

# CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC



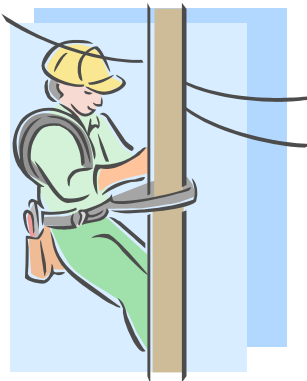
November 9, 2012



*Thank you for reading our newsletters. In this issue we discuss wrongful termination. Why? We get the occasional question from employers: "Can we terminate our employee after he/she filed a workers' compensation claim?" We summarized the October 31, 2012 Oncor case below that addresses this question. Please give us a call if you wish to discuss this case, or if you have any general questions. We would love to hear from you!*

## ***Adams v. Oncor Electric Delivery Company, LLC, No. 05-11-00618-CV. October 31, 2012.***

Bruce Adams filed a lawsuit against his employer for retaliatory discharge when his employer fired him after he filed a workers' compensation claim. On September 1, 2007, Adams was severely injured when he fell twenty-five feet from a utility pole while attempting to restore power to a residential neighborhood. Adams spent several weeks in the hospital and had multiple surgeries, including having rods put in his spine. He was in a wheelchair for a long period of time after his work accident. Adams received his full salary under Oncor's salary continuation policy. The salary continuation policy states that an employee must return to work performing "the essential job duties of his position" within 6 months of beginning to receive benefits to avoid termination of his employment.



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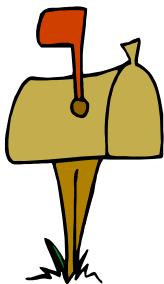
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Adams' normal job was a senior troubleshooter. The job duties included climbing poles and structures, frequently stooping, kneeling, crouching, twisting, and lifting/carrying weights up to 20 pounds individually and up to 200 hundred pounds with help from other crew members or equipment. Adams conceded that he couldn't do this type of work after his work accident. He returned to work in February 2008 in the temporary position of dispatcher. Several weeks later, Adams was terminated per the salary continuation policy because he had not returned to performing the essential job duties of his job as a senior troubleshooter. He later applied for a permanent position as dispatcher, but he didn't get the job because he was not medically cleared to do the job on a permanent basis. In 2010, Adams filed a lawsuit claiming that his termination was in retaliation for filing a workers' compensation claim. The district court and Court of Appeals of Dallas agreed with Oncor that there was no retaliation because Adams was discharged due to the uniform application of its salary continuation policy. The court cited the Texas Supreme Court in saying that if the discharge results from the uniform enforcement of a reasonable absence control policy, there is no violation of the wrongful termination statute.

**Employer Tips from Case.** The court discussed a few things that an employer should know. (1) The court said, "The Texas Supreme Court has held that if the plaintiff's discharge results from the uniform enforcement of a reasonable absence control policy, there is no violation of section 451.001 as a matter of law." (2) The court stated that the employer did not have a policy that required the employer to bring back the employee in a restricted duty status. If the policy required the employer to bring back the employee in a restricted duty status rather than the employee's pre-injury, normal job, then the court probably would not find for the employer. The employer policy merely instructed the employee to inform the employer of any ability to work (this lawsuit was only a wrongful termination action; there was no discussion of any federal causes of action). (3) The court looked favorably on the employer because the employer filed the workers' compensation claim on behalf of Adams. "...[I]t would seem 'highly irregular' for an employer to discriminate against an employee on the basis of a workers compensation claim that the employer itself filed."



**QUESTIONS? COMMENTS?** Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at [questions@rickydgreen.com](mailto:questions@rickydgreen.com), or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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