



Go Back To Work On "Light Duty"?

From: New York attorney Gary E. Rosenberg (personal injury and accident attorney and lawyer; serving Brooklyn Queens Bronx; [Queens Accident Attorney](#))

What Can Go Wrong with a Return to Light Duty Work.

The Case: "Mike" worked for an electrical contractor for over 15 years. In his younger years, he worked installing electrical boxes and running electrical wiring and cable. This was a physically demanding job. As he grew older, he was no longer physically able to work as an on-site electrician. Consequently, he took a less physical job that his boss offered in the shop, dispatching trucks and keeping inventory. He did this for several years until he had a [work-related accident where he fell](#) and [broke his hip](#). The injury was severe; Mike's orthopedic surgeon recommended a hip replacement. He was kept out of work for two months.

Regardless, within a month after the hip replacement surgery, his employer drove to Mike's house and pushed Mike to return to his job. He offered Mike a position that would be less physically intense, a special "light duty job" in the company's warehouse. Disregarding his doctor's instructions, Mike went back to work. But just traveling to work and climbing stairs made his hip hurt and hampered his recovery from surgery.

Mike's doctor eventually cleared him to return to work with restrictions on his physical activity. These restrictions didn't allow Mike from performing his old job in the warehouse.

Once more, his employer pressed Mike to take a special job supposedly crafted to avoid heavy lifting or too much walking. The employer assured Mike that his new job would be answering the phones and working a computer. The problem was that Mike had no prior office or computer experience. Thinking he would be trained to operate the computer and handle office work he went to work. And Mike waited to be trained, but his supervisor seemed to have no time to instruct him. And so it continued until Mike was dismissed from his job for lack of productivity and for being unable to operate the computer and handle the office and telephones that no one had ever trained him for.

Therefore, Mike's employer fired him after 15 years of loyal service on what can only be described as a pretense. Mike engaged an attorney to bring a claim against his employer for "retaliatory firing" because of Mike's Worker's Compensation claim for injury to his hip.

The employer argued that firing Mike had nothing to do with his injury, so he was not entitled to any further compensation, since he was capable of working.

Had simply turned down the office job, and stayed out of work. because of his [work-related hip fracture](#), the Worker's Compensation insurance carrier would have had to continue to pay him weekly benefits.

Here's what was done: Mike's claim was vigorously pursued and discovery commenced, which allowed Mike's attorney to explore the employer's legal position. In the face of questioning about the "special" office job and how Mike came to be fired, information unfavorable to the employer

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was uncovered. Mike's lawyer revealed details which allowed his attorney to convincingly argue that: (a) the office job was "make-work," and, (b) the Mike was fired for reasons related to his on-the-job accident and workers' compensation claim.

This claim ultimately settled in Mike's favor.

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