

A Day in the Life of Risk Management: Understanding Post Employment Separation Anxiety



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Understanding Post Employment Separation Anxiety: Workers' Compensation Benefits

The Texas Workers' Compensation Act specifies that an injured worker is eligible for lifetime medical benefits pertaining to a compensable on the job injury¹.

Medical Benefits

Is an injured worker still eligible for medical benefits after he or she resigns or is terminated?

Yes. Resignation and termination generally have **no** effect on an injured employee's eligibility for medical benefits. The Act states that an injured employee is entitled to all healthcare "reasonably required by the nature of the injury as and when needed."

Medical benefits are only denied when treatment or healthcare prescribed is not related to the on the job injury. For example, blood pressure medicine prescribed by the treating doctor for high blood pressure would not be paid because blood pressure problems are generally not part of a compensable injury. High blood pressure is considered an "ordinary disease of life." Other conditions such as diabetes and arthritis are also considered to be "ordinary diseases of life." These conditions frequently become intertwined with a workers' compensation claim. Generally, an insurance carrier does not pay for treatment with these types of conditions.

It is first necessary to define some legal terms associated with the payment of income benefits before the post separation situations can be addressed.

Temporary Income Benefits (TIBs)

These income benefits are paid to an injured worker if he or she misses more than seven (7) days of work due to a compensable injury². Upon the eighth (8th) day of "disability" an employee is entitled to TIBs.

- **What is "disability"?**

Disability is defined by Texas Labor Code, Section 401.011(16) as the inability to obtain and retain pre-injury wages due to a compensable injury.

¹ Texas Labor Code, Section 408.021

² Texas Labor Code, Section 408.082(a)

Work Status at the Time of Separation: Full or Modified Duty?

An injured worker's work status ("disability") must be considered when determining eligibility for TIBs upon separation from employment.

An adjuster must first ask the question "**Was the injured worker working full or modified duty at the time of separation?**"

- If the injured worker is on a *full duty work release* at the time of resignation or termination, TIBs will not be due because there is no "disability."
- If the injured worker is released to *modified duty* and resigns or is terminated, TIBs may or may not be due.

Resignation

When an injured worker returns to work under a restricted duty release and later **resigns**, disability ends if the Hearing Officer determines that the injured worker is earning less than the Average Weekly Wage because of the resignation. [APD 041917](#). An injured worker's voluntary resignation is a factor that the Hearing Officer may consider, but resignation does not automatically preclude a finding of disability. [APD 021818](#).

Termination

When an injured worker returns to work under a restricted duty release after the injury and is later **terminated**, the question becomes whether it is the termination or the injury that causes the inability to obtain or retain pre-injury wages. In such a case, a termination may end disability. [APD 032971](#). Termination for cause does not necessarily preclude disability, but may be considered by the Hearing Officer in determining why an injured worker is unable to earn pre-injury wages. Thus, disability continues after termination if a cause of the inability to earn pre-injury wages after termination was the compensable injury. [APD 032767](#).

Bona Fide Offer of Employment

A Bona Fide Offer of Employment pursuant to **DWC Rule 129.6** must be made for all modified duty job offers. If the employee resigns from a modified duty assignment, this document proves the assignment was made and concurs with restrictions set forth on the **Work Status Report (DWC-73)**. It will allow the adjuster to stop TIBs altogether. Without a Bona Fide Offer of Employment, an adjuster must continue payment of TIBs.

See the elements of a Bona Fide Offer of Employment below:

1. Be in writing;
2. Include a copy of the Work Status Report upon which the offer is being based;
3. State the location at which the injured worker will be working;
4. State the schedule the injured worker will be working;
5. State the wages the injured worker will be paid;
6. Give a description of the physical and time requirements that the offered position will entail; and
7. Provide a statement that the employer will only assign tasks consistent with the injured worker's physical abilities, knowledge, and skills and will provide training if necessary.

What about retirement after an injury?

