

# SNIFFEN & SPELLMAN, P.A.

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## LABOR AND EMPLOYMENT LAW ALERT

October 2023

### 11th Circuit Affirms *Gonzales v. Garner Food Services, Inc.*

On October 11, 2023, the Eleventh Circuit Court of Appeals issued a decision in which the court looked at whether an employee can sue under Title I of the American with Disabilities Act (ADA) for discrimination in post-employment distribution of fringe benefits. In the 1996 case of *Gonzales v. Garner Food Services, Inc.*, 89 F.3d 1523 (11th Cir. 1996) the 11th Circuit answered “no.” The court then examined whether *Gonzales* was still good law after (1) the Supreme Court’s decision about Title VII retaliation in *Robinson v. Shell Oil Co.*, 519 U.S.337 (1997), and (2) Congress’s changes to the text of the ADA.

The 11th circuit held that *Gonzales* is still good law and affirmed that a Title I plaintiff must “hold or desire” an employment position with the defendant at the time of the defendant’s allegedly wrongful act. In this case, Karyn Stanley, a former firefighter for the City of Stanford, filed the suit to establish her entitlement to the long-term healthcare subsidy after Stanford changed its retirement plan and under the new plan disability retirees such as Stanley are entitled to the health insurance subsidy for only twenty-four months after retiring. The court held that because Stanley is suing over the termination of retirement benefits when she neither held nor desired to hold an employment position with her former employer, *Gonzales* bars her claim.

Find the opinion [here](#).

### Florida Introduces New Bill Relating to Medical Marijuana and The Workplace

A bill has been introduced in Florida to protect medical marijuana users in the workplace. If passed, the bill would protect medical marijuana users from adverse employment actions. The bill only applies to public employers and not to private employers. SB 166 also includes carve outs to allow agencies to have policies that prohibit medical marijuana usage. Under the bill the employer may consider the employee’s ability to perform their job duties to be impaired if the employee “displays specific, articulable symptoms while working which adversely affect the performance of his or her duties or responsibilities.”

The bill will require employers to provide a written notice to employees whose test receives positive test results within five days of the results. The employee may then submit a physician certification for medical marijuana or a medical marijuana identification card as part of their explanation. If the employee cannot provide an explanation the employer must verify the positive result with a confirmation test, at the employer's expense. Only then can an employer take adverse personnel action against an employee. An employee or job applicant may institute civil action for an adverse action.

Find the latest version of the bill [here](#).

### **Bill on Non-Compete Contracts for Physicians Filed in Florida**

HB 11, a bill that states Florida doctors would no longer be subject to no-compete clauses in their employment contracts, was referred to subcommittees on October 5. The bill states that a restrictive covenant would be void and unenforceable if it “prohibits a physician from practicing medicine within a geographic area for any period of time after the termination of a contract, partnership, employment, or professional relationship.”

The bill will have hearings in front of the Healthcare Regulation Subcommittee, the Civil Justice Subcommittee, and the Health & Human Services Committee. The bill is currently in the Healthcare Regulation Subcommittee. If passed the bill would take effect in July 2024.

Find the latest version of the bill [here](#).

### **Florida Attorney General Sues Biden Administration**

Florida's attorney general Ashley Moody has filed a lawsuit against the Biden administration, including top officials from the Department of Labor, Department of Transportation, and the Federal Transit Administration, about a new law regulating unions. The lawsuit claims that these officials are violating federal law because they are threatening to withhold hundreds of millions in federal grants unless a state panel grants waiver to Florida's new union law.

The Florida union law took effect in July and incurs a prohibition on public employers from deducting union dues from employee paychecks and makes it easier to decertify unions. Governor DeSantis had agreed to issue waivers, but the waivers were time limited and conditional. The Department of Labor stated that those types of waivers did not comply.

The lawsuit asks the federal judge to block the agencies from withholding federal grants and declare unconstitutional the part of the federal law the Department of Labor is relying on.

Find the lawsuit [here](#).

