he would be out of work for two days after visiting emergency room, failed to establish that he would not have been terminated but for his institution of workers’ compensation proceedings, thus precluding employee’s workers’ compensation retaliatory discharge claim under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Discharge of employee who sustained hand injury was not causally related to his initiation of workers’ compensation claim, but rather, cause of his termination from employment was his failure to return to work after his visit to emergency room, thus precluding employee’s claim for workers’ compensation retaliatory discharge against his former employer under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Chicken processing plant’s termination of three employees’ employment upon their failure to secure doctor’s notes permitting them to return to work without restrictions was causally related to employees’ institution of workers’ compensation proceedings, as supported employees’ workers’ compensation retaliatory discharge claims under South Carolina law. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 810

Appropriate test of causation under workers’ compensation retaliatory discharge statute is the “determinative factor” test, which requires that employee establish that he would not have been discharged “but for” the filing of the workers’ compensation claim. Hinton v. Designer Ensembles, Inc. (S.C. 2000) 343 S.C. 236, 540 S.E.2d 94. Labor And Employment 810

5. Collateral estoppel

Workers’ Compensation Commission’s ruling that employee was injured in the course and scope of employment had preclusive effect under collateral estoppel with respect to employer’s affirmative defense that employee filed a false claim of injury, in employee’s action alleging retaliatory discharge for filing a workers’ compensation claim, where Commission afforded both parties a full and fair opportunity to litigate the issue, Commission could not have awarded benefits without actually litigating and directly determining the factual question of injury in the course and scope of employment, and such a finding was necessary to support a judgment awarding benefits. Crosby v. Prysmian Communications Cables and Systems USA, LLC (S.C.App. 2012) 397 S.C. 101, 723 S.E.2d 813, rehearing denied. Workers’ Compensation 1791

6. Counterclaims

An employer may not prevail in a retaliatory discharge action on a counterclaim for damages which arise only from the filing of a workers’ compensation claim or the employer’s decision to fire the plaintiff for filing the claim. Crosby v. Prysmian Communications Cables and Systems USA, LLC (S.C.App. 2012) 397 S.C. 101, 723 S.E.2d 813, rehearing denied. Labor and Employment 806

7. Defenses

An employer may assert certain affirmative defenses to charge of workers’ compensation retaliation under South Carolina law, including employee’s wilful or habitual tardiness or absence from work, failure to meet established employer work standards, and violating specific written company policy for which action is stated remedy of violation. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 809

An employee’s violation of company policy is not a basis for an employer to defend employee’s claim of retaliatory discharge for filing a workers’ compensation claim if the policy conflicts with the Workers’ Compensation Act. Crosby v. Prysmian Communications Cables and Systems USA, LLC (S.C.App. 2012) 397 S.C. 101, 723 S.E.2d 813, rehearing denied. Labor and Employment 809

7.1. Remedies

Where court determines that reinstatement is appropriate remedy for violation of South Carolina’s workers’ compensation retaliatory discharge statute, it is within court’s discretion to impose conditions on reinstatement. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 877

Reinstatement is equitable remedy for violation of South Carolina’s workers’ compensation retaliatory discharge statute and subject to discretion of court. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 877

In workers’ compensation retaliatory discharge action under South Carolina law, wrongfully discharged employee may recover only damages for losses which, in exercise of due diligence, he could not avoid. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 866

Courts have discretion to compute back pay in actions for workers’ compensation retaliation under South Carolina law in manner that best compensates victim of discrimination for his or her financial loss. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 867

Award of back pay for an employer’s violation of South Carolina’s workers’ compensation retaliatory discharge statute includes amount the plaintiff would have earned if retaliatory discharge had not occurred minus plaintiff’s interim earnings during recovery period. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 867

Lost wages awarded to an employee as result of employer’s violation of South Carolina’s workers’ compensation retaliatory discharge statute consist of back pay, an equitable remedy in nature of restitution, not legal damages. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 866