An injured worker's voluntary retirement from his or her pre-injury employer is evidence that disability has ended. [APD 021818](#). Retirement is a factor for the Hearing Officer to consider in determining whether there is disability. The mere fact that an injured worker retires after the date of injury does not automatically preclude a finding of disability after the retirement date. If the injured worker can prove that the compensable injury is still a cause of the inability to earn pre-injury wages after retirement, disability exists. [APD 022499](#).

Other Types of Income Benefits

Other types of income benefits, such as Impairment Income Benefits (IIBs) are not wage replacement benefits and are therefore paid regardless of resignation or termination. IIBs are paid based on a percentage of Whole Body Impairment certified by a Treating or Designated Doctor. IIBs may be disputed. All disputes go to a Designated Doctor.

Filing the DWC-6: Employer's Supplemental Report of Injury

Employer claim reporting responsibilities upon resignation or termination include filing the Supplemental Report of Injury. DWC Rule 120.3 requires that the employer file a DWC-6 form with the insurance carrier or third-party claims administrator within 10 days after an employee resigns or is terminated.

- **Why is the DWC-6 required when an injured worker resigns or is terminated?**

It is instrumental in determining the proper amount and extent of duration of TIBs. If an employee is double-dipping (working elsewhere and collecting TIBs), depending on duty restrictions, one may presume that the injured worker no longer has disability. Depending on the amount that was received while on TIBs, prosecution or restitution could also be an option.

Summary

Medical benefits are payable to an injured worker for lifetime as long as the treatment is related to the compensable injury. Whether or not an injured worker receives TIBs upon separation from employment depends largely upon the following factors:

- Work status – Is the injured worker on a modified or full duty release?
- Bona Fide Offer of Employment – Is there a Bona Fide Offer in place if the injured worker is working on a light duty release? Did you send it to your insurance carrier or Third-Party Administrator?
- Reason for termination – Was the injured worker terminated for “cause” while working modified duty?

Be sure to file the DWC-6 Form in the event the injured employee resigns or is terminated. This form is used to determine the amount and duration TIBs. If this form is not filed timely an overpayment may result.

Discrimination and Texas Labor Code, Sections 451.001 & 451.002

An employer may not discharge an employee for filing a claim in good faith. The Texas Workers' Compensation Act further explains this. Refer to **Labor Code, Section 451.001** below:

“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 proceeding under Subtitle A; or
- (4) Testified or is about to testify in a proceeding under Subtitle A. (V.A.C.S. Art. 8307c, Sec. 1.)”

In addition, an employer who violates Section 451.001 can be sued for retaliation. See **Labor Code, Section 451.002** below:

“(a) A person who violates Section 451.001 is liable for reasonable damages incurred by the employee as a result of the violation.

(b) An employee discharged in violation of Section 451.001 is entitled to reinstatement in the former position of employment.

(c) The burden of proof in a proceeding under this section is on the employee. (V.A.C.S. Art. 8307c, Sec. 2.)”

In a recent lawsuit, *City of LaPorte v. Barfield*, 898 S.W. 2d 288 (Tex. 1995), the precedent was set for retaliation cases in governmental entities.

Understanding Post Employment Separation Anxiety: Concurrent Use of Leave

Concurrent Use of Leave

Persons receiving workers' compensation benefits may also be eligible for leave benefits during their absence. Federal and state leave laws provide job protection and/or restoration and continuation of district contributions to group health care premiums that are not available under workers' compensation laws and rules. Types of leave that may run concurrently with workers' compensation benefits are summarized in the chart below.

