Littler's Workers' Compensation Retaliation Survey

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IMPORTANT NOTICE

This publication is not a do-it-yourself guide to resolving employment disputes or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation will find the information extremely useful in understanding the issues raised and their legal context. This is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute.

LITTLER'S WORKERS' COMPENSATION RETALIATION SURVEY

At a Glance: Littler's Workers' Compensation Practice and Workers' Compensation Retaliation

With lawyers in multiple jurisdictions, Littler has years of experience assisting employers in all aspects of workers' compensation, providing counseling and vigorously defending them in litigation. Because of our geographic reach, we not only know the nuances and complexities of individual state laws, we can also provide comprehensive and efficient representation in multiple jurisdictions.

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When appropriate, Littler tenaciously defends our clients in litigation with the confidence that comes from handling hundreds of workers' compensation cases each year. We collaborate with employers and insurance carriers to develop strategies that achieve the best possible resolution for the company so that files are closed as quickly as possible, minimizing liability as well as costs.

Other services we provide include the following:

- Addressing the intersection between workers' compensation and numerous other employment laws, such as ADA, FMLA, OSHA, and FLSA. As a result, we can provide a more complete representation addressing all other aspects of the employment relationship;
- Advising employers on the return-to-work requirements for employees on workers' compensation leave;
- Advising employers on implementing alternative programs in Texas and other states where an employer may opt out of participating in the state workers' compensation system;
- Assisting employers seeking to manage multi-state workers' compensation programs in developing strategies and practices consistent with an employer's policies and labor contracts that comply with state workers' compensation laws and state, federal and local employment laws;
- Defending employers in litigation involving claims of workers' compensation retaliation; and
- Handling injury claims arising under federal laws, including the Jones Act and the Longshore and Harbor Workers' Compensation Act.

We not only provide our clients with the knowledge and experience necessary for the effective management of workers' compensation matters, but we also offer the added value of extensive national resources that enable us to focus on all aspects of state, federal and local employment laws.

Littler's Workers' Compensation Retaliation Survey[1]

Workers' compensation retaliation is an issue that is prevalent in both workers' compensation and employment practice. Often, a workers' compensation retaliation claim is included in a plaintiff's lawsuit against his/her employer. At times, the workers' compensation retaliation claim can drastically influence the parties' positions and strategies in litigation.

Littler's Workers' Compensation Retaliation Survey includes an overview of which states prohibit retaliation against an employee who exercises his/her right to pursue and/or receive workers' compensation benefits. Specifically, the survey addresses whether retaliation of this nature is prohibited by statute, prohibited by state common law, or perhaps both and what the available remedies are for such a claim. The survey also addresses the burden of proof required to assert a workers' compensation retaliation claim in each jurisdiction.

By way of an overview, thirty-seven states have a statutory provision that prohibits discriminatory or retaliatory conduct based on an employee's pursuit of or receipt of workers' compensation benefits. Out of the states that do not have a statutory provision prohibiting workers' compensation discrimination or retaliation, twelve states provide employees, who are subjected to retaliation or discrimination because of their pursuit of or receipt of workers' compensation benefits, a claim under state common law.

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1 **The survey was last updated in September 2011. Although some case law is included or identified, it is not exhaustive. It is advisable to review the particular state statute where applicable and case law and confer with legal counsel before deciding what to do within a particular state as our surveys are not do-it-yourself guides.** The long version of this survey, which is available for purchase, includes an overview regarding whether the workers' compensation retaliation claim preempts other causes of action and/or remedies as well as information regarding a workers' compensation claimant's rights as to vocational rehabilitation, termination from employment and reinstatement after workers' compensation leave.

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Littler's Workers' Compensation Retaliation Survey