### **NLRB Issues Final Rule on Joint Employment**

On October 26<sup>th</sup>, the National Labor and Relations Board (NLRB) issued its final rule regarding joint employment. In essence, the rule states that employers are joint employers if two or more employing entities share or co-determine at least one of the following:

1. wages, benefits, and other compensation;
2. hours of work and scheduling;
3. the assignment of duties to be performed;
4. the supervision of the performance of duties;
5. work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;

6. the tenure of employment, including hiring and discharge; and
7. working conditions related to the safety and health of employees.

Notably, this is an exclusive list, though it covers nearly every aspect of the employment conditions. The NLRB has stated that this is an attempt to return to common law principles of joint employment, and a uniform standard that can be understood by employers.

To read more, please refer [here](#).

### **New I-9 Standards**

On October 31, 2023, the United States Citizenship and Immigration Services will require all employers to use the new form I-9 published in August of this year. The new form is available [here](#).

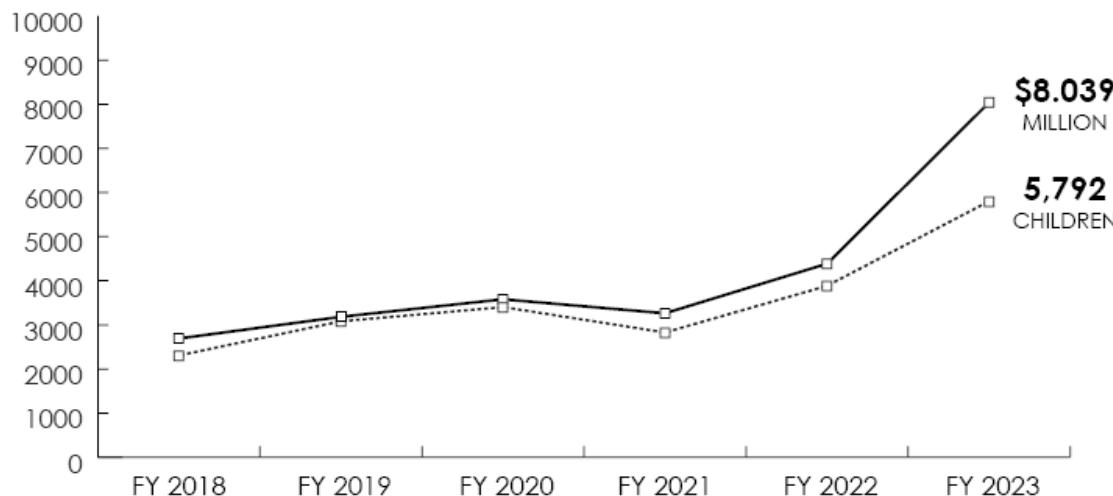
### **Department of Labor Cracks down on Child Labor Violations**

In the last edition of the Labor and Employment Law Alert, we highlighted the US Department of Labor's imposition of a fine on skating rinks in Florida for child labor violations. This past month, the Department of Labor posted a blog entry on their website highlighting their efforts to cut down on violations of child labor laws. The blog entry makes clear that cracking down on violations of the child labor laws found in federal law is a priority for the agency and its [Wage and Hour Division](#). The blog post goes onto note that federal law prohibits children under 18 from being employed in dangerous jobs.

The post noted an increase in children being employed illegally and indicated that in the fiscal year 2023 the Department concluded 955 cases with child labor violation and that it currently has more than 800 active child labor investigations underway. The blog post included a chart detailing their enforcement efforts over the past several years.

# Child Labor Enforcement

— □ — CIVIL MONEY PENALTIES ASSESSED      - □ - CHILDREN FOUND EMPLOYED IN VIOLATION



Source: U.S. Department of Labor's Wage and Hour Division

dol.gov/whd

Employers must be cautious about employing young people and make sure that they are effectively navigating the web of child labor laws.

Read more [here](#).

## Firm News

[Terry J. Harmon](#) presented a School Safety Update to the Florida Association of School Safety Specialists (FS3) at the North Florida/Panhandle Regional Meeting.

## Past Issues of the Labor and Employment Law Alert Available on Website

You may view past issues of the Labor and Employment Law Alert on the Firm's website: [www.sniffenlaw.com](http://www.sniffenlaw.com). After entering the Firm's website, click on the "Publications" page. Our Firm also highlights various articles of interest on our official Twitter feed, @Sniffenlaw.