Type of Leave	Pay Status	Job Protection Rights
Workers' Compensation Absence	TIBs may be paid for extended absence	No specific right to reinstatement to a particular position <ul style="list-style-type: none"> • No requirement to hold the position open indefinitely • Position can be filled on a case-by-case basis because of a legitimate business concern
State Sick/Personal Leave	Paid	Common expectation that employee is entitled to return to the same position
Local Sick/Personal Leave	Paid	Common expectation that employee is entitled to return to the same position
Extended Leave	Paid (partial day)	Common expectation that employee is entitled to return to the same position
Sick Leave Pool or Bank	Paid	Common expectation that employee is entitled to return to the same position
Assault Leave	Paid District is required to coordinate assault leave payment with temporary income benefits	Employee is entitled to up to two years of leave to recover from physical injury
Family and Medical Leave	Unpaid	Entitlement to return to same or equivalent position
Temporary Disability Leave	Unpaid	Return to assignment at same campus subject to the availability of an appropriate position Return to active duty not later than the beginning of the next school year
Leave of Absence	Unpaid	Rules defined by local policy

Employee Choice to Use Paid Leave

The choice to use paid leave benefits during a workers' compensation absence belongs to the employee (Labor Code §504.052). An employee cannot receive more than his or her pre-injury wage when **electing** to use paid leave while receiving workers' compensation TIBs (28 TAC Chapter 129). If the district has adopted an offset policy, an injured employee can elect to use paid leave and can receive no more than 100 percent of his or her pre-injury/illness average weekly wage. If the district has not adopted an offset policy, then the employee has the following choices:

- To use available leave and postpone TIBs until leave is exhausted or to the extent that paid leave does not equal the pre-illness or pre-injury wage.
- To receive TIBs and forego the use of available paid leave.

If a district **requires** an employee to use paid leave for an absence due to a work related illness or injury, the employee will also be eligible to receive TIBs at the same time. In some cases, the combined benefits could be as much as 170 percent of the pre-injury wage, thereby providing an incentive to remain out of work as long as possible.

Since the election to use paid leave can impact the amount of workers' compensation income benefits received, it is important for districts to document the employee's choice to use or not use paid leave for each claim.

Family and Medical Leave (FML)

Employees absent because of work-related injuries or illnesses who receive workers' compensation benefits may also be eligible for family and medical leave. They can run concurrently, as long as the employee meets the eligibility criteria, proper notice is provided, and district designation of FML occurs.

Employees who are on FML as a result of a work-related injury and are receiving workers' compensation wage benefits may choose to use accumulated sick or personal leave as well.

Modified Duty and Leave Benefits

Modified duty is a loss control program used to reduce workers' compensation claims costs. Districts are encouraged, but not required, to have a modified duty program. Districts can offer an employee a modified-duty position when the health care provider certifies the employee is able to return to a modified-duty position according to the guidelines of workers' compensation. The employee is permitted, but not required, to accept the position under the FMLA. However, refusal of modified duty may result in the loss of workers' compensation benefits according to laws governing that program. The time spent performing the modified assignment does not count toward the employee's leave entitlement, and the employee's right to restoration to the same or

equivalent position remains in effect as long as the employee is in the modified assignment. If the employee's assignment is not limited in duration, the employee's right to restoration expires at the end of the 12-month leave year period that the district uses to calculate FML.

The district may impose time limits as part of the offer of a modified duty assignment. If the employee is unable to return to the same or equivalent position at the conclusion of that period of time, the employee may use the remainder of his or her FML. If the employee is unable to resume work after exhausting his or her 12 weeks of leave, the employer's obligation to restore the employee to the original or equivalent position ceases.

Districts without a Modified Duty Program

Districts that do not have modified duty program are not required to allow an employee to return to work following leave (e.g., temporary disability leave or family and medical leave) until they are able to perform all of the essential functions of their job.

If the district gave the appropriate notice of fitness-for-duty certification requirements and the doctor's certification indicates that the employee is unable to perform the essential functions of the job, the employee is not entitled to reinstatement under the Family and Medical Leave Act (FMLA). However, if the employee has a disability, the district may be required to provide additional leave or other reasonable accommodations under the Americans with Disabilities Act.