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Alabama	There is a narrow exception to the employment-at-will doctrine in Alabama. The statute provides that "[n]o employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter… ." Alabama Code Section 25-5-11.1.	Compensatory and punitive damages are recoverable in a claim for retaliatory discharge under this statute. *See Flint Constr. Co. v. Hall*, 904 So. 2d 236 (Ala. 2004). Punitive damages are always potentially recoverable because a finding of retaliation is *per se* a violation of the public policy of the State of Alabama. Whether to award punitive damages in such cases is left to the sound discretion of the jury. *Id.* at 254.	Not applicable. *See* Alabama's anti-retaliation statute cited herein.	A prima facie case of retaliatory discharge under the statute may be established by proof of the following: (1) an employment relationship; (2) an on-the job-injury; (3) the employer's knowledge of the on-the-job injury; and (4) a subsequent termination based solely upon the employee's injury and filing of a workers' compensation claim. *Ford v. Carylon Corp., Inc.*, 937 So. 2d 491 (Ala. 2006). If the plaintiff establishes a prima facie case, the burden shifts to the defendant/employer to present substantial evidence indicating a legitimate reason for the discharge. If the defendant/employer presents such substantial evidence, the burden shifts back to the plaintiff who must then present substantial evidence that the "legitimate reason" is not true, but pretextual. The Alabama Supreme Court held in *Alabama Power Co. v. Aldridge,* 854 So. 2d 554 (Ala. 2003), that a plaintiff must prove that his or her employment was terminated *solely* because of injury or filing of a workers' compensation claim. *Sole causation* may be established by evidence showing: (1) the stated reason for termination has been applied discriminatorily in the past to employees who have filed workers' compensation claims; (2) the stated reason conflicts with an express policy of the employer regarding discharge; or (3) the employer has disavowed the stated reason or otherwise indicated that the stated reason was pretextual. Mere proximity in time between the protected activity and the termination typically will not be sufficient to establish a retaliation claim. *Coca-Cola Bottling Co. v. Hollander*, 885 So. 2d 125 (Ala. 2003). Additionally, Alabama law will not impose liability unless the person who made the termination decision had actual and specific knowledge of the plaintiff's claim for benefits, not merely knowledge of the on-the-job injury. *See Tyson Foods, Inc. v. McCollum*, 881 So. 2d 976 (Ala. 2003); *Phillips v. Sentinel Consumer Prods., Inc.*, 2004 Ala. Civ. App. LEXIS 997 (Ala. Dec. 30, 2004). Moreover, despite the statutory language "instituted or maintained," an employee need not have formally commenced a civil action to recover benefits prior to the time the termination occurred. *Hexcel Decatur, Inc. v. Vickers*, 908 So. 2d 237 (Ala. 2005); *Falls v. JVC Am., Inc.*, 7 So.3d 986 (Ala. 2008) (employee must have taken some level of action to meet definition).
Alaska	An employer may not discriminate in hiring, promotion, or retention policies or practices against an employee who has in good faith filed a claim for or received benefits under this chapter. AS 23.30.247(a).	An employer who violates this section is liable to the employee for damages to be assessed by the court in a private civil action. AS 23.30.247(a).	Not applicable. *See* Alaska's anti-retaliation statute cited herein.	To establish a prima facie case of retaliation, a plaintiff must show: (1) that the employee was engaged in a protected activity; (2) that an adverse employment decision was made; and (3) that there was a causal connection between the two. Once a prima facie case is established, the burden of production shifts to the employer to articulate a legitimate non-retaliatory explanation for the discharge. To satisfy this burden, the employer "need only produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." If the employer meets its burden of production by articulating a legitimate reason for terminating the employee, "then the burden shifts once again to the plaintiff to show that the defendant's proffered explanation is merely a pretext for discrimination." *Kinzel v. Discovery Drilling, Inc.*, 93 P.3d 427, 433 (Alas. 2004).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Arizona	In Arizona, an employee has a claim against an employer before a court for termination of employment if the employer has terminated the employment relationship of an employee in retaliation for the exercise of rights under Arizona's workers' compensation statutes. ARS 23-1501(3)(c)(iii): the "Employment Protection Act" or EPA.	The Employment Protection Act (EPA) is expressly limited to situations where employees are terminated and not to other types of retaliation. While the EPA precludes claims for compensatory and punitive damages for tortious wrongful discharge that are based on the Arizona Civil Rights Act (ACRA), a range of constitutionally protected common law tort remedies remain undisturbed as fully beyond the scope of the EPA. *Cronin v. Sheldon*, 195 Ariz. 531 (1999). The EPA authorizes a tort claim for wrongful termination in violation of the public policy set forth in another statute only if that other statute does not provide a remedy to an employee for the violation of the other statute. *Taylor v. Graham County Chamber of Commerce*, 201 Ariz. 184 (Ct. App. 2001).	Not applicable. *See* Arizona's anti-retaliation provision cited herein.	In order to succeed on a claim for retaliation under Arizona's Employment Protection Act, ARS 23-1501(3)(c)(iii), a Plaintiff must show: (1) that he/she engaged in a protected activity (*e.g.*, filed a workers' compensation claim or was injured on the job), (2) that he/she suffered an adverse employment action, and (3) that there is a causal link between the two. *See Levine v. TERROS, Inc.*, No. CV 08-1458-PHX-MHM, 2010 U.S. Dist. LEXIS 21234, at *22-23 (D. Ariz. Mar. 9, 2010) (citing *Hernandez v. Spacelabs Medical Inc.*, 343 F.3d 1107, 1113 (9th Cir. 2003)). If Plaintiff provides sufficient evidence to make out a prima facie case of retaliation, then the burden shifts to Defendant to articulate some legitimate, non-retaliatory reasons for its actions. *Id.* If Defendant sets forth such a reason, then Plaintiff must show that Defendant's proffered reason is merely a pretext for the underlying retaliatory motive. *Id.*
Arkansas	An employer may not discriminate in hiring, tenure, or term or condition of work of any individual because of the individual's claim for Workers' Compensation benefits. *See* A.C.A. §11-9-107.	Fine up to $10,000, as determined by the Workers' Compensation Commission; reasonable costs and attorney's fees. *See* A.C.A. §11-9-107.	Not applicable. *See* Arkansas' anti-retaliation statute cited herein.	Prior to the amendment of Arkansas' statute, when a common law retaliation claim existed that was not preempted by A.C.A. § 11-9-107, an employee had the burden of proof to show that his/her discharge was because of his/her workers' compensation claim. *See GE v. Gilbert*, 76 Ark. App. 375 (Ark. Ct. App. 2002). Since the amendment of the statute, however, it does not appear that courts in Arkansas have addressed the burden of proof to sustain a cause of action under A.C.A. § 11-9-107.
California	It is California's public policy that there should not be discrimination against workers who are injured in the course and scope of their employment. Section 132a claims are commonly venued before California's Workers' Compensation Appeals Board, under the same case number as the underlying WC claim. Cal. Lab. Code § 132a "Discrimination" under Section 132 includes such things as termination, reduction in grade/pay, or discontinuance of severance pay. *See County of Santa Barbara v. Workers' Comp. Appeals Bd.*, 109 Cal. App. 3d 211 (1980).	California employers and insurance companies that discriminate against an injured worker may be ordered to: 1) increase the underlying worker's compensation award by one-half, but not to exceed $10,000 (*Nordstrom, Inc. v. WCAB* 65 CCC 578 (2000)); and/or 2) reinstate the employee; and/or 3) reimburse the employee for lost wages and work benefits caused by the discriminatory acts; and 4) the employer or insurance company receives a misdemeanor charge. Cal. Lab. Code §132a(1)-(2).	Not applicable. *See* California's anti-retaliation statutory provision cited herein.	In California, the injured worker bears the burden of proving a detrimental act and its relation to the work-related injury. In other words, that the employer engaged in conduct detrimental to the employee (*e.g.*, termination, demotion, or re-assignment to a less desirable post) as a result of the work-related injury. *See Barns v. WCAB*, 216 Cal. 3d 524 (1989). In addition to this, the worker must also establish that he or she was singled out for disadvantageous treatment. *See County of San Luis Obispo v. WCAB*, 133 Cal. 4th 641 (2005). An injured worker must show more than some adverse result is a consequence of an employer action or inaction triggered by the industrial injury. *Department of Rehab. v. WCAB*, 30 Cal. 4th 1281, 1301 (2003). The workers must also show that he or she has a legal right to receive or retain the deprived benefit or status and the employer has the corresponding legal duty to provide it or refrain from taking it away. *Id.*
Colorado	None.	Not applicable.	Colorado courts have recognized the tort of wrongful termination/discharge in violation of public policy when an employer discharges an employee for exercising his right to apply for and receive benefits under the Workers' Compensation Act of Colorado (the Act), sections 8-40-101 through 8-66-112, C.R.S. (1986 Repl. Vol. 3B). *See Lathrop v. Entenmann's, Inc.*, 770 P.2d 1367, 1372-73 (Colo. Ct. App. 1989).	In order to prevail on a common law workers' compensation retaliation claim, a plaintiff has the burden of proof. *See Martin Marietta Corp. v. Lorenz*, 823 P.2d 100, 109 (Colo. 1992). A plaintiff seeking to assert a claim based on retaliatory discharge for exercising a job-related right must show that: 1) the plaintiff was employed by the defendant; 2) the defendant discharged the plaintiff; and 3) the plaintiff was discharged for exercising a job-related right or privilege to which he or she was entitled. *Herrera v. San Luis central Railroad Co.*, 997 P.2d 1238 (Colo. App. 1999) citing CJI-Civ. 4th 31:10 (1998); see also *Lathrop v. Entenmann's, Inc.*, 770 P.2d 1367 (Colo. App. 1989).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Connecticut	The Connecticut Workers' Compensation Act contains an anti-discrimination provision in section 31-290a of the Connecticut General Statutes. That section prohibits an employer from discharging, causing to be discharged, or in any manner discriminating against an employee because that employee has filed a claim for workers' compensation benefits or has otherwise exercised his or her rights under the Act. Conn. Gen. Stat. § 31-290a(a).	An employee who believes that he or she was discharged or discriminated against, in violation of the statute, has the option of suing the employer in state court or filing a claim with the Connecticut Workers' Compensation Commission. *Id.* § 31-290a(b). If the employee chooses to sue the employer in state court, the court may award reinstatement, back pay and benefits, and "any other damages caused by such discrimination or discharge." The court may also award punitive damages, and shall award a prevailing employee reasonable attorney's fees and costs. *Id.* § 31-290a(b)(1). If the employee opts to file a claim with the Connecticut Workers' Compensation Commission, the Commission will assign the claim to a Workers' Compensation Commissioner, who may award reinstatement, back pay and benefits, and who shall award reasonable attorney's fees to a prevailing employee. Unlike civil actions filed in state court, the Commissioner cannot award punitive damages or any other relief. *See id.* § 31-290a(b)(2).	Not applicable. *See* Connecticut's anti-retaliation statute cited herein.	To make out a prima facie case of workers' compensation discrimination under section 31-290a, the employee must produce evidence that (1) he filed a claim for benefits or otherwise exercised his rights under the Act, (2) the employer was aware of the workers' compensation claim or exercise of other rights protected under the Act (3) adverse employment action was taken by the employer, and (4) there was a causal connection between the protected activity and the adverse employment action. If the employee establishes his prima facie case, the burden shifts to the employer to produce evidence of a legitimate, non-discriminatory business reason for the adverse employment action. If the employer satisfies its burden, the burden shifts back to the employee to prove, by a preponderance of the evidence, that the employer's reason was a pretext for discrimination. The ultimate burden rests with the employee/claimant to demonstrate, through a preponderance of the evidence that the employer intentionally discriminated against him. *Mele v. City of Hartford*, 270 Conn. 751 (2004).
Delaware	It is unlawful for any employer or the duly authorized agent of any employer to discharge or to retaliate or discriminate in any manner against an employee as to the employee's employment because such employee has claimed or attempted to claim workers' compensation benefits from such employer, because such employee reported an employer's noncompliance with a provision of this chapter, or because such employee has testified or is about to testify in any workers' compensation proceeding. Del. Code Ann. tit. 19 § 2365.	Claims for workers' compensation retaliation must be filed in the Superior Court of Delaware within two years of the employer's allegedly unlawful action. If the Court, after hearing, finds in favor of the employee, the employee shall be restored to employment or to the position, privilege, right or other condition of employment denied by such action and shall be compensated for any loss of compensation and damages caused thereby, as well as for all costs and attorney's fees, as fixed by the Court, except that if the employee shall cease to be qualified to perform the duties of employment, the employee shall not be entitled to such restoration and compensation. An employer who violates this section shall be liable to pay a penalty of not less than $500 and not more than $3,000, as may be determined by the Court and which shall be paid to the Workers' Compensation Fund. Any party shall have the right to appeal as in other cases before the Court, but if the employee's claim ultimately is sustained, the employer also shall be liable for all costs and attorney's fees on appeal. Del. Code Ann. tit. 19 § 2365. Employees may be eligible for non-economic damages, such as compensation for emotional distress, consistent with the rules applicable to other intentional torts. *See Mondzelewski v. Pathmark Stores, Inc.*, 1998 Del. Super. LEXIS 520 (Del. Supp. Oct. 16, 1998). However, Delaware courts have rejected claims for punitive damages associated with workers' compensation retaliation. *See Meltzer v.City of Wilmington*, 2008 Del. Super. LEXIS 464 (Del. Sup. August 6, 2008).	Not applicable. *See* Delaware's anti-retaliation statute cited herein.	The employee bears the burden of proof in establishing his/her claim. Any claim of an employee alleging such action by an employer shall be filed with the Superior Court within two years of the employer's alleged action. Del. Code Ann. tit. 19 § 2365.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
District of Columbia	The D.C. Workers' Compensation Act prohibits an employer or duly authorized agent from discharging or discriminating against an employee because the employee has claimed or attempted to make a workers' compensation claim, or has testified or is about to testify in a workers' compensation proceeding. D.C. Code § 32-1542. The employee need not have made a formal workers' compensation claim in order to be protected from retaliation. *See Lyles v. D.C. Dep't of Employment Servs.*, 572 A.2d 81 (D.C. App. 1990) (employee's refusal to return to work believing that she was still suffering the effects of a work-related injury amounted to an "attempt to claim compensation" qualifying the employee for protection against retaliation for such refusal).	An employer who unlawfully discharges or discriminates against an employee under the anti-retaliation provisions is subject to a penalty between $100 and $1,000, payable to the Mayor's special workers' compensation fund. In addition, the employee must be restored to his employment and compensated for any loss of wages arising out of the discrimination; provided, however, that if the employee is no longer qualified to perform the duties of his employment, he shall not be entitled to restoration and compensation. These penalties and payments must be made directly by the employer and cannot be delegated to an insurance carrier. D.C. Code § 32-1542	Not applicable. *See* District of Columbia's anti-retaliation statute cited herein.	The process for proving retaliation is similar to the process for proving employment discrimination. The employee must establish a prima facie case by showing that s/he has made or attempted to make a claim for workers' compensation and that s/he was discharged by the employer in retaliation for making the claim. Once the employee has established a prima facie case, the burden of production shifts to the employer to offer a non-retaliatory explanation for the termination. Finally, to prevail, the employee must show that s/he was fired, wholly or in part, for pursuing her/his right to claim workers' compensation and not for the proffered non-retaliatory reason. *Abramson Assoc., Inc. v. District of Columbia Dep't of Employment Servs.*, 596 A.2d 549 (D.C. 1991)*; see also 5000 Wisconsin Inc. v. District of Columbia Dep't of Employment Servs.*, 728 A.2d 1192, 1195 (D.C. 1999). An employee who is no longer qualified to perform the duties of his employment is not entitled to relief for unlawful retaliation. D.C. Code § 32-1542. An employer's termination of an employee on workers' compensation leave, even if unreasonable, does not amount to retaliatory discharge absent additional evidence that the termination was motivated by animus against the employee resulting wholly or in part from the employee's pursuit of his/her workers' compensation rights. *See Lyles v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 81 (1990). *See also St. Clair v. District of Columbia Dep't of Employment Servs.*, 658 A.2d 1040 (D.C. 1995) (retaliation not established where employee could only work part-time in a full-time position).
Florida	An employer is not permitted to discharge, threaten to discharge, intimidate, or coerce any employee by reason of such employee's valid claim for compensation or attempt to claim compensation under the Workers' Compensation Law. Fla. Stat. § 440.205.	The scope of the statute is limited to discharge, threatened discharge, intimidation, and coercion. Florida courts have treated alleged violations of Section 440.205 as actions to recover damages for an intentional tort. As such, damages are available for emotional distress. *Scott v. Otis Elevator Co.*, 572 So. 2d 902, 904 (Fla. 1990). Courts have also indicated a willingness to entertain claims for punitive damages. *See McRae v. Douglas*, 644 So. 2d 1368, 1371 (Fla. 5th DCA 1994). However, the employee is not entitled to recover her attorney's fees if she prevails. *Nicholson v. Ross Products, Inc.*, 506 So. 2d 487, 487 (Fla. 4th DCA 1987); *Flores v. Roof Tile Admin., Inc.*, 887 So. 2d 360, 361 (Fla. 2004).	Not applicable. *See* Florida's anti-retaliation statute cited herein.	When considering a claim for relief under Section 440.205, the court applies the *McDonnell Douglas* burden-shifting framework. *Russell v. KSL Hotel Corp.*, 887 So. 2d 372, 379-380 (Fla. 3d DCA 2004). If the employee makes out a prima facie case of retaliation, then the burden shifts to the employer to demonstrate a legitimate, non-retaliatory reason for its challenged action. If the employer so demonstrates, then the burden shifts to the employee to demonstrate that the employer's articulated reason is pretext for retaliatory action. To make out a prima facie case, the employee must demonstrate (1) that he asserted, or attempted to assert, a valid claim for workers' compensation benefits, (2) that the employer discharged him, threatened to discharge him, intimidated him, or coerced him, and (3) that the employer carried out the prohibited act because of the workers' compensation claim. *Russell v. KSL Hotel Corp.*, 887 So. 2d 372, 379 (Fla. 3d DCA 2004). With regard to the element of causation, one Florida court has held that the employer's desire to retaliate must be a "substantial factor" in the decision to carry out a prohibited act. *Allan v. SWF Gulf Coast, Inc.*, 535 So. 2d 638 (Fla. 1st DCA 1988) (holding that, on the circumstances presented, the trial court did not err to give the "substantial factor" jury instruction). A showing of ill motivation on the employer's part is insufficient. *Southern Freightways v. Reed*, 416 So. 2d 26, 26 (Fla. 1st DCA 1982).
Georgia	None. Under the Georgia workers' compensation act, an employee has no remedy in Georgia for a retaliatory discharge for filing a workers' compensation claim. *See Evans v. Bibb Co.*, 178 Ga. App. 139, 140, 342 S.E.2d 484, 486 (1986), in which the Georgia court held that the General Assembly was the appropriate forum for any change in Georgia law.	Not applicable.	None.	Not applicable.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Hawaii	It shall be unlawful for any employer to suspend or discharge any employee solely because the employee suffers any work injury which is compensable under this chapter and which arises out of and in the course of employment with the employer unless it is shown to the satisfaction of the director that the employee will no longer be capable of performing the employee's work as a result of the work injury and that the employer has no other available work which the employee is capable of performing. Haw. Rev. Stat. § 386-142; Haw. Rev. Stat. § 378-32(2).	Any employee who is suspended or discharged because of such work injury shall be given first preference of reemployment by the employer in any position which the employee is capable of performing and which becomes available after the suspension or discharge and during the period thereafter until the employee secures new employment. Haw. Rev. Stat. § 386-142; Haw. Rev. Stat. § 378-32(2).	Not applicable. *See* Hawaii's anti-retaliation statute cited herein.	A plaintiff must prove by a preponderance of the evidence that the termination or other discriminatory action against him/her was taken solely because of his/her work-related injury and that he/she is able to work. *Fergerstrom v. Datapoint Corp.*, 680 F. Supp. 1456 (D. Haw. 1988) (an employee who was unable to work and who was discharged under employer's administrative discharge policy that applied to all leaves of absence (whether work-related or not) was not subject to retaliatory discharge under the Act).
Idaho	None.	Not applicable.	There is authority in Idaho under which a common law wrongful termination claim for workers' compensation retaliation may be premised. Pursuant to the common law public policy exception to the at-will employment doctrine, discharging an employee for filing a worker's compensation claim constitutes wrongful termination. *See Jackson v. Minidoka Irrigation Dist.*, 563 P.2d 54, 58 (ID 1977) (listing cases illustrating the public-policy exception to the employment-at-will doctrine, including *Frampton v. Central Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973), in which the plaintiff was fired for reporting an injury to her arm so she could file for workmen's compensation, which the Indiana court held to be in clear contravention of public policy); *see also Thomas v. Med. Ctr. Physicians, P.A.*, 61 P.3d 557, 565 (ID 2002) ("This Court has also indicated that the public policy exception would be applicable if an employee were discharged, for example for refusing to date her supervisor, for filing a worker's compensation claim, or for serving on jury duty.") (citing *Sorensen*, 118 Idaho at 668, 799 P.2d at 72); *Prado v. Potlatch Corp.*, 2006 U.S. Dist. LEXIS 68874, 12-14 (D. Idaho Sept. 7, 2006).	An employee may claim damages for wrongful discharge when the motivation for the firing contravenes public policy and the employee bears the burden of proof to show that the firing contravenes public policy. *See Jackson v. Minidoka Irrigation Dist.*, 98 Idaho 330, 333, 563 P.2d 54, 57 (1977).
Illinois	Illinois law forbids employers from discriminating against an employee because of his or her exercise of workers' compensation rights. 820 ILCS 305/4(h). Furthermore, it is unlawful for an employer to inquire whether a prospective employee has ever filed a claim for benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act, or received benefits under these Acts. 820 ILCS 55/10.	Civil damages for violating these anti-discrimination provisions are not discussed in the statute.	Although a statutory non-discrimination claim exists, Illinois courts also recognize a common law claim for retaliatory discharge based on filing a workers' compensation claim. *See e.g., Geary v. Telular Corp.*, 341 Ill. App.3d 694 (1st Dist. 2003).	A retaliatory discharge claim requires the following elements. First, the plaintiff must have been an employee of the defendant before the injury occurred. Second, the plaintiff must have exercised or threatened to exercise a right granted by the workers' compensation act. Finally, the plaintiff's termination must have been causally related to his or her filing of a claim or statement of intent to file a claim under the act. *See Mercil v. Federal Express*, 664 F.Supp. 315, 317 (N.D. Ill. 1987); *Gonzalez v. Prestress Engineering Corp.*, 194 Ill.App.3d 819, 824 (4th Dist. 1990). The causation element is not met if the employer has a valid basis, which is not a pretext, for discharging the plaintiff. *Mercil*, 664 F.Supp. at 317.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Indiana	None.	Not applicable.	Yes. Indiana case law allows an employee at–will to bring an action for retaliatory discharge if the employee was discharged for exercising his or her statutorily conferred right to file a worker's compensation claim. *Frampton v. Central Indiana Gas Co.,* (1973), Ind., 297 N.E. 2d 425; *Stivers v. Stevens*, 581 N.E. 2d 1253 (Ind. App. 1991) (This rule of law also applies to an employee who was discharged for merely suggesting that he or she might file a worker's compensation claim). This type of action is commonly referred to as a "Frampton" claim or case.	In a "Frampton" case, the plaintiff must show more than a filing of a worker's compensation claim and discharge itself. *Powdertech, Inc. v. Joganic*, 776 N.E. 2d 1251 (Ind. Ct. App. 2002). Accordingly, the employee must present evidence which directly or indirectly implies the necessary inference of causation between the filing of a worker's compensation claim and the termination. *Id.* Such evidence can consist of proximity in time or evidence that the employer's asserted lawful reason for the discharge is simply a pretext. *Id.* The employee can prove pretext by showing that (1) the employer's stated reason has no basis in fact; (2) although based in fact, the stated reason was not the actual reason for discharge; and (3) the stated reason was insufficient to warrant the discharge. *Id.*
Iowa	None.	Not applicable.	In *Springer v. Weeks & Leo Co*., 475 N.W.2d 630, (Iowa 1991), the Iowa Supreme Court recognized a right of action for a discharge in retaliation for an employee's filing a workers' compensation claim. Under Iowa law, discharge based on retaliation for seeking workers' compensation benefits is against public policy. *Weinzetl and Schubert v. Ruan Single Source Transportation Co*., 587 N.W.2d 809, 811 (Iowa Ct. App. 1998).	To recover for retaliation, the plaintiff bears the burden of proving that their protected conduct of seeking workers' compensation benefits was a determining factor in defendant's decision to discharge them. *Weinzetl and Schubert v. Ruan Single Source Transportation Co*., 587 N.W.2d 809, 811 (Iowa Ct. App. 1998). A determining factor is one that tips the scales decisively in either direction. *Id.* Mere proof of protected conduct followed by termination is insufficient. *Id.*
Kansas	None.	Not applicable.	An employer cannot fire an employee in retaliation for the employee's filing of a workers' compensation claim; the filing of such a claim represents the protected exercise of a statutory right. *Bausman v. Interstate Brands Corp.*, 252 F.3d 1111, 1115 (10th Cir. 2001).	Workers' compensation retaliatory discharge cases are analyzed under a burden-shifting approach. A plaintiff makes a prima facie claim by showing: (1) that he filed a claim for workers' compensation benefits or sustained an injury for which he might assert a future claim for such benefits; (2) that the employer had knowledge of the compensation claim or the fact that he sustained a work-related injury for which the plaintiff might file a future claim for benefits; (3) that the employer terminated the plaintiff's employment; and (4) that a causal connection existed between the protected activity or injury and the termination. *Rebarchek v. Farmers Co-op. Elevator*, 35 P.3d 892 (Kan. 2001). The burden then shifts to the employer to show a legitimate, non-retaliatory reason for the discharge. If the employer meets this burden, the burden shifts back to the plaintiff to show by clear and convincing evidence that the reasons offered by the employer were merely a pretext for wrongful termination. *Id.*