Employee of chicken processing plant failed to mitigate her damages by diligently seeking new employment after her discharge from plant, and thus employee was not entitled to lost wages in her action for workers’ compensation retaliatory discharge against plant under South Carolina law; however, employee was entitled to reinstatement of her former employment conditioned upon her ability to perform job. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 868(4)

7.2. Mitigation of damages

Party who claims that damages should have been mitigated bears burden of proving in action for workers’ compensation retaliation under South Carolina law that they could reasonably have been reduced or avoided. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 868(3)

Requirement for workers’ compensation retaliation claims under South Carolina law that employee mitigate his damages permits employee to recover amount of his losses caused by employer’s breach reduced by amount employee obtains, or through reasonable diligence could have obtained, from other suitable employment. Atkinson v. House of Raeford Farms, Inc., 2012, 874 F.Supp.2d 456. Labor and Employment 868(3)

8. Review

Appellate court is required to independently evaluate evidence which has been presented to a circuit court in an action alleging retaliatory discharge for filing a workers’ compensation claim, but appellate court may not reconsider a factual finding of the Workers’ Compensation Commission after the question has been fully litigated. Crosby v. Prysmian Communications Cables and Systems USA, LLC (S.C.App. 2012) 397 S.C. 101, 723 S.E.2d 813, rehearing denied. Appeal And Error 989; Workers’ Compensation 1789

**SECTION 41‑1‑85.** Personnel action based on use of tobacco products outside of workplace prohibited.

The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee.

HISTORY: 1990 Act No. 593, Section 2A, eff June 25, 1990.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 24:27, South Carolina.

Employment Coordinator Employment Practices Section 47:33, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

**SECTION 41‑1‑90.** Requirement of notice that completion of training program does not guarantee employment.

Every employer in this State who requires prospective employees to complete a job training program conducted either by the employer or on behalf of the employer by an outside organization prior to consideration for employment shall give each prospective employee before beginning the training program a notice in the form prescribed by Section 41‑1‑100 if completion of the job training program does not guarantee the prospective employee regular employment on a permanent basis by the employer.

HISTORY: 1986 Act No. 332, Section 1, eff July 1, 1986.

RESEARCH REFERENCES

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:1, Labor Relations Act.

**SECTION 41‑1‑100.** Form of notice required by Section 41‑1‑90.

The notice required by Section 41‑1‑90 shall appear on any printed matter promoting the job training program and on every application for enrollment in the program in substantially the following form: “Notice. Completion of this job training program does not guarantee you regular employment on a permanent basis by the employer who requires you to complete the program.”

HISTORY: 1986 Act No. 332, Section 2, eff July 1, 1986.

**SECTION 41‑1‑110.** Conspicuous disclaimer of contract of employment created by handbook, personnel manual or other document issued by employer.

It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

HISTORY: 2004 Act No. 185, Section 1, eff March 15, 2004.

RESEARCH REFERENCES

ALR Library

17 ALR 5th 1 , Effectiveness of Employer’s Disclaimer of Representations in Personnel Manual or Employee Handbook Altering At‑Will Employment Relationship.

100 ALR 507 , Specification in Employment Contract of Grounds or Causes of Discharge as Exclusive of Other Grounds or Causes.

Encyclopedias

32 Am. Jur. Proof of Facts 3d 229, Proving the Contractually Binding Effect of a Personnel Manual Provision as to Discharge Only for “Good Cause”.

