



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2019-10

The Honorable Chris Kannady
State Representative, District 91
2300 N. Lincoln Boulevard, Room 240
Oklahoma City, OK 73105

December 17, 2019

Dear Representative Kannady:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

In what venue must a workers' compensation retaliation claim be filed or maintained if the claim stems from an injury that occurred on or after February 1, 2014 but before May 28, 2019?

I.
BACKGROUND

Generally, Oklahoma is an employment-at-will state, meaning that unless prohibited elsewhere in law or policy, it is permissible to terminate an employee for any reason or no reason. *See Burk v. K-Mart Corp.*, 1989 OK 22, ¶¶ 6-7, 770 P.2d 24, 26. It was not until the 1976 passage of the Retaliatory Discharge Act that employees received protection in district court against retaliation associated with workers' compensation claims. *See* 1976 Okla. Sess. Laws ch. 217 (codified at Title 85, Section 5, repealed by 2011 Okla. Sess. Laws ch. 318, § 87); *see also Young v. Station 27, Inc.*, 2017 OK 68, ¶ 13, 404 P.3d 829, 835-36; *Glasco v. State ex rel. Okla. Dep't of Corr.*, 2008 OK 65, ¶ 10, 188 P.3d 177, 182. This allowed an employee to seek remedies against an employer who takes an adverse action against the employee because the employee, for example, retained a lawyer for, caused to be initiated, or testifies in a workers' compensation claim or proceeding.

In 2011, the Legislature reformed the workers' compensation laws by adopting the Workers' Compensation Code, codified in Title 85 of the Oklahoma Statutes. *See* 2011 Okla. Sess. Laws ch. 318; *see also Young*, 2017 OK 37, ¶ 16, 404 P.3d at 836-37. Under that code, an aggrieved employee was authorized to bring an action in district court to recover "reasonable damages, actual and punitive if applicable, suffered by the employee . . . [and] to be reinstated to his or her former position." 85 O.S.2011, § 341 (repealed by 2013 Okla. Sess. Laws ch. 208, § 171).

Then, in 2013, the Legislature reformed the workers' compensation laws again by enacting the Administrative Workers' Compensation Act (the "AWCA"), codified in Title 85A. *See* 2013 Okla. Sess. Laws ch. 208. Effective February 1, 2014, the AWCA replaced the retaliation prohibitions of Title 85, Section 341 with those set forth in Title 85A, Section 7. The two provisions are similar, but have a notable difference relevant to your question: Section 7 vested "exclusive jurisdiction to hear and decide [retaliation] claims" in the newly-created Workers' Compensation Commission. 85A O.S.Supp.2014, § 7(B).

Finally, in 2019, the Legislature enacted House Bill 2367 ("H.B. 2367"), which, among other things, amended Title 85A, Section 7 to return exclusive jurisdiction to hear and decide retaliation claims to district courts. *See* 2019 Okla. Sess. Laws ch. 476, § 5; 85A O.S.Supp.2019, § 7(B). H.B. 2367 contained an emergency provision and, as a result, it went into effect immediately upon receiving the Governor's signature on May 28, 2019.

In summary, there are three versions of workers' compensation laws to consider when addressing your question. The first is the Workers' Compensation Code in effect between August 26, 2011 and January 31, 2014, which provided for retaliation actions in district court. *See* 85 O.S.2011, § 341. The second is the pre-H.B. 2367 AWCA, which provided for retaliation actions in front of the Commission from February 1, 2014 until May 27, 2019. *See* 85A O.S.Supp.2014, § 7(B). Finally, the post-H.B. 2367 AWCA again provides for retaliation actions in district court, effective May 28, 2019. *See* 85A O.S.Supp.2019, § 7(B).

II. DISCUSSION

Two determinations are required to resolve your question about the appropriate forum for workers' compensation retaliation claims. First, one must determine when a retaliatory claim accrues. Second, one must determine which retaliation statute was in effect during the relevant time period. Because the original AWCA and the H.B. 2367 amendments provide for exclusive jurisdiction in either the Workers' Compensation Commission or the district courts, respectively, determining the applicable statute also determines the proper forum.

A. The relevant date for retaliation claims relates back to the work-related injury.

Retaliation claims under workers' compensation laws are tied to the work-related injury that gave rise to the original workers' compensation claim, not the moment of employer retaliation or filing of a claim. *See Young*, 2017 OK 68, ¶ 2, 404 P.3d at 831. Shortly after the Oklahoma Supreme Court's holding in *Young*, the Court reiterated "that a plaintiff's retaliatory discharge action is based upon the retaliatory discharge statute in effect when the workers' compensation injury occurred." *Hopson v. Exterran Energy Sols.*, 2018 OK 33, ¶ 3, 417 P.3d 1194, 1194. The Court went on to state "even though *Young*'s employment termination occurred after the effective date of the AWCA, her claim for retaliatory discharge related back to the injury date giving rise to her workers' compensation claim." *Id.* The language in Section 7 of the AWCA that was at issue in *Young* and *Hopson* was not altered by the passage of H.B. 2367. Accordingly, regardless of when a retaliatory discharge occurred, the date used to determine the operative statute is the date when the underlying work-related injury occurred.