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Kentucky	(1) No employee shall be harassed, coerced, discharged, or discriminated against in any manner whatsoever for filing and pursuing a lawful claim under this chapter (2) It is unlawful practice for an employer: (a) To fail or refuse to hire, or to discharge any individual, or otherwise to **discriminate** against an individual with respect to his compensation, terms, conditions, or privileges of employment, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust; or (b) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because such individual has been diagnosed as having category 1/0, 1/1, or 1/2 occupational pneumoconiosis with no respiratory impairment resulting from exposure to coal dust. (3) Any individual injured by any act in violation of the provisions of subsection (1) or (2) of this section shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, together with the costs of the law suit, including a reasonable fee for his attorney of record. K.R.S. §342.197.	Injunction and recovery of actual damages. *See* K.R.S. §342.197	Not applicable. *See* Kentucky's anti-retaliation provision cited herein.	The employee must prove workers' compensation claim was substantial and motivating factor but for which the employee would not have been discharged. *See Daniels v. R.E. Michael Co.*, 941 F. Supp. 629 (E.D. KY 1996).
Louisiana	It is illegal to either refuse to hire, or discharge, an employee from employment because the employee has asserted a claim for benefits under the Workers' Compensation statute or under the law of any state or of the United States. La. Rev. Stat. § 23:1361(A), (B). However, nothing prohibits an employer from discharging an employee who because of injury can no longer perform the duties of his employment. La. Rev. Stat. § 23:1361(B); s*ee Cahill v. Frank's Door and Bldg. Supply Co., Inc.*, 590 S.2d So.2d 53, 54 (La. 1991).	A person denied employment or discharged from employment in violation of the statute is entitled to a civil penalty equal to up to one year's wages. La. Rev. Stat. § 23:1361(C).	Not applicable. *See* Louisiana's anti-retaliation statute cited herein.	Because Section 23:1361(B) creates a civil cause of action, the normal burden of proof applies. *Bowman v. F. Christiana & Co.*, 553 So.2d 971, 973-74 (La. App. 4 Cir.1989). Thus, the plaintiff is required to establish the necessary facts by a preponderance of the evidence, meaning that the evidence as a whole must show that the necessary facts are more probable than not. *Id.* Thus, the plaintiff bears the burden of proving more probably than not that he or she was discharged from employment because he or she asserted a claim for workers' compensation benefits. *See Cahill v. Frank's Door and Building Supply Co.*, 577 So.2d 350, 352 (La.App. 1 Cir.), rev'd on other grounds, 590 So.2d 53 (La.1991). To recover for a retaliatory discharge in Louisiana, a plaintiff may meet his or her burden of proof in two ways: (1) by presenting direct evidence that asserting a workers' compensation claim was the reason for the discharge or (2) by presenting circumstantial evidence that he or she was fired for asserting a workers' compensation claim. *Nicholson v. Transit Mgmt.,* 781 So. 2d 661 (La. App. 4 Cir. 2001.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Maine	An employee may not be discriminated against by any employer in any way for testifying or asserting any claim under this Act. Me. Rev. Stat. 39-A § 353.	Any employee who is so discriminated against may file a petition alleging a violation of this section. The matter ***must be referred to a hearing officer for a formal hearing under section 315***, but any hearing officer who has previously rendered any decision concerning the claim must be excluded. If the employee prevails at this hearing, the hearing officer ***may award the employee reinstatement to the employee's previous job, payment of back wages, reestablishment of employee benefits and reasonable*** attorney's fees. Me. Rev. Stat. 39-A § 353.	Not applicable. *See* Maine's anti-retaliation provision cited herein.	The employee bears the burden of proof at the hearing. The key question for the hearing officer on a claimant's claim of discrimination is whether the motivation for the employee's termination "was rooted substantially or significantly in the employee's exercise of his rights under the Workers' Compensation Act." *Lavoie v. Re-Harvest, Inc.*, 2009 ME 50 (Me. 2009). If an employee makes a prima facie case, an employer then presents its legitimate, non-discriminatory business reason for its decision. The employee must then show that the reason is pretextual.
Maryland	It is unlawful for an employer to discharge a covered employee from employment solely because the covered employee files a claim for workers' compensation. M.D. Code Lab. & Empl., § 9-1105.	A person who discharges an employee solely for filing a claim for workers' compensation is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding $500; imprisonment not exceeding one year; or both. M.D. Code Lab. & Empl., § 9-1105. In addition to the criminal penalties set forth in the statute, an aggrieved employee may bring suit to recover compensatory damages, including back pay and front pay. *See Moniodis v. Cook*, 64 Md. App. 1 (1984). Punitive damages may also be awarded if the employee can show "actual malice" on the part of the employer. *Kessler v. Equity Mgmt.*, 82 Md. App. 577 (1990).	Not applicable. *See* Maryland's anti-retaliation statute cited herein	In wrongful discharge claims based on retaliation, it is the plaintiff's burden to prove that the exercise of protected activity was a "motivating" factor in the discharge. The employee need not prove that but for the discrimination she would not have been discharged. *Ruffin Hotel Corp. v. Gasper, Brandon v. Molesworth*, 655 A.2d 1292 (Md. App. 1994).
Massachusetts	No employer or duly authorized agent of an employer shall discharge, refuse to hire or in any other manner discriminate against an employee because the employee has exercised a right afforded by this chapter, or who has testified or in any manner cooperated with an inquiry or proceeding pursuant to this chapter, unless the employee knowingly participated in a fraudulent proceeding. Mass. Gen. Laws ch. 152 § 75B(2).	An employer found to have violated this paragraph shall be exclusively liable to pay to the employee lost wages, shall grant the employee suitable employment, and shall reimburse such reasonable attorney fees incurred in the protection of rights granted as shall be determined by the court. The court may grant whatever equitable relief it deems necessary to protect rights granted by this section. Mass. Gen. Laws ch. 152 § 75B(2). In the event that any right set forth in this section is inconsistent with an applicable collective bargaining agreement, such agreement shall prevail. An employee may not otherwise waive rights granted by this section. Mass. Gen. Laws ch. 152 § 75B(3).	Not applicable. *See* Massachusetts' anti-retaliation provision cited herein.	To prove retaliation, the plaintiff must demonstrate that, but for his protected activity, the adverse employment action would not have occurred. The plaintiff must show a causal link between the protected activity and the adverse employment action, and the mere fact that one event followed, in time, another is not, without more, sufficient to establish causation. To support a claim of retaliation, the plaintiff must provide more proof than temporal sequence and may, in the effort, introduce such circumstantial evidence as a general practice or policy of retaliation by the employer. *See Brienzo v. Town of Acushnet*, 15 Mass. L. Rep. 142 (Mass. Super. Ct. 2002) (internal citations omitted).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Michigan	A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under this act or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act. However, the statute fails to provide a remedy for the retaliatory discharge. MCL § 418.301(11). Any employer otherwise subject to the provisions of this act who consistently discharges employees within the minimum time specified in this chapter and replaces such discharged employees without a work stoppage will be presumed to have discharged them to evade the provisions of this act and is guilty of a misdemeanor. MCL §418.125.	Full tort remedies are available to employees. *Philip's v Butterball Farms Co,* 448 Mich 239 (1995).	An employee can pursue a common law public policy claim even though WC retaliation is codified since the statute has no remedy. *Harper v. AutoAlliance Intl., Inc.,* 392 F. 3d 195 (6th Cir. 2004).	Plaintiff has the burden of coming forward with evidence to establish that s/he was discharged in retaliation for pursuing her/his workers' compensation claim. This burden is met by "proving that retaliation for filing or pursuing a workers' compensation claim was a substantial motivating factor in causing his discharge." *Daniels v. R.E. Michael Co.,* 941 F. Supp. 629, 632 (E.D. Ky. 1996) (internal citations omitted).
Minnesota	The first cause of action for retaliation under Minn. Stat. § 176.82, subd. 1 makes it a violation of the statute for any person who discharges or threatens to discharge an employee or in any manner intentionally obstructs an employee seeking workers' compensation benefits. Minn. Stat. § 176.82. There are separate and distinct causes of action and penalties under Minn. Stat. § 176.225 for frivolous defenses to or denials of claims, unreasonable delay in payment of benefits, negligent refusal to pay compensation, intentional underpayment of compensation or unreasonable discontinuance of compensation. A cause of action under Minn. Stat. § 176.225 must be brought in a workers' compensation action where a retaliation claim under Minn. Stat. § 176.82 may be brought by any person in district court.	An employer who violates this anti-retaliation statute may be liable in a civil action for damages including costs, reasonable attorney's fees, and punitive damages. Punitive damages may not exceed three times the amount of any compensation benefits to which the employee is entitled. *Id.* Under Minn. Stat. § 176.82, subd. 1, employees have a cause of action for both discharge and intentional obstruction of benefits. *See Flaherty v. Lindsey,* 467 N.W.2d 30 (Minn. 1991). The second cause of action, under Minn. Stat. § 176.82, subd. 2, is an additional civil penalty of up to one year's wages, not to exceed $15,000.00, for an employer who, without reasonable cause, refuses to offer continued employment to its employee when employment is available within the employee's physical limitations. Minn. Stat. § 176.82, subd. 2 only applies to employers with more than 15 full-time employees.	Not applicable. *See* Minnesota's anti-retaliation statutory provisions cited herein.	To recover for retaliation, the employee must prove that he or she was discharged because he or she was seeking workers' compensation benefits. The standard of proof in retaliation cases under Minn. Stat. § 176.82 was established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). According to this case, the employee must establish a prima facie case of discriminatory treatment. Once this happens, the employer must articulate legitimate reasons for the discharge and the fact finder must then determine whether the employee's reasons are pre-textual. If the employee demonstrates the discharge was impermissibly motivated and the employer then articulates another reason for the discharge the employee must prove by a preponderance of the evidence that the discharge was for the impermissible reason. *See Phipps v. Clark Oil & Ref. Corp.*, 396 N.W.2d 588 (Minn. Ct. App. 1986), aff'd, 408 N.W.2d 569 (Minn. 1987); *Snesrud v. Instant Web Inc.*, 484 N.W.2d 423 (Minn.Ct. App. 1992). When the retaliation claim is based on intentional obstruction of benefits, the employee must first show an actual disruption in the receipt of benefits. *See Flaherty*, 467 N.W.2d at 32. In addition, an employee's claim for punitive damages will fail if he or she has received appropriate workers' compensation benefits. *See Keeler v. Tennis Sanitation*, No. C6-94-1423, 1994 Minn. App. LEXIS 1153 (Minn.. Nov. 22, 1994). The employee must show actual damages to be awarded punitive damages. *Id.*
Mississippi	None.	Not applicable.	None. Mississippi is an employment at-will state. The general rule of employment at will is that a contract for employment for an indefinite period may be terminated at the will of either party, whether the termination is for any reason or no reason at all. The Mississippi Supreme Court has declined to adopt a public policy exception or to recognize a common law tort action against an employer by an employee who claims to have been discharged for filing a workers' compensation claim. *Buchanan v. Ameristar Casino Vicksburg, Inc.*, 852 So. 2d 25, 26 (Miss. 2003); *Kelly v. Mississippi Valley Gas Co.*, 397 So. 2d 874, 877 (Miss. 1981).	Not applicable.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Missouri	No employer or agent shall discharge or in any way discriminate against any employee for exercising any of his rights under the Worker's Compensation Law. Any employee who has been discharged or discriminated against shall have a civil action for damages against his employer. R.S. Mo. §287.780.	Compensatory and punitive damages available. *See Kransey v. Curators of Univ. of Mo*., 765 S.W. 2d 646 (Mo. Ct. App. 1989); *Reed v. Sale Memorial Hosp. and Clinic*, 698 S.W.2d 931, 940 (Mo. App. 1985).	Not applicable. *See* Missouri's anti-retaliation statutory provision cited herein.	The employee has the burden to show: (1) his status as an employee before injury; (2) his exercise of a right granted by the Worker's Compensation Law; (3) the employer discharged or discriminated against him; and (4) an exclusive causal connection between his exercise of his workers' compensation rights and the employer's actions. *See Hansome v. Nw. Cooperage Co*., 679 S.W.2d 273, 275 (Mo. 1984); *see also Bloom v. Metro Heart Group*, 440 F.3d 1025 (8th Cir. 2006) (appealed from E.D. Mo.); *Hopkins v. Tip Top Plumbing & Heating Co.*, 805 S.W.2d 280 (Mo.App. W.D. 1991). Even when termination is the end result of a compensable injury, a cause of action for retaliatory discharge will not lie if the basis for the discharge is valid and non-pretextual. *See Rodriguez v. Civil Service Commission*, 582 S.W.2d 354 (Mo.App. 1979).
Montana	"An employer may not use as grounds for terminating a worker the filing of a claim under ... this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section." Section 39-71-317, MCA (2010).	An aggrieved party may also file an administrative complaint and thereafter file suit in the district court of Montana and if found liable, damages may include, compensatory damages, punitive damages and costs and attorneys' fees. MCA § 49-2-506 & 512. The amount is capped: "… the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge … ." MCA § 39-2-905(1). The Wrongful Discharge Act precludes damage awards for emotional distress, pain and suffering and punitive damages, and caps awards at 4 years of lost wages and fringe benefits.	It is unclear whether a common law claim exists, however, it is likely based on Montana's Anti-Discrimination Act. *See* MCA § 49-2-301 *et seq.* and 49-1-101 *et seq.*	Claimant must prove: (1) That he/she was discharged, and (2) That the employer's motive for discharge was to retaliate for his/her filing a claim under the Workers' Compensation Act. *Lueck v. UPS*, 258 Mont. 2, 8, 851 P.2d 1041, 1045 (1993).
Nebraska	None.	Not applicable.	A public policy exception to an employer's right to terminate at-will applies when an employer wrongfully discharges – or demotes - an employee in retaliation for filing a workers' compensation claim. *See Trosper v. Bag n' Save*, 273 Neb. 855 (2007) (extending the cause of action to remedy retaliatory demotion); *Jackson v. Morris Comm'n Corp*., 265 Neb. 423 (2003).	Nebraska uses the *McDonnell-Douglas* burden-shifting analysis for workers' compensation retaliation cases. *Riesen v. Irwin Industrial Tool. Co.,* 272 Neb. 41 (2006). Specifically, the plaintiff must show that s/he was subjected to an adverse employment action because s/he pursued a workers' compensation claim. The burden then shifts to the employer to provide a legitimate, non-retaliatory reason for its adverse action. Finally, the burden shifts back to the plaintiff to show that the employer's business reason was mere pretext for illegal retaliation.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Nevada	None.	Not applicable.	Yes. Nevada recognizes wrongful termination for filing a workers' compensation claim in violation of public policy. *See Allum v. Valley Bank*, 114 Nev. 1313, 1319-20 (1998); *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293 (1989); *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994), *cert. denied*, 513 U.S. 1082 (1995). Nevada also recognizes a cause of action for constructive tortious discharge for filing a workers' compensation claim. A plaintiff who brings such an action must prove that: (1) the employee's resignation was induced by action and conditions that are violative of public policy; (2) a reasonable person in the employee's position at the time of resignation would have also resigned because of the aggravated and intolerable employment actions and conditions; (3) the employer had actual or constructive knowledge of the intolerable actions and conditions and their impact on the employee; and (4) the situation could have been remedied. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 377 (1999) In the *Dillard* case, the plaintiff's claim was that Dillard violated public policy by requesting that she return to work prior to being medically released. Further, the plaintiff alleged that Dillard then punished her for her refusal to return to work against doctor's orders by demoting her. The Nevada Supreme Court held that such action by an employer was a direct violation of Nevada public policy and retaliatory. *Id.*	In Nevada, to establish a prima facie case of wrongful termination in violation of public policy, Plaintiff must demonstrate: (1) that he engaged in "protected activity;" (2) an adverse employment action; and (3) a causal link between the "protected activity" and the adverse employment action. *See Allum v. Valley Bank*, 114 Nev. 1313, 1319-20 (1998); *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293 (1989); *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1464 (9th Cir. 1994), *cert. denied*, 513 U.S. 1082 (1995). More specifically, to demonstrate a prima facie case of retaliatory discharge for filing a workers' compensation claim in Nevada, plaintiff has the burden to prove that: (1) he filed a workers' compensation claim, (2) he was terminated from employment, and (3) a causal link existed between the termination and the workers' compensation claim. *See Hansen v. Harrah's*, 100 Nev. 60 (1984).
New Hampshire	None.	Not applicable.	A common law wrongful discharge claim exists for workers' compensation retaliation. *Perrotti-Johns v. Wal-Mart Stores, Inc.*, 2006 U.S. Dist. LEXIS 47358 (D. N.H. July 11, 2006)	To make out a wrongful discharge claim in New Hampshire, a plaintiff must allege and prove that: (1) the termination of employment was motivated by bad faith, retaliation, or malice; and (2) that she was terminated for performing an act that public policy would encourage or for refusing to do something that public policy would condemn. *Perrotti-Johns v. Wal-Mart Stores, Inc.*, 2006 U.S. Dist. LEXIS 47358 (D. N.H. July 11, 2006); *Karch v. BayBank FSB*, 147 N.H. 525, 530 (2002).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
New Jersey	The Workers' Compensation Law prohibits an employer from discharging or otherwise discriminating against any employee with respect to the terms and conditions of employment on the basis of that employee's claim for workers' compensation benefits, his attempt to claim benefits, or his or her testimony or anticipated testimony in a workers' compensation proceeding. N.J.S.A. § 34:15-39.1.	Violators are subject to fines of between $100 and $1,000, imprisonment for not more than 60 days, or both. N.J.S.A. § 34:15-39.1. Additionally, any employee subject to an adverse employment action in contravention of N.J.S.A. § 34:15-39.1, shall be restored to employment and compensated by the employer for all wages lost attributed to said discrimination. However, if the employee ceases to be qualified to perform the duties of his or her position, the employee will not be entitled to restoration to employment or to compensation for lost wages from the employer. N.J.S.A. § 34:15-39.1. The employer alone and not his insurance carrier shall be liable for any penalty under this act. N.J.S.A. § 34:15-39.3. Damages in a civil action for retaliatory discharge may be of the type typically prayed for in personal injury tort actions. *Labree v. Mobil Oil Corp.,* 692 A.2d 540 (N.J. Super 1997).	The Supreme Court of New Jersey has held that, in addition to the administrative remedies provided for by N.J.S.A. § 34:15-39, an employee has a common law right of action for wrongful discharge based upon an alleged retaliatory firing attributable to the filing of a workers' compensation claim because such a retaliatory firing is specifically declared unlawful under *N.J.S.A.* § 34:15-39.1 and 39.2. *Lally v. Copygraphics*, 85 N.J. 668, 670, 428 A.2d 1317 (1981).	To prove a prima facie case of workers' compensation retaliation, the employee must demonstrate that (1) he made or attempted to make a claim for workers' compensation; and (2) he was discharged in retaliation for making that claim." *Cerracchio v. Alden Leeds, Inc.*, 223 N.J. Super. 435, 442-43 (App. Div. 1988). If the employee makes his or her *prima facie* case, the burden shifts to the employer to demonstrate that the termination was for a legitimate non-discriminatory reason.
New Mexico	An employer shall not discharge, threaten to discharge or otherwise retaliate in the terms or conditions of employment against a worker who seeks workers' compensation benefits for the sole reason that that employee seeks workers' compensation benefits. N.M. Stat. § 52-1-28.2(A)	The director or a workers' compensation judge shall impose a civil penalty of up to five thousand dollars for each violation. The civil penalty shall be deposited in the workers' compensation administration fund. N.M. Stat. § 52-1-28.2. An aggrieved employee may seek civil damages in pursuing a claim for retaliatory discharge. *See Michaels v. Anglo American Auto Auctions, Inc.*, 869 P.2d 279, 282 (N.M. 1994).	Based on N.M. Stat. § 52-1-28.2(A), New Mexico recognizes a common law claim for wrongful termination if an employee is terminated for seeking workers' compensation benefits. This is based on the public policy embodied in Section 52-1-28. *Michaels v. Anglo American Auto Auctions, Inc.*, 869 P.2d 279, 282 (N.M. 1994).	In New Mexico, retaliatory discharge has three elements: (1) the employee must have acted to further an end that public policy encourages, (2) the employer knew of or suspected the employee's action, and (3) the employee's action was a motivating factor in the employer's decision to discharge him. UJI 13-2304 NMRA; *Vigil v. Arzola,* 699 P.2d 613, 620 (N.M. Ct. App. 1983) (overruled on other grounds by *Chavez v. Manville Products Corp.,* 777 P.2d 371 (N.M. 1989)). Thus, in this case, Plaintiff would have to prove that (1) he filed for workers' compensation, (2) Defendant knew or suspected he had done so, and (3) Defendant's decision to discharge him was motivated by that filing.
