

# SNIFFEN & SPELLMAN, P.A.

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## **LABOR AND EMPLOYMENT ALERT *January 2012***

### **United States Supreme Court Upholds “Ministerial Exception” to Employment Discrimination Laws**

In a case of first impression, the Supreme Court of the United States unanimously held that the Establishment and Free Exercise Clauses of the First Amendment bar lawsuits brought on behalf of ministers claiming their church’s termination decisions violate employment discrimination laws. In Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C. (Case No. 10-553), the Court affirmed that a “ministerial exception” exists, which prevents courts from deciding cases involving religious decisions made by churches, even when those decisions may violate state and federal anti-discrimination laws. In this case, a teacher designated a “commissioned minister” claimed she was terminated in violation of the Americans with Disabilities Act and other state laws. The school sought the teacher’s resignation due to fears that her narcolepsy would render her incapable of performing job tasks.

The Court refused to establish a rigid formula for deciding when an employee qualifies as a minister, but determined that in this case the teacher had been publicly held out as a minister; the teacher had a significant amount of religious training followed by a formal process of commissioning; and the teacher performed many duties of a minister, including teaching religion and leading chapel services. In light of the long history of courts deferring to religious institutions on matters of religion pursuant to the First Amendment, the Court held that the church and school were immune from suit.

A copy of the Court’s opinion can be found at the following link: [Hosanna-Tabor Evangelical Lutheran Church and School](#).

### **Eleventh Circuit Holds FMLA Protects Employee’s Pre-eligibility Request for Post-Eligibility Leave**

In Pereda v. Brookdale Senior Living Communities, Inc. (Case No. 10-14723) the Eleventh Circuit held that an employee who was not yet eligible for FMLA leave, but who had made a request for post-pregnancy leave slated to begin after she was eligible, could bring a claim of FMLA interference and retaliation. The Court reasoned that an employer who receives notice in advance of FMLA eligibility could interfere or retaliate against a leave-seeking employee with no remedy for the employee. In the opinion, the Court reviewed the language of the FMLA and concluded that it protects employees and prospective employees even if they are not currently eligible or entitled to leave so long as leave would not begin until the employee is eligible.

A copy of the Court’s opinion can be found at the following link: [Pereda](#).

### **Fourth Circuit Holds Intra-office Complaints are Protected Under the FLSA**

The Fourth Circuit in Minor v. Bostwick Laboratories, Inc. (Case No.10-1258) recently held that the Fair Labor Standards Act (“FLSA”) offers retaliation protections to employees who lodge intra-office or intra-company complaints regarding compensation. As such, internal employee complaints regarding overtime compensation, minimum wage and other compensation concerns

qualify as protected activity under the FLSA. In analyzing this issue, the Court considered the FLSA's remedial nature and statutory language, the guidance and interpretations offered by the Equal Employment Opportunity Commission, and the majority holdings on this issue by other circuits.

A copy of the Court's opinion can be found at the following link: [Minor](#)

### **Third District Court of Appeal Bars Plaintiff from Recovering for a Claim not Contained in the Pleadings or Administrative Complaint**

The Third District Court of Appeal in Sunbeam Television Corp. v. Mitzel (Case No. 3D11-0249) recently reversed a trial court's decision allowing recovery for a plaintiff who changed her theory of the case years into the litigation. Plaintiff, a television reporter, was terminated after more than fifteen years of service. In her initial pleadings and administrative complaint, Plaintiff stated that she was the victim of age discrimination. Two years into the litigation, Defendant moved for summary judgment following a recent decision that set a high evidentiary burden for age discrimination claims. In response, Plaintiff modified her claim, alleging age and sex discrimination. Defendant's motion to preclude any testimony regarding sex-based discrimination was overruled, and a jury trial resulted in a verdict favoring Plaintiff.

