

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT ALERT *November 2011*

Public Employers' Absolute Immunity from Defamation Suits Related to Employment References Upheld by Fourth District

The Fourth District Court of Appeal in Florida recently confirmed that public officials who make statements within the scope of their duties have absolute immunity from defamation suits, even when those statements might violate Florida law regarding employment references. In Blake v. The City of Port St. Lucie (Case No. 4D11-74), the Fourth District held that Section 768.095, Florida Statutes, which allows for civil liability when an employer knowingly discloses false information in response to a request from a prospective employer or the employee herself, does not abrogate the traditional absolute immunity from suit enjoyed by public officials acting in the scope of their jobs. This decision comes on the heels of a similar opinion issued just last year upholding such immunity in relation to a similar statute. Essentially, the Court held that Section 768.095 only applies to employers who are not public officials.

The opinion is available at the following link: [Blake v. The City of Port St. Lucie](#).

Proposed Florida Senate Bill Provides Wage Protection for Employees

On November 8, 2011, Florida Senator David Simmons filed Senate Bill 862 (SB 862) which provides wage protection for employees in Florida. The text of SB 862 provides, “[a] county, municipality, or political subdivision of the state may not adopt or maintain in effect any law, ordinance, or rule that creates requirements, regulations, or processes for the purpose of addressing wage theft. The regulation of wage theft by counties, municipalities, or political subdivisions is expressly preempted to the state.” “Wage theft” is further defined as “illegal or improper underpayment or nonpayment of an individual worker’s wages, salaries, commissions, or other similar form of compensation.” If passed, the law will take effect on July 1, 2012.

More information related to SB 862 is available at the following link: [SB 862](#).

Eleventh Circuit Affirms Summary Judgment in Favor of Employer in FLSA Case

On November 17, 2011, the Eleventh Circuit Court of Appeals affirmed summary judgment in favor of an employer defending claims of violations of the Fair Labor Standards Act (“FLSA”). In Josendis v. Wall to Wall Residence Repairs, Inc. (Case No. 09-12266), Plaintiff, a former employee, alleged he was owed back wages and unpaid overtime pursuant to the FLSA. The Court held that the employee failed to show entitlement under either provision of the FLSA. Specifically, the employee was ineligible for “individual coverage,” because he could not show that he regularly and directly participated in the actual movement of persons or things in interstate commerce. The employee was also ineligible for “enterprise coverage” since he could not establish that his employer was sufficiently engaged in commerce where the business had a gross annual volume of more than \$500,000.00.

The opinion is available at the following link: [Josendis v. Wall to Wall Residence Repairs, Inc.](#)

Florida’s New Unemployment Compensation Law Challenged as Discriminatory

In June of 2011, Florida Governor Rick Scott signed House Bill 7005 (HB 7005) into law, changing Florida's unemployment compensation process and reducing the maximum amount of state benefits jobless citizens can receive. Among other provisions, the law requires recipients of unemployment compensation to undergo a skills test to match them to a new job and report their interactions with potential employers on the internet. Additionally, claimants must file for benefits online. A workers' rights center in Miami has filed a federal administrative complaint with the United States Department of Labor requesting that it conduct an investigation into Florida's benefit program, claiming that it is inaccessible to persons with disabilities, limited literacy or lack of English proficiency. Specifically, the complaint asserts that the state agency responsible for administering the program (Department of Economic Opportunity) fails to inform people that they can be accommodated or exempted from the online requirements or skills assessment.

More information related to HB 7005 is available at the following link: [HB 7005](#).

Source: [SunSentinel.com](#)

Florida Employer Avoids Paying FLSA Plaintiff's Attorneys' Fees

The United States District Court for the Middle District of Florida issued an order this month denying a Plaintiff's claim for attorneys' fees under the FLSA. Craig v. Digital Intelligence Systems Corp, et al. (Case No. 8:2010-cv-02549). In Craig, Plaintiff sought unpaid overtime wages pursuant to the FLSA. Based on information contained in Plaintiff's discovery responses, Defendants calculated Plaintiff's unpaid overtime wages and tendered a check to Plaintiff for the full amount of unpaid overtime wages and liquidated damages. After tendering the check, Defendants filed a Motion to Dismiss Plaintiff's claim arguing that Plaintiff's claim was moot pursuant to Dionne v. Floormasters Enterprises, Inc., 647 F.3d 1109 (11th Cir. 2011).