New York	The New York Workers' Compensation Law prohibits any employer from discharging or in any other way discriminating against an employee as to his or her employment because such employee has claimed or attempted to claim workers' compensation benefits, or because he or she has or is going to testify in a workers' compensation proceeding. NY Workers' Compensation Law, § 120.	Upon a finding of discrimination, the Workers' Compensation Board shall make an order reinstating the effected employee to the position or privileges he or she would have had but for the discrimination. Further, the effected employee shall be entitled to back wages, and attorneys' fees and costs, as set by the Workers' Compensation Board. The discriminating employer shall be subject to a penalty of between $100.00 and $500.00, paid into the state treasury, in addition to any damages paid to the employee. All penalties, compensation and fees or allowances shall be paid solely by the employer, and not the carrier. NY Workers' Compensation Law, § 120.	Not applicable. *See* New York's anti-retaliation statutory provision cited herein.	The burden of proving a retaliatory discharge in violation of the statute lies with the employee. *See Coscia v. Association for Advancement of Blind & Retarded,* 273 A.D.2d 719, 720 3rd Dept. 2000). Specifically, the claimant must demonstrate "a causal nexus between [his] activities in obtaining compensation or filing a discrimination complaint and the employer's activities against him." *Id.* at 721. If the employee is able to make his or her prima facie case, then the burden shifts to the employer to demonstrate that the termination was not made in retaliation to the employee's workers' compensation claim. *Axel v. Duffy Mott Co.,* 47 N.Y.2d 1, 9 (1979).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
North Carolina	The Retaliatory Employment Discrimination Act (REDA) prohibits an employer from discriminating against an employee based on the employee's involvement with a workers' compensation claim. NC Gen. Stat. § 95-241 *et seq.*	Under REDA, an employer may not discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following in connection with workers' compensation: file a claim or complaint; initiate any inquiry, investigation, inspection, proceeding or other action; or testify or provide information to any person. N.C. Gen. Stat. § 95-241 An employee who alleges a REDA violation must file a complaint with the North Carolina Employment Discrimination Bureau (EDB) within 180 days of the adverse employment action. The EDB investigates complaints and attempts early resolution and settlement when appropriate. If the EDB is unable to resolve a claim, it will issue a right-to-sue letter or file a civil action on behalf of the employee. Once an employee receives a right-to-sue letter, s/he has 90 days to file a civil action against the employer. Damages may include injunction of the discriminatory practice; reinstatement to the same or equivalent position; reinstatement of full fringe benefits and seniority rights; and compensation for economic losses that were proximately caused by the retaliatory action or discrimination, including lost wages and benefits. If the discrimination is found to be "willful," the employee is entitled to triple the amount awarded to compensate for economic losses. The court may also order the employer to pay the employee's reasonable costs and expenses, including attorneys' fees, for bringing suit against the employer. N.C. Gen. Stat. § 95-243	The North Carolina Court of Appeals has specifically held that a plaintiff may state a claim for wrongful discharge in violation of public policy where he or she alleges that the dismissal resulted from an assertion of rights under the Workers' Compensation Act. *Tarrant v. Freeway Foods of Greensboro*, 593 S.E.2d 808 (N.C. Ct. App. 2004), *Brackett v. SGL Carbon Corp.*, 158 N.C. App. 252 (2003).	In order to state a claim under REDA, a plaintiff must show (1) that he exercised his rights as listed in the statute (filed a claim or complaint, initiated an inquiry, *etc.*); (2) that he suffered an adverse employment action, and (3) that the alleged retaliatory action was taken because the employee exercised his rights under REDA. If the employee presents a prima facie case of retaliatory discrimination, then the burden shifts to the defendant to show that he would have taken the same unfavorable action in the absence of the protected activity of the employee. *McDowell v. Cent. Station Orig. Interiors*, No. COA10-324, 2011 N.C. App. LEXIS 728 (N.C. App. Apr. 19, 2011), quoting *Wiley v. United Parcel Serv.*, 102 F. Supp.2d 643 (M.D.N.C. 1999), *aff'd*, 2001 US App. LEXIS 7803 (4th Cir. April 27, 2001). A substantially similar analysis is used in a claim for wrongful discharge in violation of public policy. *See Salter v. E&J Healthcare*, 575 S.E.2d 46 (N.C. App. 2003).
North Dakota	An employer who "willfully discharges or willfully threatens to discharge an employee for seeking or making known the intention to seek [workers' compensation] benefits is liable in a civil action for damages incurred by the employee, including reasonable attorneys' fees." N.D. Cent. Code §65-05-37. The statute defines an "employer" as "a person who engages or received the services of another for remuneration" and an "employee" as "a person who performs hazardous employment for another for remuneration." N.D. Cent. Code §65-01-02.	A willful violation of N.D. Cent. Code § 65-05-37 is a class A misdemeanor. A prevailing plaintiff is entitled to recover in a civil action, "damages incurred," including reasonable attorney fees. N.D. Cent. Code §65-05-37. Damages awarded under this section "may not be offset by any workforce safety and insurance benefits to which the employee is entitled." Before N.D. Cent. Code §65-05-37 was enacted, North Dakota courts treated retaliatory discharge claims as a tort rather than breach of contract. *See Ghorbanni v. North Dakota Council on the Arts*, 639 N.W.2d 507 (N.D. 2002). Tort damages include exemplary damages. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987). Because the statute appears to have been a codification of prior case precedent, presumably a plaintiff suing under the statute can recover tort damages, including exemplary damages.	Not Applicable. *See* North Dakota's anti-retaliation statute cited herein.	Before N.D. Cent. Code §65-05-37 was passed in 2003, the North Dakota Supreme Court recognized a common law cause of action for wrongful discharge in retaliation for seeking worker's compensation benefits. *Krein v. Marian Manor Nursing Home*, 415 N.W.2d 793 (N.D. 1987). There are no reported cases construing the statute. However, North Dakota courts have identified three elements of *a* prima facie claim for retaliatory discharge under the state's analogous whistleblower statute: 1) protected conduct; 2) adverse employment action; and 3) causation. *Dahlberg v. Lutheran Social Services of North Dakota*, 625 N.W.2d 241, 253 (N.D. 2001). Presumably, the courts would apply a similar analysis in a worker's compensation retaliation case. Also, the identification of prima facie elements suggests that some sort of burden-shifting analysis would be applied by the courts.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Ohio	The statute provides that an employer shall not discharge, demote, reassign or take any action against an employee because the employee filed a claim or instituted, pursued or testified in any proceedings under the workers' compensation act. R.C. § 4123.90.	Damages, which are dependant on the type of action taken against the employee (*i.e.,* discharge, demotion, reassignment, etc.), include reinstatement, back pay, lost wages and attorney's fees. R.C. § 4123.90.	Ohio recognizes a common-law tort claim for wrongful discharge in violation of public policy when an injured employee suffers retaliatory employment action after injury on the job but before the employee files a workers' compensation claim or institutes or pursues a workers' compensation proceeding. The remedies available for wrongful discharge in violation of the public policy against retaliatory employment actions as expressed in R.C. § 4123.90 are limited to those listed in R.C. § 4123.90.	Ohio courts employ a burden-shifting analysis for workers' compensation discrimination claims. To make a prima facie case of workers' compensation discrimination, a plaintiff must show: (1) that he was injured on the job; (2) that he filed, instituted or pursued a claim for benefits or testified in a workers' comp proceeding; and (3) that he suffered an adverse employment action. To rebut a prima facie case, a defendant must provide a legitimate, nondiscriminatory reason for the adverse employment action. If the employer can establish a legitimate, nondiscriminatory reason for its action, the employee must prove that the reason is pretextual in order to prevail. *See Young v. Stelter & Brinck, Ltd.*, 174 Ohio App. 3d 221, 225-226 (Ohio Ct. App., Hamilton County 2007).
Oklahoma	An employer may not discharge or terminate any group health insurance of an employee (except for nonpayment of premium) because the employee in good faith filed a claim, retained a lawyer for representation regarding a claim, instituted or caused to be instituted a proceeding under the Workers' Compensation Law, testified or is about to testify in any proceeding under the Workers' Compensation Law or elects to participate or not to participate in a certified workplace medical plan. 85 Ok. St. § 5.	Reinstatement; Actual Damages; Punitive Damages not to exceed $100,000. *See* 85 Ok. St. § 6.	Not applicable. *See* Oklahoma's anti-retaliation statute cited herein.	The employee must show: (1) employment; (2) on the job injury; (3) receipt of treatment that puts employer on notice that treatment has been rendered for job related injury; (4) employee in good faith instituted claim under Act; (5) consequent termination of employment. *See Buckner v. GMC*, 760 P.2d 803 (Okla. 1988); *Glasco v. State ex rel. Okla. Dep't of Corr.*, 188 P.3d 177 (Okla. 2008). If the plaintiff establishes a prima facie case, the employer must rebut the inference of a retaliatory motive by articulating a legitimate, non-discriminatory reason for termination. If the defendant satisfies this burden, the presumption of retaliatory motive is successfully rebutted. At that point, the plaintiff can only prevail by proving his termination was significantly motivated by retaliation for the exercise of his statutory rights, or by proving defendant's proffered reason for the discharge was pretextual. *Harris v. Indus. Bldg. Servs., LLC*, No. CIV-05-682-F, 2006 U.S. Dist. LEXIS 7463, *11-12 (W.D. Okla. Feb. 6, 2006).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Oregon	It is an unlawful employment practice for an employer to discriminate against a worker with respect to hire or tenure or any term or condition of employment because the worker has applied for benefits or invoked or utilized the procedures provided for in ORS chapter 656 or has given testimony under the provisions of those laws. ORS § 659A.040(1).	This section applies only to employers who employ six or more persons. ORS § 659A.040(2). Any person claiming to be aggrieved by an unlawful practice specified in Oregon's anti-retaliation provision, among others, may file a civil action in circuit court. In any action under this subsection, the court may order injunctive relief and any other equitable relief that may be appropriate, including but not limited to reinstatement or the hiring of employees with or without back pay. A court may order back pay in an action under this subsection only for the two-year period immediately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-year period immediately preceding the filing of the action. In any action under this subsection, the court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. ORS 659A.885.	Not applicable. *See* Oregon's anti-retaliation provision cited herein.	The courts in Oregon apply the burden shifting analysis of *McDonnell Douglas* for claims brought under ORS 659A. *Snead v. Metropolitan Property & Casualty Insurance*, 237 F.3d 1080, 1090-94 (9th Cir. 2001). Pursuant to *McDonnell Douglas*, plaintiff has the initial burden to establish a prima facie case of discrimination. To establish a prima facie case, plaintiff must present sufficient admissible evidence to raise an inference that misconduct occurred, but need not prove actual discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973). Once plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* If the defendant is successful, then the burden returns to the plaintiff to show by a preponderance of the evidence that the alleged legitimate, nondiscriminatory reason for the employment action is merely a pretext for discrimination. *Id.; See also Kotelnikov v. Portland Habilitation Center*, 545 F. Supp. 2d 1137, 1139 (D. Or. 2008). Causation sufficient to establish the third element of the prima facie case may be inferred from the circumstantial evidence, such as the employer's knowledge that the plaintiff engaged in protected activities and the proximity in time between the protected action and the allegedly retaliatory employment decision." *Dickison v. Wal-Mart Stores, Inc.*, 2007 WL 1959287, citing *Yartzoff v. Thomas*, 809 F.2d 1371, 1376 (9th Cir. 1987), cert denied 498 U.S. 939 (1990). However, the mere fact that plaintiff filed a claim for a work injury, and a negative employment act occurred, does not in itself create a genuine factual issue of discrimination. *Id. Coszalter v. City of Salem*, 320 F.3d 968, 978 (9th Cir. 2003) (timing alone does not support inference of discrimination; additional evidence of surrounding circumstances must support such an inference.) In order to establish the causal link of the prima facie case, the injured worker must show that his worker's compensation claim was a "substantial factor," or "a factor that made a difference," in the decision to terminate or take any other adverse action. *Lewis v. Wal-Mart Stores, Inc.*, 2009 WL 3462056 at *9 (D. Or).
Pennsylvania	None.	Not applicable.	Although Pennsylvania has no statutory workers' compensation retaliation provision, Pennsylvania recognizes a common law cause of action for retaliatory discharge *Shick v. Shirey*, 716 A.2d 1231 (Pa. 1998). This protection may be extended to a manager who is terminated for refusing to dissuade his subordinate from filing a workers' compensation claim,. *Rothrock v. Rothrock Motor Sales, Inc.*, 883 A.2d 511 (Pa. 2005) The common law cause of action exists for at will employees only. *Harper v. Am. Red Cross Blood Servs.*, 153 F.Supp.2d. 719 (E.D.Pa. 2001). The available damages are compensatory in nature. *See Rothrock v. Rothrock Motor Sales, Inc.*, 883 A.2d 511 (Pa. 2005)). The issue of whether the Pennsylvania common law cause of action extends to mere discrimination versus a complete discharge of an employee in retaliation for filing a workers' compensation claim does not seem to have been litigated in Pennsylvania.	Under Pennsylvania common law, to advance a prima facie case of retaliatory discharge for filing a workers' compensation claim under the public policy exception to at-will employment doctrine, the employee has the initial burden to prove that the: 1) employee engaged in a protected activity; 2) employer took adverse employment action after or at the same time as employee's protected activity; and 3) causal link exists between employer's protected activity and employer's adverse reaction. *Landmesser v. United Air Lines, Inc.*, 102 F.Supp.2d 273 (E.D.Pa. 2000)(federal court, interpreting *Shick*, adopted test used in title VII discrimination cases). The employee has the significant burden to allege specific facts which indicate that the employer was motivated in that discharge by a desire to hurt the employee because the employee exercised a protected right in filing a workers' compensation claim. If the employee develops evidence to show the critical motivation to discriminate, the burden then shifts to the employer to rebut a prima facie case of retaliation.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Puerto Rico	The Workers' Accident Compensation Statute, Puerto Rico Act No. 45 of April 18, 1935, ("Act No. 45"), includes an anti-retaliation provision to protect those individuals that received or continue receiving treatment under workers' compensation. This statute provides that the State Insurance Fund Corporation ("SIF") shall collect premiums from employers based on the total amount of salaries paid. The government system is mandatory and may not be substituted with private coverage. It grants immunity to insured employers from any damages resulting from an employee's work-related accident.	If the employee is not reinstated after having being discharged from treatment at the SIF, subject to the provisions included in section 5a of Act No. 45 (which are enumerated on the "Reinstatement Rights" section below), the employer is under the obligation to pay the employee or his/her beneficiaries the wages said laborer or employee would have received if reinstated; also, the employer shall be responsible for all damages caused to the employee. In addition, if the employer is not insured under the SIF at the time the occupational accident takes place, then it is responsible for all the damages suffered by the employee and/or his beneficiaries, and also has to reimburse the compensation and expenses incurred by the SIF in treating the employee.	Not applicable. See Puerto Rico's anti-retaliation statutory provision cited herein.	Employee bears the burden of proof.
Rhode Island	None.	Not applicable.	Not directly addressed by any court. Rhode Island does not accept a common-law claim of wrongful discharge. *See Pacheco v. Raytheon Corp.*, 623 A.2d 464 (RI 1993) ("we now unequivocally state that in Rhode Island there is no cause of action for wrongful discharge"); *Andrade v. Jamestown Hous. Auth.*, 82 F.3d 1179 (1st Cir. 1996) (no claim for wrongful discharge where employee was terminated for failing to report earnings to WC Commission).	Not applicable.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
South Carolina	[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. S.C. Code Ann. § 41-1-80.	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 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. S.C. Code Ann. § 41-1-80.	Not applicable. *See* South Carolina's anti-retaliation statutory provision cited herein.	A claim of workers compensation retaliation is analyzed similarly to the *McDonnell-Douglas* burden-shifting evidentiary framework in Title VII cases. An employee must establish a prima facie case that he/she instituted a workers compensation proceeding, and because of that action, was discharged or demoted. *Hinton v. Designer Ensembles, Inc.*, 343 S.C. 236, 540 S.E.2d 94 (2000). The employer must then articulate a legitimate, non-discriminatory reason for the adverse action. The employee has to prove the proffered employer reason is a pretext for retaliation, either by persuading the court the discharge was significantly motivated by retaliation or by showing the proffered explanation is unworthy of credence. *Wallace v. Milliken & Co.*, 406 S.E.2d 358, 360 (1991). Any employer shall have as an affirmative defense to this section the following: willful 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. S.C. Code Ann. § 41-1-80. In an action by employee for back wages and reinstatement following discharge in violation of S. C. Code Ann. § 41-1-80, (the South Carolina) Court of Appeals erred by applying the "substantial factor" test, which requires proof that filing the claim constituted an important or significant motivating factor for discharge; the appropriate standard is the "determinative factor" test, which requires proof that the employee would not have been discharged "but for" filing the claim for workers' compensation. *Wallace v. Milliken & Co.*, 305 S.C. 118, (1991). Temporal proximity, in and of itself, is not enough to establish pretext. *Johnson v. J.P. Stevens & Co., Inc.*, 308 S.C. 116, 118 (1992). Nevertheless, an employer should reasonably anticipate at least the possibility of a retaliatory discharge claim where the adverse employment decision is temporally proximate to the claim.
South Dakota	An employer is civilly liable for wrongful discharge if it terminates an employee in retaliation for filing a lawful workers' compensation claim. S.D. Codified Laws § 62-1-16. A separate statute makes it unlawful for an employer to discriminate in hiring any prospective employee due to a preexisting injury if the injury does not affect the individual's ability to perform the job. S.D. Codified Laws § 62-1-17.	The anti-retaliation and discrimination provision applies to employers as defined in the statute, essentially any individual or entity "using the service of another for pay." The statute does not address what damages are available. However, §62-1-16 appears to be a codification of the South Dakota Supreme Court's decision in *Niesent v. Homestake Mining Co. of Calif.*, 505 N.W.2d 781 (S.D. 1993). In *Niesent*, the Court did not address damages, but merely recognized a common law cause of action for wrongful discharge in retaliation for filing a WC claim under the public policy exception to the employment at-will doctrine. In 2008, the South Dakota Supreme Court, citing *Niesent,* clarified that retaliatory discharge claims are not contract actions, but tort claims that arise independently of the contractual employment relationship. *Tiede v. Cortrust Bank,* 748 N.W.2d 748 (S.D. 2008). Hence, a prevailing plaintiff could presumably recover compensatory (wage loss, emotional distress) and punitive damages. The statute does not provide for recovery of attorney fees.	Not applicable. *See* South Dakota's anti-retaliation statutory provision cited herein.	The anti-retaliation provision provides that the employee has the burden of proof: "The burden of proof is on the employee to prove the dismissal was in retaliation for filing a workers' compensation claim." S.D. Codified Laws § 62-1-16. The statute, however, does not address the burden itself. Presumably, the burden is a preponderance of the evidence. Neither the statutory sections nor pertinent case law address burden-shifting.