Employees returning to work following temporary disability leave or family and medical leave must be able to perform the essential functions of their job. It is important to distinguish between an employee who is unable to perform the essential functions of the job and an employee who is released to come back to work on a part-time basis. If the employee is released to come back to work on a part-time basis and is able to perform all of the essential functions of the job, the FMLA requires the district to reinstate the employee until the employee's 12-week entitlement is exhausted. For example, an employee who has been out for eight weeks submits a medical certification stating that the employee is able to perform all of the essential job functions and can return to work on a half-day basis for two weeks. The employee would need to be reinstated to a half-day schedule for two weeks. If the employee returns to a full-time schedule at the end of the two weeks, the employee would have used a total of nine weeks of FML.

Understanding Post Employment Separation Anxiety: The Basics of Unemployment Compensation

An unemployment claim could cost up to \$10,556. Employer liability can extend eighteen months after separation. The Texas Workforce Commission (TWC) decides who receives benefits, issues benefit checks, and bills employers. School districts reimburse TWC directly or through a carrier.

TWC operates under the Texas Labor Code provisions known as the Texas Unemployment Compensation Act (TUCA) and its own commission created procedures. TWC will not regulate legal claims outside the area of unemployment compensation.

The two main disqualifications for unemployment compensation are found at Sections 207.044 and 207.045 of the TUCA.

- Section 207.044 disqualifies a claimant who quit a job without good work-connected cause.
- Section 207.045 disqualifies a claimant who was discharged for work-connected misconduct.

The burden of persuasion in these cases rests on the party who initiated the separation. Either party may appeal the initial determination on a claim to a hearing officer and then to the three TWC commissioners in Austin.

A Conflict of Laws

Normal school district practices under the Texas Education Code may conflict with requirements of the TUCA. Understanding and preparing for these conflicts are the only options.

- **Probationary contract employees** who are non-renewed at the end of their contracts are considered by TWC to be discharged. These employees will collect benefits if the district cannot prove misconduct.
- **Resignations in lieu of discharge** are considered discharges. It is the district's burden to show misconduct. (*Madisonville ISD v. TEC*)
- **Notice of Proposed Nonrenewal** should not stop the documentation of specific work problems. TWC will grant benefits if there are not documented problems near the time of actual separation.
- **Noncertified employees** who diligently attempt to become certified will receive benefits if discharged for failing to meet certification requirements.
- Discharged **“at will” employees** will receive benefits unless the district proves misconduct. Simply stating the policy allowing for discharge of “at will” employees is not a defense.

Reasonable Assurance

Letters of reasonable assurance of continued work protect school districts from claims filed during school breaks and between terms. These notices should be signed at hire and each spring by all noncontract employees (including substitutes) who do not work year round. A professional employee's signed contract serves the same purpose as a letter of reasonable assurance.

Letters of reasonable assurance are **not guarantees of continued work** and should specifically state this. If an employee fails to sign and return the reasonable assurance notice, the employee may be considered to have voluntarily resigned from his or her position.

- For instructional employees, a signed contract or reasonable assurance notice from any school district protects all previous school employers from unemployment charges.
- Notices of reasonable assurance do not protect school districts from claims filed while school is in session.

Backdoor Disqualifications

- Workers Compensation payments (TIBs and SIBs) disqualify a claimant from UC benefits.
- Excessive earnings over the weekly benefit amount will stop the benefit payment for that week. Summer payment of earned wages does not affect benefit payments.
- Teacher Retirement System payments reduce benefits.
- Refusal to accept reasonable new work will terminate benefits.
- Benefits are only paid to claimants who are able and available for some type of work. A claimant does not have to be able to perform their previous job duties.
- A fraud disqualification is imposed if a claimant deliberately misinforms TWC about benefit eligibility. A fraud ruling requires repayment of all benefits.