Plaintiff continued to seek attorneys' fees and argued that Defendants' action circumvented the FLSA's intentions of fully compensating a wronged employee. The Court found that Plaintiff had been fully compensated for his FLSA claim, that the tender of the check rendered his FLSA claim moot, and that there was no justiciable controversy with regard to Defendants' pay practices. Accordingly, the Court granted Defendants' Motion to Dismiss and dismissed Plaintiff's Complaint with prejudice.

Unfortunately, the opinion is not currently available online. Please feel free to contact our office if you would like a copy of the opinion.

United States Supreme Court Agrees to Review Significant Fair Housing Act Case

The Supreme Court of the United States recently granted certiorari in Magner v. Gallagher (Case No. 10-1032) to decide whether disparate impact claims are cognizable under the Fair Housing Act ("FHA") and, if so, what test applies to those claims. The FHA prohibits housing discrimination on the basis of race, color, religion, sex, familial status or national origin. A group of owners and former owners of rental properties in St. Paul, Minnesota, brought consolidated actions challenging the City's enforcement of its Housing Code. The suits alleged, among other things, that the City violated the FHA because aggressive enforcement of its Housing Code had a disparate impact on racial minorities. The trial judge dismissed the case on summary judgment, citing insufficient evidence of disparate impact. On appeal, the Eighth Circuit Court of Appeals reversed the case in respect to disparate impact while upholding other parts of the trial court's summary judgment. The Eighth Circuit utilized the McDonnell-Douglas burden shifting analysis, most commonly used in employment law cases, to reach its conclusion.

The Supreme Court docket is available at the following link: [Magner v. Gallagher](#).

The Eighth Circuit's opinion is available at the following link: [Gallagher v. Magner](#).

NLRB to Vote on Adoption of Amendments to Elections

The National Labor Relations Board has scheduled a vote to determine whether it should adopt certain amendments to its election procedures that the Board proposed in June of this year. The proposed rule package was designed to simplify election procedures, create uniformity across regional offices and reduce litigation. After the proposed rules were published, the Board received more than 65,000 written comments and heard testimony from 66 speakers at a two-day hearing in July. During the November 30th meeting at which the vote will be taken, NLRB Chairman Mark Pearce will propose issuing a final rule limited to several provisions designed to reduce unnecessary litigation.

The meeting of the Board's three members will be held at the NLRB's headquarters in Washington, D.C. and will be open to the public. Board Members will discuss and vote on a resolution to accept the Chairman's proposals, proceed to draft a final rule limited to those proposals, and defer the remainder of the proposed rule for further consideration.

A News Release related to the upcoming meeting is available at the following link: [News Release](#).

Amendment to Rules Regarding Mediation Procedures in Florida Court Cases

The mediation procedures set forth in Rule 1.720 of the Florida Rules of Civil Procedure have been significantly amended to now require all of the following to appear at mediation, unless otherwise permitted by court order or stipulated by the parties in writing: (1) a party or its representative with full authority to settle; (2) the party's counsel of record; and (3) a representative of the insurance carrier, excluding outside counsel, who has full authority to settle in an amount up to the amount of the last demand or the policy limits. The parties must now also file a notice identifying who will be attending the mediation ten (10) days prior to the mediation. The amendment to the rule becomes effective January 1, 2012.

Firm News

The attorneys and staff of Sniffen & Spellman, P.A. wish you and yours a happy holiday.

Past Issues of the Labor and Employment Alert Posted on Website

You may view past issues of the Labor and Employment Alert on the Firm's website: www.sniffenlaw.com. After entering the Firm's website, click on the "Publications" page.

*Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301
(850)205-1996*