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Tennessee	None.	Not applicable.	Yes, a common law claim for wrongful discharge exists in Tennessee for workers' compensation retaliation. *See Anderson v. Standard Register Co.*, 857 S.W. 2d 555 (Tenn. 1993). Under this cause of action, a plaintiff may recover, back pay and benefits, reinstatement, front pay, emotional distress, and punitive damages. *Emerson v. Oak Ridge Research, Inc., 187* S.W.3d 364, 368 (Tenn. Ct. App. 2005).	Plaintiff must show: (1) plaintiff was an employee at time of injury; (2) plaintiff made a claim against defendant's worker compensation benefits; (3) defendant terminated plaintiff's employment; (4) claim for workers' compensation benefits was a substantial factor in employer's motivation to terminate employee. *See Anderson v. Standard Register Co.*, 857 S.W. 2d 555 (Tenn. 1993). A facially neutral policy will allow employee dismissal if facts do not show a causal connection to employee discharge. *Id.*
Texas	A person may not discharge or in any other manner discriminate against an employee because the employee has (1) filed a workers' compensation claim in good faith; (2) hired a lawyer to represent the employee in a claim; (3) instituted or caused to be instituted in good faith a [workers' compensation] proceeding; or (4) testified or is about to testify in a [workers' compensation] proceeding. Texas Labor Code § 451.001.	Section 451.001 covers all employees whose employer subscribes to workers' compensation insurance in Texas. Workers' compensation in Texas is optional. An employer may opt out of providing workers' compensation insurance in Texas. In this case, an employee may assert a common law claim for negligence against the non-subscribing employer. An employee of a non-subscribing employer cannot bring a claim for workers' compensation retaliation against the employer. *Texas Mexican Ry. Co. v. Bouchet*, 963 S.W. 2d 52, 57 (Tex. 1998). Section 451.001 protects current employees, not applicants. *Carney v. Sabine Contracting Corp.*, 914 S.W. 2d 651, 654 (Tex. App.—Amarillo 1996, no writ). Damages and other relief available consist of 1) reasonable damages incurred by the employee as a result of the violation, and 2) reinstatement in the former position of employment. Tex. Lab. Code § 451.002. Reasonable damages include back pay, front pay, and punitive damages. Attorneys' fees are not recoverable in a workers' compensation retaliation case. *Holland v. Wal-Mart Stores, Inc.*, 1 S.W. 3d 91, 96 (Tex. 1999).	Not applicable. *See* Texas' anti-retaliation statutory provision cited herein.	The employee bears the burden of proof in a workers' compensation retaliation claim. Tex. Lab Code § 451.002. To establish a prima facie case of workers' compensation retaliation in Texas, an employee must prove 1) that he or she filed a workers' compensation claim; 2) that an adverse employment action occurred; and 3) a causal connection between the filing of the claim and the adverse employment action. *Metal Indus. Inc of Cal. v Farley, 33 S.W.3d 83, 89 (Tex. App., Texarkana 2000, no pet.).* The employer may rebut the prima facie case by showing a legitimate non-retaliatory reason for the adverse action. The employee then bears the burden of proving that the employer's reason is false or that it is a pretext for retaliation. The causal connection is a "but for" standard, meaning that the employee must establish that the alleged retaliatory act would not have occurred when it did had the employee not engaged in protected activity. *Continental Coffee Prods. Co. v. Cazarez*, 937 S.W. 2d 444, 450 (Tex. 1996). An employee may demonstrate cause by direct or circumstantial evidence. Circumstantial evidence includes, without limitation, 1) knowledge by the decision-maker of the employee's protected activity; 2) expression of a negative attitude towards the employee's injury; 3) failure to follow company policies; 4) unequal treatment in comparison to similarly-situated employees; 5) evidence that the stated reason for the adverse action is false. *Continental Coffee Prods. Co. v. Cazarez*, 937 S.W. 2d 444, 451 (Tex. 1996).
Utah	None.	Not Applicable.	In 2006, the Utah Supreme Court concluded that "retaliatory discharge for filing a workers' compensation claim violates the public policy of the state; thus, an employee who has been fired or constructively discharged in retaliation for claiming workers' compensation benefits has a wrongful discharge cause of action." *Touchard v. La Z-Boy, Inc.*, 565 Utah Adv. Rep. 15, 21 148 P.3d 945 (Utah 2006). The court declined to extend this cause of action to an employee who has suffered only harassment or discrimination or to an employee who has been retaliated against for opposing an employer's treatment of employees who are entitled to claim WC benefits.	In Utah, to make out a prima facie case of wrongful discharge, an employee must show "(i) that his employer terminated him; (ii) that a clear and substantial public policy existed; (iii) that the employee's conduct brought the policy into play; and (iv) that the discharge and the conduct bringing the policy into play are causally connected." *Ryan v. Dan's Food Stores, Inc.*, 350 Utah Adv. Rep. 3, 20, 972 P.2d 395, 404 (Utah 1998).