Background Checks, Criminal Acts, and Poor Publicity

- Wait for background check results before allowing employee to work.
- If already working, discharge based on the employee's falsification **of application, if any**. TWC considers a falsified application to be misconduct, even if discovered later.
- **Criminal acts**, without a conviction, must still be proven to be misconduct and must be related to the work. Schools can claim a broader definition of "work related" than private businesses. TWC will not issue a final decision until legal issues are settled.
- Bringing **poor publicity** on the district may be misconduct depending on your situation. Use newspaper articles and local reaction to the incident as evidence of harm to the district. (*Collingsworth General Hospital and TWC v. Fredonia Hunnicutt*)

Settlements and Nondisclosure Agreements

- Section 207.072 of the TUCA prohibits an employer from requiring or accepting an employee's waiver of the right to file for unemployment benefits.
- Section 207.074 of the TUCA places **criminal penalties** on employers who accept a waiver of the right to file for unemployment benefits.
- Structure **nondisclosure agreements** to specifically exempt disclosure of information to TWC in order to protest an unemployment claim. Otherwise, the district will not be able to defend against a claim.

Understanding Post Employment Separation Anxiety: Legal Liability Issues

Rather than provide a non-exhaustive summary of the Americans with Disabilities (ADA) Act, below is a list of frequently asked questions and answers.

- **What is the ADA?**

The ADA prohibits discrimination on the basis of disability. To be protected by the ADA, one must have a disability.

- **What is defined as an “individual with disabilities”?**

A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having a disability

- **Who is considered a “qualified individual” under the ADA?**

An individual with a disability is “qualified” if he or she satisfies skill, experience, education, and other job related requirements of the position held, and who, with or without reasonable accommodation can perform the essential job functions of that position.

- **What employment practices are prohibited by the ADA?**

ADA prohibits discrimination in recruitment, hiring, promotions, training, pay, social activities and other privileges of employment.

- **Can an employer fire an employee because he/she cannot perform some aspects of the job?**

No. Terminating an employee because they can no longer perform certain aspects of a job is not allowed. The ADA requires that employers make reasonable accommodations to the known physical or mental limitations of a qualified individual unless it results in undue hardship.

- **What is an “essential function” of a job?**

Those core duties that are the reason the job exists are considered essential job functions. (For example, an essential function of data entry specialists is typing.)

- **What is a “reasonable accommodation”?**

A reasonable accommodation is any modification or adjustment to a job or work environment that will enable a qualified employee to perform the essential functions of the job. This could include making facilities usable by disabled

individuals; restructuring a job; modifying work schedules or reassignment to another position that the employee is qualified to perform.

- **Do reasonable accommodations have to be made for every employee?**

No. An employer is not required to make an accommodation if it would impose an undue hardship on the operation of the business. An undue hardship is an action that requires “significant difficulty or expense” in relation to the size of the employer.

- **How is an employer made aware of an employee’s disability?**

It is the employee’s responsibility to tell the employer that he/she needs a reasonable accommodation. Employers are only required to accommodate “known” disabilities.

- **What can employers expect if an employee believes they were discriminated because of their disability?**

Complaints must be filed with the Equal Employment Opportunity Commission (EEOC). The EEOC is the agency charged with enforcing laws that prohibit discrimination. They are responsible for investigating complaints and advocates for employees who believe they have been discriminated.

- **How can employers protect themselves against claims and/or litigation?**

It is essential that the district have sound policies on file which reflect the current ADA laws and that they make reasonable accommodations when possible. Documentation is the key to defending allegations regarding discrimination. It is critical that the employee’s personnel file be documented to detail the considerations that the employer made in regards to the employees disability and that an individual does not pose a direct threat to the health and safety of themselves in the workplace. Knowledge of district policies is crucial in proving a willful violation of a policy or rule.

Title VII

Title VII of the Civil Rights Act of 1964 is probably the best known of all of the employment discrimination laws. The Act prohibits employers from:

- Firing or failing to promote based on the employee’s color, race, religion, sex or national origin.
- Using an employee’s color, race, religion, sex or national origin to determine pay, fringe benefits, retirement plans or disability leave.
- Harassing employees because of color, race, religion, sex or national origin.
- Retaliating against individuals for filing a charge of discrimination, participating in an

investigation or opposing discriminatory practices

Under Title VII, the courts have recognized essentially three types of claims, which include:

- Direct discrimination claims
- Hostile environment claims
- Retaliation claims

Direct discrimination claims can involve disparate treatment claims, which involve claims that an employee was individually subjected to discriminatory treatment. Disparate treatment claims require proof of an employer's discriminatory motive or intent. Thus, the employee must first introduce evidence of discrimination regarding an adverse employment action. The burden shifts to the employer to defend a legitimate non-discriminatory reason for the adverse employment action. Proper documentation of an employee's personnel file is critical for the district to prevail in disparate treatment cases.

