

## WAS FACTORY WORKER FIRED BECAUSE BOSSES WERE ANTICIPATING WORKERS' COMP CLAIM?



A work-related injury kept a manufacturing plant employee at home nearly every day for six weeks. But he didn't follow company policy by calling in to report his absences and was consequently fired. He asserted that his position was terminated because the bosses were anticipating a workers' comp claim. So he brought legal action against his former employers. The man worked at Olin Corporation in Illinois. He'd been employed for around three years when, in 2007, he injured his side and lower back transporting a tub of shells. He was sent to the company's medical department and was referred to his personal physician. He gave Olin a doctor's note recommending that he not work, but it was only good for several days. The medical department sent the employee a letter requesting additional documentation and that he report for an evaluation. But he didn't respond to the letter, missed his appointment and didn't show up for work. He later received a retroactive "off-work note" dating from the day of his injury on through the subsequent month. He worked a couple of days of light duty but complained of shoulder pain and was again referred to a doctor, who recommended more time off. Company policy dictated that a worker's failure to call in to report absences for three consecutive days was grounds for termination. During his six weeks of missed work, the man called in on occasion but ultimately stopped checking in altogether. The plant manager approved his termination shortly thereafter. The man filed for workers' compensation, which was settled with Olin. He then filed a lawsuit, alleging that the company had fired him because it was aware that he would be filing for workers' comp. Olin moved for summary judgment, which was granted by the district court. Judges did not see a connection between the termination and the man exercising his workers' compensation rights, as there was no evidence that the manager even spoke to anyone in the medical department. On appeal, the man claimed that he was told to stop calling in to report his absences. But he couldn't identify the person who told him this, what position that person held or even when the conversation had taken place. Even if it were true, it only showed that the manager fired him based on inaccurate information, not in retaliation to an anticipated workers' comp claim. The plaintiff further asserted that the manager either knew or should have known of the employee's medical status, and a reasonable jury might rule that claiming he was unaware was a simple case of dishonesty. But evidence would still be needed to prove that the manager had knowledge. The plaintiff pointed to an email from a company nurse who also supervised disability claims. In it, she referenced the man getting a lawyer, but the email had been sent after the man's termination and the manager was not listed as a recipient. Both appellate and federal judges accepted the manager's reason for firing the employee – that he had violated company policy. As the plaintiff couldn't prove retaliation for a probable workers' comp claim, the appeals court affirmed the grant of summary judgment in favor of Olin.