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
Vermont	No person, firm or corporation shall refuse to employ any applicant for employment because such applicant asserted a claim for workers' compensation benefits. A person is not required to employ an applicant who does not meet the qualifications of the position sought. No person shall discharge or discriminate against an employee from employment because such employee asserted a claim for workers' compensation benefits. An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter. 21 V.S.A. § 710.	The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 as though discrimination under this section were an unfair act in commerce. 21 V.S.A. § 710 Civil penalties are not more than ten thousand dollars per violation. Vt. Stat. tit. 9, ch. 63 § 2461. Moreover, the limited and discretionary remedies in § 710 are further augmented by the employee's right to obtain civil redress. *See Murray v. St. Michael's College*, 667 A.2d 294 (VT 1995).	Vermont recognizes a private cause of action for wrongful discharge in retaliation for filing a workers' compensation claim. *See Murray v. St. Michael's College*, 667 A.2d 294 (VT 1995).	To withstand summary judgment regarding a worker's claim that he was discriminated against for filing a workers' compensation claim, the worker is required to present a prima facie case of retaliatory discrimination, namely, that (1) he was engaged in a protected activity, (2) his employer was aware of that activity, (3) he suffered adverse employment decisions, and (4) there was a causal connection between the protected activity and the adverse employment decision. Once the worker has established a prima facie case of retaliatory discrimination, the employer is required to articulate some legitimate, nondiscriminatory reason for the challenged conduct; if the employer has articulated such a reason, the worker is required to prove that the reason was a mere pretext. *Murray v. St. Michael's College*, 667 A.2d 294 (1995).
Virginia	No employer or person shall discharge an employee solely because the employee intends to file or has filed a claim under the Virginia Workers' Compensation Act, or has testified or is about to testify in any proceeding under the Act. An employer is not prohibited from discharging an employee for filing a fraudulent claim. Va. Code § 65.2-308. The statute authorizes an employee to assert a retaliation claim against not only the employer, but the individual by whom he was discharged. *See Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246 (W.D. Va. 2001).	An employee may bring an action in a circuit court having jurisdiction over the employer or person who allegedly discharged the employee in violation of the anti-retaliation provisions. The court has discretion to award a variety of damages, including actual damages; attorney's fees; rehiring or reinstatement; and back pay with interest. Va. Code § 65.2-308. Punitive damages are not available under the retaliation statute. *See Dunn v. Bergen Brunswig Drug Co.*, 848 F. Supp. 645 (E.D. VA 1994). The Virginia Supreme Court has expressly declined to rule on whether a claimant is entitled to a jury trial, but a jury trial has been permitted by a federal district court. *See Mullins v. Va. Lutheran Homes*, 253 Va. 116 (1997); *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246 (W.D. Va. 2001).	Retaliatory discharge is not a common law cause of action in Virginia. *Dunn v. Bergen Brunswig Drug Co.*, 848 F. Supp. 645 (E.D. VA 1994).	An employee alleging unlawful retaliation under the Virginia Workers' Compensation Act has the burden of proving by a preponderance of the evidence that workers' compensation retaliation was the sole basis for his/her discharge. *See Cooley v. Tyson Foods*, 257 Va. 518 (1999) In order to prevail on a retaliation claim under the Virginia Workers' Compensation Act, a discharged employee must establish that workers' compensation retaliation was the sole reason for his discharge. An employee does have the right, however, to set forth alternative, inconsistent causes of action in his complaint. *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246 (W.D. Va. 2001).
Washington	No employer may discharge or in any manner discriminate against any employee because such employee has filed or communicated to the employer an intent to file a claim for compensation or exercises any rights provided under this title. However, nothing in this section prevents an employer from taking any action against a worker for other reasons including, but not limited to, the worker's failure to observe health or safety standards adopted by the employer, or the frequency or nature of the worker's job-related accidents. RCW § 51.48.025.	All appropriate relief including rehiring or reinstatement of the employee with back pay. RCW § 51.48.025(4)	A claim under § 51.48.025 is not mandatory and exclusive, and a worker may file a tort claim for wrongful discharge independent of the statute based upon allegations that the employer discharged the worker in retaliation for having filed or expressed an intent to file a workers' compensation claim. The court found that the tort of outrage was available as an independent cause of action in addition to possible relief under the Industrial Insurance Act or for damages for wrongful discharge. *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 821 P.2d 18 (1991).	An employee is required to prove that she had filed a claim, that the employer thereafter discriminated against her in some way and that the claim and discrimination were causally connected. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 59 P.3d 611 (2002)

