



Labor & Employment Client Alert

Legislature Grants District Courts Jurisdiction of Workers' Comp Retaliation Claims Where the Alleged Retaliation Occurs After May 28, 2019

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In May, the Oklahoma Supreme Court confirmed in *Southon v. Oklahoma Tire Recyclers, LLC* that the Workers' Compensation Commission has exclusive jurisdiction to resolve workers' compensation retaliation claims. However, just days after the decision, on May 28, 2019, Governor Stitt signed into law House Bill 2367 ("H.B. 2367"), which returned exclusive jurisdiction over such claims to district courts and substantially expanded the remedies that are recoverable. H.B. 2367 went into effect immediately after it was signed, but it does not have retroactive effect to alleged acts of retaliation occurring prior to May 28, 2019. Here's what employers need to know:

- **The proper forum for a workers' compensation retaliation claim depends on the date the alleged injury, or adverse action, occurred.**
 - H.B. 2367 does not expressly state that it is to be given retroactive effect and, therefore, does not nullify *Southon*. Longstanding case law makes clear that the workers' compensation statutes in force on the date of the injury (the alleged retaliation) determine a plaintiff's rights and an employer's duties.
 - If the alleged retaliation occurred *before* May 28, 2019, then the statute in effect at the time governs, meaning the Commission has jurisdiction of the claim as *Southon* declared, and the available remedies are those limited by the prior statute.
 - If the retaliation occurred *after* H.B. 2367 took effect, the district court has jurisdiction and the newly enacted, expanded remedies may be recovered. *Southon* is therefore moot with respect to claims arising from retaliation that occurred *after* May 28, 2019.

- H.B. 2367 removes a cap on the amount of damages plaintiffs can recover for alleged retaliation and expands employers' potential exposure.
 - H.B. 2367 removes the cap on damages a plaintiff may recover, as long as the damages are "reasonable." H.B. 2367 also allows an employee to recover punitive damages not to exceed \$100,000, and the prevailing party may recover costs and reasonable attorneys' fees.

GableGotwals assists employers in all aspects of employment and human resources law. If you need assistance regarding worker's compensation discrimination and retaliation claims, please contact any [**GableGotwals Labor & Employment attorney**](#).



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