

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT August 2022

US Court of Appeals for the 11th Circuit Rules on Federal Contractor Vaccine Mandate

Executive Order 14042 directs executive agencies to include a clause in procurement agreements requiring federal contractors to comply with workplace safety rules designed to respond to the Covid-19 pandemic including vaccine mandates. A federal trial court issued a nationwide preliminary injunction, finding that the plaintiffs in a suit challenging this directive were likely to succeed on their claim that the executive order exceeded the President's authority under the Procurement Act.

The 11th Circuit recently issued a decision where it agreed that the plaintiffs were likely to succeed, and also satisfied the other requirements for a preliminary injunction and upheld the issuance of a preliminary injunction. Nevertheless, the court held that a nationwide injunction was too broad, limiting the injunction so that it only enjoins federal agencies from enforcing the mandate against the plaintiffs – the seven plaintiff States and their agencies and members of Associated Builders and Contractors.

To read the decision, click [here](#).

11th Circuit Clarifies Liability Standard in Florida Governmental Immunity Cases

The Eleventh Circuit recently issued an important decision in the field of governmental immunity. Government officials in Florida are generally immune from suit when they act in the course and scope of their employment. It is only when officials acting in the course and scope of their employment act in bad faith, with a malicious purpose or when they have exhibited wanton and willful disregard of human rights, safety, or property that the immunity is waived. What do those terms mean though?

This recent 11th Circuit decision helps clarify that question. The Court held that “bad faith” is akin to “actual malice” meaning that tortious actions lodged at a governmental official acting in the course and scope of their employment are not subject to immunity defenses if the tortious conduct was committed with “ill will, hatred, spite, or an evil intent.” The Court further clarified that it viewed the “wanton and willful” exception to concern conduct “much more reprehensible and unacceptable than mere intentional conduct.”

To read the decision, click [here](#).

News from the Administrative State: Combatting Economic Collusion

On July 9, 2021, President Biden signed the “Executive Order on Promoting Competition in the American Economy.” On August 1, 2021, the National Labor Relations Board (NLRB) and the Department of Justice (DOJ) followed suit by jointly signing a memorandum of understanding to ensure workers can exercise their rights freely and protect competitive labor markets.

This cohesion between the NLRB and DOJ will allow the two agencies to work together, sharing information and collaborating on new policies. Violations discovered by one agency will now be reported to both agencies.

Read more [here](#) and [here](#).

Florida Court Holds that Breach of Non-Compete Covenant in Employment Contract was Excepted from Arbitration Provision

A Florida appellate court decision issued recently is a good reminder to employers of the importance of a carefully drafted employment contract and arbitration provisions. In the case, operators of a night club challenged a trial court's decision to compel arbitration on certain claims of a lawsuit. The Florida appellate court reversed the trial court's order, finding that claims of a breach of non-compete provisions of an employment contract were unambiguously excluded from the agreement's arbitration provisions and could not be compelled to arbitration, as the trial court did. These types of contractual provisions must be drafted with care depending on the goals of the employer, that is to compel certain claims to arbitration, or only specific ones with carve-outs for others.

To read the case, click [here](#).

Federal Appellate Court Upholds NLRB Finding of Unlawful Employment Action

The US Circuit Court of Appeals for the D.C. Circuit has upheld the National Labor Relations Board's ruling that the discharge of an employee for vulgar objection to terms and conditions of employment violated the National Labor Relations Act, federal law governing private sector labor relations issues. Federal labor law forbids employers from taking action against an employee in retaliation for engaging in protected concerted activity, or discussion about the terms and conditions of employment. But what about where the way in which the activity is carried out is what the employer takes issue with?

This is an issue that has evolved over the years, and this recent decision of the D.C. Circuit affirmed the NLRB's decision finding that an employee that was fired for writing “whore board” on overtime sign-up sheets was terminated in violation of federal labor law because the writing was an expression of his dislike for the company overtime policy. The kicker was that facts indicated that the company otherwise tolerated vulgarity, profanity, and graffiti in the workplace.

Consistent application of employment policies is key to defending many employment claims. Something to keep in mind.

To read the decision, click [here](#).

From the Lighter Side: Chief Candy Officer is a Job. And there's a Vacancy

Yes, Chief Candy Officer is a thing and Canada's Candy Funhouse has an opening for one. The job can be done remotely or based in Canada or New Jersey Offices of the Ontario-based candy company. What does a Chief Candy Officer do? The Chief Candy Officer serves as the head candy taste tester trying over 3,500 products a month. Extensive palate training is required. The CCO also leads the company's FUN house candy strategy, runs candy board meetings, and has a say in the products that company will carry.

Best of all, no [golden ticket](#) needed to get into this C-Sweet (had to). The job does come with an extensive dental plan. Good thing.

More [here](#).

Firm News

Sniffen & Spellman is pleased to announce that four of the Firm's attorneys have been recognized in the 29th Edition of The Best Lawyers in America® for their work in the following areas:

- [Robert Sniffen](#): "Lawyer of the Year" for Labor Law – Management; Employment Law – Management; and Litigation – Labor and Employment
- [Michael Spellman](#): Labor Law – Management, Litigation – Labor and Employment, and Employment Law - Management
- [Dawn Whitehurst](#): Personal Injury Litigation – Defendants
- [Matthew Smith](#): Litigation - Insurance

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