31 Am. Jur. Trials 317, Wrongful Discharge of At‑Will Employee.

36 Am. Jur. Trials 419, Defending Wrongful Discharge Cases.

NOTES OF DECISIONS

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1. In general

Disclaimer in code of conduct given to employees was not conspicuous, and therefore, did not disclaim potential contract liability under South Carolina law for wrongful discharge of employee, where disclaimer on table of contents was not capitalized or underlined. Lord v. Kimberly‑Clark Corp., 2011, 827 F.Supp.2d 598. Labor and Employment 51

Employee handbook did not create a unilateral contract between city and retired firefighters and police officers for continuing free health insurance; each retiree signed numerous acknowledgment forms confirming the employee handbooks did not create a contract, plain language of the employee handbook conspicuously disclaimed the existence of a contract, and no evidence indicated the city treated the handbook as a contract despite the disclaimer. Bishop v. City of Columbia (S.C.App. 2013) 401 S.C. 651, 738 S.E.2d 255, rehearing denied, certiorari denied, on remand 2015 WL 9999556. Municipal Corporations 187(2); Municipal Corporations 200(2); Public Employment 381; Public Employment 388(2)

If an employer wishes to issue an employee handbook or manual without being bound by it and with a desire to maintain the at‑will employment relationship, the employer must insert a conspicuous disclaimer into the handbook. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 40(2)

Disclaimer in handbook for employees of domestic violence shelter was conspicuous, as required to maintain at‑will employment relationship, where disclaimer was on handbook’s front page, in bold, capitalized letters. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 40(2)

When looking at an employment handbook to determine to what degree it gives rise to a promise, an expectation, and a benefit, the court must focus on the actual language of the employee handbook; the court should consider whether the promises are couched in permissive or mandatory language. Lingard v. Carolina By‑Products (S.C.App. 2004) 361 S.C. 442, 605 S.E.2d 545, rehearing denied. Labor And Employment 50

2. Policy statements

Employer’s policy statement, which stated that its policy was to be fair and just in all dealings with employees and which was located in employee handbook’s provision governing termination of hourly nonexempt employees, did not create employment contract or otherwise alter salaried employee’s at‑will status; policy was limited to hourly nonexempt employees, and policy did not create expectation that employment was guaranteed or that particular process must be complied with before employee would be terminated. Grant v. Mount Vernon Mills, Inc. (S.C.App. 2006) 370 S.C. 138, 634 S.E.2d 15, rehearing denied, certiorari denied. Labor And Employment 50

Unlike a mandatory, progressive discipline procedure, a general policy statement of nondiscrimination set forth in employee handbook does not create an expectation that employment is guaranteed for any specific duration or that a particular process must be followed before an employee may be fired. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 50

To be enforceable in contract, general policy statements in employee handbook must be definitive in nature, promising specific treatment in specific situations. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 50

3. Effect on at‑will relationship

While a clear compliance with the terms of the state disclosure statute for employee handbooks would obviously be important, it is not required, and certainly does not establish the existence of a contract, if the employee handbook at issue otherwise does not contain mandatory language sufficient to alter the presumption in South Carolina of an at‑will employee relationship. Oroujian v. Delfin Group USA LLC, 2014, 57 F.Supp.3d 544. Labor and Employment 50

Under South Carolina law, allegedly “mandatory language” in employee handbook prohibiting employer from engaging in discriminatory practices did not alter at‑will nature of employment to create employment contract, and thus termination of employee did not constitute a breach of any such contract; language was typical of the type found in handbooks for at‑will employees. Oroujian v. Delfin Group USA LLC, 2014, 57 F.Supp.3d 544. Labor and Employment 51

Under South Carolina law, when an employee handbook alters the employee’s at‑will status, an employee discharged without cause or not in accord with specific procedures laid out in the handbook may have a cause of action for wrongful discharge. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 839

Under South Carolina law, employee handbook did not contain mandatory language entitling an employee to a fair and proper investigation before termination that could be construed as a binding contract between employer and employee that would alter the at‑will nature of their employment agreement, even though grounds for discharge were set forth in mandatory language, where none of the mandatory language restricted the employer’s right to terminate employees, or restricted employer’s right to force forfeiture of additional pay obtained through falsification of an application for such pay. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 51