Hostile environment claims were initially limited to the context of sexual harassment. Harassment on the basis of sex is a violation of Title VII and is a form of sex discrimination.

- Sexual harassment is defined as "unwelcome conduct, either verbal or physical, which would not occur but for the sex of the individual."

The elements of a hostile environment claim are always the same. The only difference is the basis for the hostile environment.

- The elements of a hostile work environment claim are: (1) the employee belongs to the protected group; (2) the employee was subject to discrimination; (3) discrimination was based on race, sex, national origin, color, or religion; (4) discrimination affected a term, condition, or privilege of employment; and (5) the employer knew or should have known of the discrimination and failed to take proper remedial action.

Retaliation claims under Title VII involve claims for discrimination for making charges, testifying, assisting, or participating in enforcement proceedings. It is unlawful for an employer to discriminate against any of its employees because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII. To establish a case for retaliation under this provision of Title VII, an employee must prove that they engaged in activity protected by Title VII, that an adverse employment action occurred, and that a causal link existed between the protected activity and the adverse employment action.

Defenses to a Title VII claim include arguing that the employer took prompt remedial action, the conduct was not so severe or pervasive to create a hostile environment or

that the employee participated in the conduct and, therefore, it was not harassing or offensive to that employee. In addition, recent court cases have advised that employers have a possible defense in which they can argue that the employee unreasonably failed to take advantage of a proper policy and corrective action plan that was adopted by the employer.

Title VII provides comprehensive remedies for employment discrimination of all types. The primary remedy, however, is back pay, which includes regular wages, overtime compensation, and fringe benefits. An employee is also entitled to reinstatement. If reinstatement is not feasible, then front pay is awarded to make the employee whole. Compensatory and punitive damages are limited, depending on the number of employees in the district. Attorney's fees are also available for the successful plaintiff in a Title VII suit.

The Age Discrimination in Employment Act (ADEA)

The ADEA makes it unlawful for an employer:

"To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age. The ADEA limits its applicability in that the prohibitions shall be limited to individuals who are at least 40 years of age. "

In order to establish age discrimination under the ADEA, an employee must first show:

- (1) the employee was discharged;
- (2) the employee was qualified for the position;
- (3) the employee was within the protected age group;
- (4) the employee was either replaced by someone outside the protected class, replaced by someone younger, or was otherwise discharged because of the employee's age.

Once again, documentation is the key to defending a wrongful termination lawsuit based on allegations of ADEA. A district must be prepared to prove that an employee's poor performance was misconduct rather than his or her inability due to age

Whistleblower Claims

The Texas Whistleblower Act, which is found in Chapter 554 of the Texas Government Code, can create potential liability to school districts.

- The Act states that a state or local governmental unit may not suspend or terminate the employment of, or take other adverse personal action against, a public employee who in good faith reports a violation of law by an employing governmental entity or another public employee to an appropriate law enforcement authority.

- Appropriate law enforcement authority is defined to mean a part of state or local government, or a part of the federal government, that the employee in good faith believes is authorized either to “regulate under or enforce the law alleged to be violated in the report,” or “to investigate or prosecute a violation of criminal law.”

The employee’s recovery for actual damages is capped by the Act. **The maximum amount of damages that can be awarded by a jury varies according to the number of employees in the district.** In addition, the employee may be reinstated to “an equivalent position.” No punitive damages may be recovered against the district. No recovery is allowed against an individual supervisor; however civil fines may be levied against individuals. The maximum fine allowed against an individual administrator or supervisor who violates the act is \$15,000 and may not be paid by the district. The employee may also recover court costs and attorney’s fees.