STATE	WC Anti-Retaliation or Discrimination Statute	Scope and Damages of Statute	Common Law Claim, If No Statute	Burden of Proof
West Virginia	An employer may not discriminate in any manner against any of his present or former employees because of such present or former employees' receipt of or attempt to receive workers' compensation benefits. W. Va. Code § 23-5A-1. If an employer has provided medical insurance to an employee or his dependents by paying all or part of the premiums on an individual or group policy, the employer may not cancel, decrease, or suspend such coverage during the entire period for which the employee is claiming or receiving workers' compensation benefits for temporary disability during the continuance of the employer-employee relationship. If the medical insurance policy requires a contribution by the employee, that employee must continue to make the contribution required, to the extent the insurance contract does not provide for a waiver of the premium. An employer is not prohibited from changing insurance carriers or cancelling or reducing medical coverage if the temporarily disabled employee and his dependents are treated with respect to insurance in the same manner as other similarly classified employees and their dependents who are also covered by the medical insurance policy. W. Va. Code § 23-5A-2.	The statute is silent as to available damages. The Supreme Court of Appeals of West Virginia has upheld awards of back pay, reinstatement, and punitive damages. Where reinstatement is not a viable option, front pay may be awarded. *See Peters v. Rivers Edge Mining*, 680 S.E.2d 791 (W.Va. 2009). Although the prohibition against retaliatory discharge has been codified by statute, courts will consider common law principles, particularly with regard to remedies. *See Peters v. Rivers Edge Mining*, 680 S.E.2d 791 (W.Va. 2009).	Not applicable. *See* West Virginia's anti-retaliation statute cited herein.	In order to make a prima facie case of workers' compensation discrimination, the employee must prove that: (1) an on-the-job injury was sustained; (2) proceedings were instituted (or the employee was attempting to file a claim) under the West Virginia Workers' Compensation Act; and (3) the filing of a workers' compensation claim was a "significant factor" in the employer's decision to discharge or otherwise discriminate against the employee. If the employee satisfies these elements, the burden then shifts to the employer to prove a legitimate, non-pretextual, and non-retaliatory reason for the discharge. In rebuttal, the employee can then offer evidence that the employer's proffered reason for the discharge is merely a pretext for discrimination. *Powell v. Wyo. Cablevision*, 184 W. Va. 700 (1991).
Wisconsin	Employers are prohibited from engaging in conduct that is either retaliatory or intended to obstruct an employee from seeking benefits. Wis. Stat. § 102.35.	The penalty to an employer for a violation of Wis. Stat. §102.35 is two-fold. First, the Act prescribes a penalty of between $50 and $500 for each offense of unreasonably refusing to rehire an injured employee, or of discriminating or threatening to discriminate as to the injured employee's job. This penalty is paid to the State. Wis. Stat. § 102.35(2). Second, the Act, upon request of the Department, provides an employee with a private cause of action if the employer "refused to rehire" the employee after a work-related injury. *See* Wis. Stat. § 102.35(3).	Not applicable.	"To make a prima facie case under Wis. Stat. §102.35, an employee must show that he or she sustained an injury while on the job and that the employer refused to rehire the employee because of the injury. If the employee makes that showing the burden shifts to the employer to show a reasonable cause for the refusal to rehire." *Ray Hutson Chevrolet, Inc. v. LIRC*, 519 N.W.2d 713, 715-16 (Wis. Ct. App. 1994) citing *West Bend Co. v. LIRC*, 149 Wis.2d 100, 126, 438 N.W.2d 823, 830-31 (1989); *see also Open Hearth Homes, LLC v. LIRC*, 2011 Wisc. App. LEXIS 363, at *8 (Wis. Ct. App. May 11, 2011). The phrase "refusal to rehire" has been construed to include termination of an employee before or after he/she returns to work from a work-related injury. Employers have the burden of proving reasonable cause for the termination. If the employee is successful, the employer will be liable for the wages the employee lost during the period of refusal, not to exceed one year's wages. This penalty has been construed as a monetary, not a temporal, limit. In other words, if the employee returns to employment within one year after the refusal to rehire, but later wage loss is attributable to the refusal to rehire, the "benefit" continues to accrue until the one year of lost wages has been paid. The burden is on the employer to prove that good cause exists for termination even when an injured employee is rehired and then fired after a certain period. *Dielectric Corp. v. LIRC*, 330 N.W.2d 606 (Wis. Ct. App. 1983). In addition, the statute does not require a showing that the employer's motivation for the termination was related to the work injury, only that there was not reasonable cause. *West Allis Sch. District* 342 N.W.2d 415, 426 (Wis. 1984). Elimination of a position for valid economic reasons constitutes reasonable cause but elimination because of accidents caused by a work-related injury may violate the reasonable cause provision. *West Bend Co. v. LIRC*, 438 N.W.2d 823 (Wis. 1989); *Great N. Corp. v. LIRC*, 525 N.W.2d 361 (Wis.Ct.App. 2004); *Link Indus., Inc. v. LIRC*, 415 N.W.2d 574 (Wis.Ct.App. 1987).