Under South Carolina law, language in employee handbook providing that the employer was responsible for hiring competent supervisors did not create a binding contract between employer and employees that would alter the nature of at‑will employment, or that would give rise to a breach of contract action based on employees’ allegations that their supervisors were incompetent, following termination of employees for alleged falsifications of applications for a per diem allowance, where language regarding supervisors did not concern personnel issues such as eligibility for per diem compensation, and language governing termination of employees was permissive. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 51

Employee handbook’s termination provision, which stated that warnings were “normally” given as result of employee’s unsatisfactory conduct or performance, was permissive and did not require supervisors to give warnings prior to termination, and thus provision did not alter at‑will employment relationship. Grant v. Mount Vernon Mills, Inc. (S.C.App. 2006) 370 S.C. 138, 634 S.E.2d 15, rehearing denied, certiorari denied. Labor And Employment 50

Nondiscrimination provision in handbook for employees of domestic violence shelter did not constitute a promise altering at‑will employment relationship and giving rise to a breach‑of‑contract claim, where provision was not specific and did not make any promises regarding disciplinary procedure or termination decisions. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 50

Mandatory, progressive discipline procedures set forth in employee handbook may constitute enforceable promises by employer and, if definite, impose a limitation on employer’s right to terminate an employee at any time, for any reason. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 50

4. Questions for jury

Issue of whether an employee handbook constitutes a contract on which a former employer may base a breach of contract claim should be submitted to the jury when the issue of the contract’s existence is questioned and the evidence is either conflicting or is capable of more than one inference. Hessenthaler v. Tri‑County Sister Help, Inc. (S.C. 2005) 365 S.C. 101, 616 S.E.2d 694. Labor And Employment 58

Issue of whether employee handbook, which created progressive disciplinary policy couched in mandatory terms, represented employment contract was for jury in truck drivers’ wrongful termination action against their employer after they were terminated after being discovered at home rather than on their routes. Lingard v. Carolina By‑Products (S.C.App. 2004) 361 S.C. 442, 605 S.E.2d 545, rehearing denied. Labor And Employment 873

5. Questions for court

Under South Carolina law, a court should intervene to resolve an employee handbook issue as a matter of law if the handbook statements in the handbook and required disclaimer, taken together, establish beyond any doubt that an enforceable promise does or does not exist; judgment as a matter of law is likely not appropriate when there is no disclaimer or when the language is mandatory rather than permissive. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 140(2); Labor and Employment 155(2)

6. Promises

Under South Carolina law, an employee’s at‑will status may not be altered simply by demonstrating the absence of a conspicuous disclaimer and an employee signature in a handbook; the handbook must also include enforceable promises stated in mandatory language. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 839

Under South Carolina law, to qualify as mandatory language sufficient to establish an implied contract for employment, the policy manual language of an employee handbook must be definitive in nature, promising specific treatment in specific situations. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 50

In wrongful termination cases under South Carolina law, the promises in an employee handbook or other document must restrict the right of an employer to discharge; such restrictions typically emerge when employers include mandatory procedures related to progressive discipline and discharge. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 839

7. Disclaimers

In wrongful termination action under South Carolina law, employee handbook did not contain a conspicuous disclaimer as one of two conditions required to prevent the treatment of the handbook as a binding contract with terminated employees. Anthony v. Atlantic Group, Inc., 2012, 909 F.Supp.2d 455, affirmed. Labor and Employment 51

**SECTION 41‑1‑120.** Establishing independent contractor status between nonprofit youth sports organization and coach; written agreement; disclosures.

(A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this section constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

(1) secure compensation for the coach pursuant to the workers’ compensation law; and

(2) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold‑faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization for the purposes listed in subsection (A)(1) and (2);

(2) not entitled to workers’ compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach’s income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of required coverage under the state unemployment compensation law or any civil action instituted by a third party.

(D) As used in this section, “nonprofit youth sports organization” means an organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is primarily engaged in conducting organized sports programs for persons under twenty‑one years of age.

HISTORY: 2016 Act No. 155 (H.3576), Section 1, eff April 21, 2016.