On appeal, the Court agreed with Defendant in that Plaintiff should not have been allowed to allege additional counts of discrimination outside of her original complaint. The Court stated that Florida's Civil Rights Act specifically requires an individual alleging discrimination to file a detailed administrative complaint to give the employer notice of discriminatory practices and the ability to investigate and remedy any problems.

A copy of the Court's opinion can be found at the following link: [Sunbeam Television Corp.](#)

### **PERC Orders Attorneys' Fees in Favor of Public Employer**

The Florida Public Employees Relations Commission ("PERC") ruled that a public employer is entitled to an award of attorneys' fees in an unfair labor practice proceeding in which the employer prevailed. In Pleasants v. City of Casselberry, 38 FPER ¶157 (2011), PERC found that the City did not commit an unfair labor practice when it eliminated a position in the police department which led to an employee layoff. PERC went on to find that the City was entitled to attorneys' fees for the final two days of the hearing, and the balance of the litigation.

A copy of PERC's opinion can be found at the following link: [Pleasants](#).

### **Eleventh Circuit Finds Plaintiff who Receives Full Amount in Settlement not Overseen by Court is not Eligible for Attorney's Fees and Costs as Prevailing Party**

The Eleventh Circuit recently confirmed that an employee who receives the full amount of overtime pay requested in a settlement is not automatically considered a prevailing party for attorney's fees and costs purposes. In Dionne v. Floormasters Enterprises, Inc. (Case No.09-15405), Plaintiff claimed that he was owed overtime wages and interest. His former employer later responded by paying the full amount of damages claimed by Plaintiff while still denying all culpability. Following this payment, Plaintiff moved for attorney's fees and costs claiming that he was a prevailing party. The Court disagreed and held that Defendant's voluntary change in conduct was not sufficient to establish the Plaintiff prevailed in the case. The Court found it especially notable that the lower court neither approved the settlement agreement nor retained

jurisdiction to enforce the settlement. The settlement between the parties was different than a judgment overseen and approved of by a court.

A copy of the Court's opinion can be found at the following link: [Dionne](#).

**Eleventh Circuit Rules Employer not Liable for Punitive Damages since it was Unaware of and did not Participate in Discrimination**

The Eleventh Circuit recently affirmed a decision setting aside an award of punitive damages in a discrimination case where upper management did not know about or approve of discriminatory practices. In Ash v. Tyson Foods, Inc. (Case No. 08-16135), Plaintiff was denied a promotion to shift manager. At trial, Plaintiff obtained a jury verdict that included punitive damages.

On review, the Eleventh Circuit upheld the finding of discrimination on the part of the decision maker who chose not to promote Plaintiff; however, the Court found that the employer did not violate its anti-discrimination policies and did not have knowledge that the decision maker violated its policies until Plaintiff brought suit. The Court explained that the employer's lack of knowledge and participation in discrimination immunized it from punitive damages. In addition, the decision maker, a local plant manager, was not high enough in the corporate hierarchy to expose the employer to punitive damages.

A copy of the Court's opinion can be found at the following link: [Ash](#).

**Firm News**

**Sniffen & Spellman, P.A.** welcomes new associate **Chasity H. O'Steen**. Ms. O'Steen practices in the areas of Local Government Law, Water and Wastewater Utilities, Administrative Law, Labor and Employment Law, and Civil Rights Defense. She currently serves on the Second Judicial Circuit Grievance Committee, and is a member of The Florida Bar Special Committee on Diversity and Inclusion and The Florida Bar Voluntary Bar Liaison Committee. Ms. O'Steen is a Past-President of Tallahassee Women Lawyers. Ms. O'Steen is a 2003 graduate of Florida State University College of Law. While in law school, Ms. O'Steen served as Notes & Comments Editor for the Florida State University Law Review and was a member of the Florida State College of Law Moot Court Team and Phi Delta Phi International Legal Fraternity. Ms. O'Steen received her B.A. from Florida State University.

**Past Issues of the Labor and Employment Alert Available on Website**

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

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