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Wyoming	None.	Not applicable.	In *Griess v. Consolidated Freightways Corp. of Delaware,* 776 P.2d 752 (Wyo. 1989), the Wyoming Supreme Court recognized a limited cause of action for retaliatory discharge, holding that "a person whose employment is terminated for exercising rights under the worker's compensation statutes and who is not covered by the terms of a collective bargaining agreement has a cause of action in tort against the employer for damages." The court explained that another remedy was not available; hence, "recognition of an action in tort will protect the exercise of statutory rights and vindicate the public policy expressed in Wyoming's constitution and statutes."	In *Cardwell v. American Linen Supply,* 843 P.2d 596, 599-600 (Wyo. 1992), the Wyoming Supreme Court adopted the following standard from the Oklahoma Supreme Court: "...the discharged employee must show employment, on the job injury, receipt of treatment under circumstances which put the employer on notice that treatment has been rendered for a work-related injury, or that the employee in good faith instituted, or caused to be instituted, proceedings under the [Wyoming Workers' Compensation] Act, and consequent termination of employment. After a prima facie case is established, the burden then appropriately shifts to the employer to rebut the inference that its motives were retaliatory by articulating that the discharge was for a legitimate non-retaliatory reason ... . To accomplish this, the employer must set forth clearly, through the introduction of admissible evidence, the reasons for the employee's termination. The explanation provided must be legally sufficient to justify entering judgment for the employer. If the employer carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity." "...[T]he nature of the burden which shifts to the employer must be understood in connection with the employee's ultimate and intermediate burdens. The ultimate burden of persuading the trier of fact that the employer retaliatory discharged the employee for exercising statutory rights under the Act remains at all times with the employee. The burden of persuasion never shifts and the employee bears the burden of persuasion that the reason given for termination was pretextual. This burden merges with the ultimate burden of persuading the court that [the employee] has been the victim of retaliatory discharge. The employee may succeed in this, either directly or by persuading the court that the discharge was significantly motivated by retaliation for [employees] exercise of statutory rights, or indirectly by showing that the employer's proffered explanation is unworthy of credence." In *Lankford v. True Ranches, Inc.,* 822 P.2d 868, 872 (Wyo. 1991), the Wyoming Supreme Court recognized a distinction between "a termination for the exercise by the worker of his rights under the workers' compensation law and a termination for inability to do the work, even if such inability is caused by an accident requiring the exercise of workers' compensation rights. The disability and partial disability benefits of the workers' compensation law are in recognition of this distinction."

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