B. The statute in effect at the time of the work-related injury determines jurisdiction over related retaliation claims.

As noted above, the statute in effect at the time of the initial injury generally governs a workers' compensation claim. *See Young*, 2017 OK 68, ¶ 2, 404 P.3d at 831; *Hopson*, 2018 OK 33, ¶ 3, 417 P.3d at 1194; *see also* OKLA. CONST. art. 5, § 54 (repeal of a statute shall not affect any accrued right or proceedings begun). In Oklahoma "statutes, and amendments, are to be construed to operate only prospectively unless the Legislature clearly expresses a contrary intent." *Welch v. Armer*, 1989 OK 117, ¶ 27, 776 P.2d 847, 850; *Trinity Broad. Corp. v. Leeco Oil Co.*, 1984 OK 80, ¶ 6, 692 P.2d 1364, 1366. Moreover, "[a]ny doubts must be resolved against a retroactive effect." *CNA Ins. Co. v. Ellis*, 2006 OK 81, ¶ 13, 148 P.3d 874, 877.

With respect to the amendment of Section 7 effected by H.B. 2367, the Legislature did not express an intent that the changes apply retroactively. When the AWCA was passed, it bifurcated workers' compensation claims, in general, between those claims for injuries occurring prior to the "effective date of this act" and those occurring after:

- B. This act shall apply only to claims for injuries and death based on accidents which occur on or after the effective date of this act.
- C. The Workers' Compensation Code in effect before the effective date of this act shall govern all rights in respect to claims for injuries and death based on accidents occurring before the effective date of this act.

85A O.S.Supp.2014, § 3(B), (C). Claims for injuries occurring before the effective date would be heard in the newly created Workers' Compensation Court of Existing Claims, applying the laws as set out in the pre-AWCA Workers' Compensation Code. 85A O.S.Supp.2014, § 400. Claims arising after the effective date were to be filed with the Workers' Compensation Commission and referred to an administrative law judge. *Id.* § 27. With the passage of H.B. 2367, the AWCA's effective date was restated, but not changed. This alone cannot be the basis of assuming retroactive intent.

Without a clear expression of retroactive intent, the general rule of prospective application must apply. Specifically, the law in effect *at the time of the injury* controls the claims and remedies. *Young*, 2017 OK 68, ¶ 2, 404 P.3d at 831; *Hopson*, 2018 OK 33, ¶ 3, 417 P.3d at 1194. Thus, retaliation claims relating to worker injuries occurring after February 1, 2014 but before May 28, 2019 are governed by the pre-H.B. 2367 AWCA and jurisdiction lies with the Workers' Compensation Commission. *See* 85A O.S.Supp.2014, § 7. Retaliation claims based on injuries occurring on or after May 28, 2019 are governed by the current AWCA and jurisdiction lies with the district courts. *See* 85A O.S.Supp.2019, § 7.

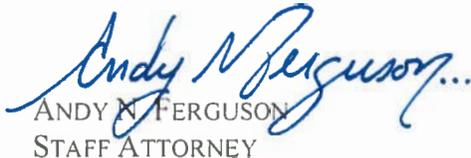
Finally, because these provisions cannot both be applied to the same claim, transfer of existing claims from one exclusive jurisdiction to another is not possible. Nor do workers who have yet to file retaliation claims have the option between the two forums. They may only file in the exclusive jurisdiction designated by the statute in effect when the work-related injury occurred.

It is, therefore, the official opinion of the Attorney General that:

1. Retaliation claims under workers' compensation laws relate back to the date of the work-related injury for purposes of determining which statute is given effect and which entity has jurisdiction. *Young v. Station 27, Inc.*, 2017 OK 68, 404 P.3d 829; *Hopson v. Exterran Energy Sols.*, 2018 OK 33, 417 P.3d 1194.
2. Retaliation claims relating to work-related injuries that occurred between February 1, 2014 and May 27, 2019 must be filed with the Workers' Compensation Commission. *See* 85A O.S.Supp.2014, § 7.
3. Retaliation claims relating to work-related injuries that occurred or will occur on or after May 28, 2019 must be filed in district court. *See* 85A O.S.Supp.2019, § 7.
4. For retaliation claims properly filed with and currently pending before the Workers' Compensation Commission, the Commission has exclusive jurisdiction. The claim may not be transferred to District Court.



MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA



ANDY N. FERGUSON
STAFF ATTORNEY

