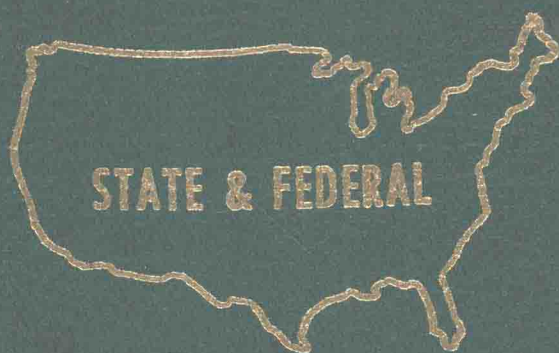


AMERICAN JURISPRUDENCE 2d



WORKERS' COMPENSATION
—
WRONGFUL DISCHARGE

AMERICAN JURISPRUDENCE

SECOND EDITION

A MODERN COMPREHENSIVE TEXT STATEMENT
OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS
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TO
WRONGFUL DISCHARGE

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FOREWORD

This volume contains a new article on the increasingly litigated area of **Wrongful Discharge**, recognizing the fact that the courts of many jurisdictions have drastically altered the long-standing policy of most American courts which traditionally permitted the discharge of “at-will” employees for any, or no reason. The article concentrates on the development within the past 20 years of theories under which a discharged employee—not protected by a union contract or civil service regulations—may bring an action against his or her former employer.

The theories under which discharged employees may be able to recover include the “public policy” exception which offers relief against retaliatory discharge of “whistleblowers,” of employees who refuse to commit illegal or unethical acts, and of employees who exercise such legal rights as bringing workers’ compensation actions. Another frequently invoked theory is based on the contention that employees have implied-in-fact contracts which may be founded on representations made in employee handbooks and manuals. Other actions for **Wrongful Discharge** have been based on covenants of good faith and fair dealing, and on various tort remedies, such as interference with contractual relations, infliction of emotional distress, invasion of privacy, and fraud. Also discussed in this article are defenses and remedies, including the awarding of punitive damages and injunctive relief.

The **Workers’ Compensation** article in this volume takes into account the many statutory and other changes in the law of workers’ compensation that have occurred in the period since the original Am Jur 2d **Workmen’s Compensation** article appeared.

Discussion as to who is an “employee” for purposes of workers’ compensation laws has been expanded, including a more detailed examination of the status of independent contractors and their employees, who are now often covered by workers’ compensation statutes. There is also expanded coverage on the question as to who are “dependents” for purposes of workers’ compensation death benefits, what constitutes an “accident” or “injury” subject to workers’ compensation, and on the relation of the accident, injury, or disability required to entitle a claimant to compensation.

Changes in the law with regard to the application of conflicts of law rules to workers’ compensation, and the right of a claimant to bring an action outside the normal workers’ compensation remedy, against the employer or third persons, are among the matters discussed. The current rules as to the compensability of injuries of a mental or emotional nature, or injuries which are caused by stress or other emotional stimuli, and suicide, are also covered. Furthermore, discussion has been added highlighting changes in the law regarding the effect of a workers’ compensation claimant’s settlement on an employer’s or compensation insurer’s liability.

Each article has been enhanced by the inclusion of *Observations*, *Practice guides*, *Cautions*, and *Checklists* providing detailed advice and procedures, as well as *Research References* directing the reader to related discussions in ALR and ALR Federal annotations, to practical advice in Am Jur Proof of Facts and Am

Jur Trials, and to pertinent forms in Am Jur Pleading and Practice Forms (Rev) and Am Jur Legal Forms 2d.

A **Table of Parallel References** to help the reader translate references from the original Am Jur 2d **Workmen's Compensation** article into appropriate references in the new **Workers' Compensation** article in this volume will be found immediately following this Foreword. (There is no Table of Parallel References for the **Wrongful Discharge** article since no similar article appeared in the original Am Jur 2d volume.) **The Table of Statutes and Rules Cited** follows the Parallel Reference Table.

An **Index** for each article will be found at the back of this volume.

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Use the following tables to find where the subject matter of the various sections of Am Jur and Am Jur 2d are treated in the Am Jur 2d Revised volume.

When a particular subject matter is treated in another topic, the title of the other topic is noted. If a section of the earlier article has become obsolete, the table will show that it has been deleted.

Also consult the index at the end of the volume for detail and for matters not appearing in the earlier edition.

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<i>Title and section</i>	<i>Am Jur 2d title and section</i>	<i>Title and section</i>	<i>Am Jur 2d title and section</i>
28 USCS		40 USCS	
1445(c) WORKERS' COMPENSATION	519	290 WORKERS' COMPENSATION	40
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651 et seq WORKERS' COMPENSATION	80	1983 WORKERS' COMPENSATION	78
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WORKERS' COMPENSATION

by

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Scope of topic: This article discusses workers' compensation under state legislation, including the validity, construction, operation, and effect of such legislation, the employers and employments covered, the persons entitled to benefits, compensable injuries, the computation of benefits, and the means and methods of securing them. It also examines persons liable for payment of compensation, compensation insurance, and other incidental rights and duties under state workers' compensation legislation.