In order to avoid or lessen whistleblower activities against them, the district must provide education and training for their employees. Proper documentation is crucial to the investigation of employee complaints of retaliation due to their filing of a whistleblower claim. It is crucial in the defense of the school district to prove that the same action would have been taken in the absence of the whistleblower report. The district should demand strict compliance with policy and administrative procedures and document in compliance with the law.

Case Scenario #1

Case Information:

Name: Cheri Pye
Date of birth: 09/15/1946
Occupation: Cafeteria Worker
Injury date: 09/05/08
Injury/Diagnosis: Bi-lateral Carpal Tunnel Syndrome (CTS)
Length of Employment: 2 years with Bing ISD.
Ethnicity: African-American

On 09/05/08 Cheri was slicing pies when she noticed some pain that had been progressively getting worse for about 2-3 weeks. She went to see Dr. Cuttalot, who indicated that she was suffering from Bi-lateral CTS as a result of her daily pie slicing. Cheri was taken off of work beginning 9/06/08. On 9/6/08, as suggested by her doctor, Cheri reported this injury to her supervisor. Cheri had carpal tunnel surgery on 10/03/08 and was released to modified duty one month later. Bing ISD made a Bona Fide Offer of Employment pursuant to DWC Rule 129.6. Cheri assumed a modified duty position as a part-time lunch monitor at less than pre-injury pay.

A month passed by and, unfortunately, Cheri had received verbal and written warnings about not being attentive enough in the lunchroom and not watching the kids. Food fights were occurring daily. Rumors were flying about how poorly she performed as a lunch monitor. Her co-workers told her she was too old to perform the duties of the job. Her supervisor also told her she should retire.

On 12/05/08, a reprimand was issued for not meeting performance standards. Cheri resigned because she felt she was treated unfairly and her co-workers were making fun of her.

What types of claims or exposure could the district be subject to based on the scenario above?

Use your worksheet and work in your group to jot down some issues that you feel may surface.

NOTES:

Case Scenario #1
Case Information: Cheri Pye

Workers' Compensation	Liability	Unemployment Compensation	Leave Administration

Case Scenario #2

Case Information:

Name: Stephen Stanke
Date of Birth: 05/15/65
Occupation: Teacher
Injury Date: 04/15/08
Hire Date: 8-10-1994
Ethnicity: Caucasian

Mr. Stanke taught 5th grade for the Malodor ISD. At the beginning of the 07-08 school year, a new principal was hired at the elementary school where Mr. Stanke taught.

On 10/15/07, Stephen called Texas Education Agency and reported that his new principal was forcing him to attend meetings during his planning and preparation time.

On 12/5/07, he was placed on a growth plan by his new principal for failure to correctly maintain his grade book and failure to control his class.

On 2/25/08, Mr. Stanke mentioned to his principal that there was an odor in his classroom. There were cleaning supplies and other chemicals stored near his classroom.

Stephen saw a doctor on 02/28/08 and was told the chemicals were causing his episodic migraines. He began missing work. On 03/01/08, Stephen filed a workers' compensation claim for migraines. Stephen had a total of 10 days of intermittent lost time due to the migraines. He received TIBs.

A notice of proposed nonrenewal was issued to Mr. Stanke on 3/10/08 citing his poor performance.

Before the school board voted on his nonrenewal, Mr. Stanke resigned in writing effective the end of the school year. His salary was paid over 12 months so he continued to receive pay through 08/11/08.

Mr. Stanke filed an Unemployment Compensation claim against Malodor ISD on 06/03/08.

On 7/13/08, he signed a new teacher contract with Fresh Aire ISD, effective on 8/12/08.

What types of claims or exposure could the district be subject to based on the above scenario.

Use your worksheet and work in your group to jot down some issues that you feel may surface.

NOTES:

Case Scenario #2
Case Information: Stephen Stanke

Workers' Compensation	Liability	Unemployment Compensation	Leave Administration