Federal aspects: The treatment of workers' compensation awards in bankruptcy proceedings is discussed in 9 Am Jur 2d, Bankruptcy §§ 1193 and 2379. Federal workers' compensation acts, including the Longshore and Harbor Workers' Compensation Act, the Federal Employees' Compensation Act, and the Defense Base Act, are treated in 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 87 et seq. The Jones Act is discussed in 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 41 et seq. and the Outer Continental Shelf Lands Act is discussed in 38 Am Jur 2d, Gas and Oil §§ 259 et seq. The exemption of workers' compensation from federal tax levy is discussed in 35 Am Jur 2d, Federal Tax Enforcement § 28. (See "Federal Legislation," *infra*, for USCS citations).

Treated elsewhere:

Unauthorized practice of law with respect to workers' compensation claims or proceedings, see 7 Am Jur 2d, Attorneys §§ 107, 113

Aircraft operators or persons engaging in the business of aviation, application of workers' compensation laws to, see 8 Am Jur 2d, Aviation §§ 97-99

Bankruptcy, treatment of workers' compensation awards, see 9A, 9B Am Jur 2d, Bankruptcy §§ 1193, 2379

Tortfeasors' damages mitigated by workers' compensation recoveries, see 22 Am Jur 2d, Damages §§ 579-582

Declaratory relief as to matters regarding workers' compensation, see 22A Am Jur 2d, Declaratory Judgments § 182

Exemption of workers' compensation awards from creditor's claims, see 31 Am Jur 2d, Exemptions §§ 220-223

- Judgment for workers' compensation as a debt against which an exemption from creditor's claims may be asserted, see 31 Am Jur 2d, Exemptions § 286
- Federal employers' liability acts, such as the Jones Act, see 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 41 et seq.
- Federal workers' compensation acts, including the Federal Employees' Compensation Act, the Longshoremen's and Harbor Workers' Compensation Act, the Defense Base Act, and the War Hazards Compensation Act, see 32 Am Jur 2d, Federal Employers' Liability and Compensation Acts §§ 87 et seq.
- Federal tax levies on workers' compensation awards, see 35 Am Jur 2d, Federal Tax Enforcement § 28
- Outer Continental Shelf Lands Act, see 38 Am Jur 2d, Gas and Oil §§ 259 et seq.
- Employers' liability insurance as affected by workers' compensation, see 43 Am Jur 2d, Insurance §§ 721 et seq.
- Insurance, generally, see 43, 44 Am Jur 2d, Insurance
- Accident and health insurance recoveries as affected by insured's receipt of or right to workers' compensation, see 43, 44 Am Jur 2d, Insurance §§ 1098, 1788, 1790
- Employer-employee relations, generally, see 48, 48A Am Jur 2d, Labor and Labor Relations
- Civil defense personnel under workers' compensation, see 54 Am Jur 2d, Military and Civil Defense § 361
- Miners disabled by mine operations, compensation under federal law for, see 54 Am Jur 2d, Mines and Minerals § 169
- Prisoners, liability to prisoners under workers' compensation acts, see 60 Am Jur 2d, Penal and Correctional Institutions §§ 186, 187, 202-206
- Pension benefits barred by acceptance of workers' compensation benefits or decreased due to workers' compensation payments received by the pensioner, see 60A Am Jur 2d, Pensions and Retirement Funds § 1694
- Medical malpractice action barred by acceptance of workers' compensation benefits, see 61 Am Jur 2d, Physicians, Surgeons, and Other Healers § 308
- Unemployment compensation as affected by workers' compensation award, see 76 Am Jur 2d, Unemployment Compensation § 90
- Retaliatory discharge from employment in response to filing workers' compensation claim, see 82 Am Jur 2d, Wrongful Discharge §§ 23 et seq., 199

Research References

Annotation References:

- ALR Digests: Workers' Compensation
 Index to Annotations: Workers' Compensation
 Larson, Workmen's Compensation Law

Practice References:

- 25 Am Jur Pl & Pr Forms (Rev), Workmen's Compensation
 20 Am Jur Legal Forms 2d, Workmen's Compensation
 10 POF2d 505, Accident Occurring in Course of Employment—"Dual Purpose" Doctrine; 11 POF2d 423, Dependency of Child Who Has Attained Majority—Workers' Compensation; 24 POF2d 439, "Casual Worker" Under Workers' Compensation Act; 25 POF2d 1, Workers' Compensation—Disability Resulting from Mental Stress; 32 POF2d 199, Workers' Compensation—Special Mission Exception to Coming-and-Going Rule; 40 POF2d 603, Employers' Tort Liability Under Dual Capacity Doctrine; 42 POF2d 481—Workers' Compensation—Injury Occurring During Social, Recreational, or Athletic Activity; 46 POF2d 221, Forensic Audiology—Workers' Compensation for Noise-Induced Hearing Loss; 48 POF2d 1, Workers' Compensation—Employers' Intentional Misconduct; 50 POF2d 187, Discharge from Employment in Retaliation for Filing Workers' Compensation Claim; 7 POF3d 143, Workers' Compensation for Attendant Care Services by Family Members; 10 POF3d 669, Workers' Compensation—Compensable Coronary Episode (Heart Attack)