

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT November 2023

Board Members Enjoy Immunity Like Their Agencies

In a recent case before the Fourth District Court of Appeals, the Court determined that the statements of county commissioners, as public servants are eligible for absolute immunity for statements made in judicial and quasi-legislative activities, provided that the statements fall within the duties of the public servant. In the case before the Court, Stratos, who formerly served as the Executive Vice President, General Counsel, and Chief Privacy Officer, filed suit against two Defendants alleging that they had defamed her through several meetings during which her performance was reviewed.

The lower Court held that these statements made by two commissioners were outside of the scope of their employment. In reversing the decision, the Fourth Circuit found that, because the Board had the power to hire and fire employees, statements made relating to the performance of the South Broward Hospital District were necessarily related to the duties of the commissioners, and therefore the customers enjoyed absolute immunity for their comments.

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

OSHA Changes Standards for Mandatory Reporting

Beginning on January 1, 2024, the Occupational Safety and Health Administration (“OSHA”) will be enforcing new rules related to illness and injury reporting requirements for select industries. Specifically, OSHA will require employers to use the Injury Tracking Application (“ITA”) to submit this information either through the ITA webform, a conforming csv file, or through a compliant third-party software application.

The industries that are required to submit this information is contained in 29 CFR §1904 Appendix B, and is largely industries including food production, manufacturing, retail, transportation, and health care services with 100 employees or more. OSHA has stated that these changes are being made to improve its data collection and analytics, as well as keep both the industries affected and the public aware of potential health related issues.

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

EEOC Issues Language Access Plan for Persons with Limited English Proficiency

The Equal Employment Opportunity Commission (EEOC) has issued a Language Access Plan in accordance with Executive Order 13166. The language access plan goal is to provide meaningful access to EEOC programs and activities to people with limited English proficiency (LEP).

Spanish-speaking individuals may submit an electronic pre-charge inquiry form in Spanish and request an initial consultation with an EEOC staff member and EEOC language assistance support. Further, individuals with LEP can call 1-800-669-4000 to speak to an EEOC staff member about their employment situation which provides on-demand telephonic, virtual, and on-site interpretations and document translation services.

The EEOC has established a Language Access Working Group (LAWG) to monitor language access services and provide recommendations to the Office of the Chair (OCH). The EEOC has stated that its preferred method of communication with individuals with LEP is by using a bilingual staff member. Also, to enhance communication with individuals with LEP, the EEOC has had vital documents translated into languages other than English.

Find the EEOC Language Access Plan [here](#).

Fourth DCA Issues Ruling on Failure to Exhaust Under the FCRA

The Fourth DCA issued an order on November 1 holding that Krieger Belony (Belony) failed to address his administrative remedies under the FCRA. Belony appealed a final order dismissing his complaint for gender discrimination retaliation against his former employer North Broward Hospital district (Broward Health). After Belony was terminated he filed a charge of discrimination with the EEOC. Belony stated he wanted to file with the EEOC and FCHR. Belony's charge referenced Title VII and Civil Rights Act of 1964 discrimination, only federal law. The EEOC issued Belony a right to sue letter stating that Belony could file a private suit in federal court. Belony instead filed the lawsuit in state court for sexual harassment retaliation under Florida Statutes 760.10(1)(a) and 760.10(7).

The court held that the trial court correctly dismissed the complaint for failure to exhaust administrative remedies under the FCRA. The court found that under a plain reading of section 760.11 F.S. (2019) the claimant must assert a violation sufficient to put the employer on notice that the claimant is alleging a violation of Florida law. By merely asserting a charge with the FCHR is insufficient to satisfy the states' requirement because a cause of action under a federal statute is not the same as one under a state statute.

Read the order [here](#).

The Pregnancy Workers Fairness Act (PWFA)

The Pregnancy Workers Fairness Act, effective June 27, 2023, can be found at 42 U.S.C. §2000gg. The PWFA is similar to the Americans with Disabilities Act, 42 U.S.C. 12111 ("ADA") in that it requires the employer to extend "reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business" of the employer.

The PWFA requires the ADA "interactive process" between employer and affected employee and is similar in wording to the Family Medical Leave Act ("FMLA") in that both paid and

unpaid leave along with reasonable accommodations for pregnancy and childbirth are available. The PWFA adopts the standards for “undue hardship” and “reasonable accommodation” from the ADA.

There is an administrative prerequisite via the EEOC for enforcement and remedies. The PWFA basically adopts Title VII remedies, protections, and sanctions available as a result of pregnancy, including its after-effects as set out in 42 U.S.C. §1981a and 1988, including attorneys’ fees and costs for the successful plaintiff.

Note that §760.01(2) Fla. Stat. already expressly includes pregnancy as a protected status in the Florida Civil Rights Act.

Also noteworthy is that in September, Gov. DeSantis issued a directive to offer paid maternity leave for state employees. Employers also should be aware of separate federal provisions for breast feeding accommodations set out in 29 U.S.C. §218d, and that the Federal Register is still seeking comment on the definitions and other provisions of the PWFA.

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

Firm News

Maria A. Santoro has joined the Firm as Senior Counsel. Ms. Santoro will be based out of our Tallahassee office. She received her Bachelor of Arts degree in Business and English from Florida State University and her Juris Doctorate degree from Western Michigan University. Ms. Santoro practices in the areas of Employment, Commercial Litigation, Personal Injury Litigation, Medical Malpractice Automobile Litigation, Construction, and Administrative Law. She is also AV® Preeminent rated by Martindale-Hubbell, in the Bar Register of Preeminent Women Lawyers and a member of the American Board of Trial Advocates and Past President of the American Board of Trial Advocates, North Florida Chapter.

Teresa Cooper Ward has joined the Firm as Of Counsel. Ms. Ward practices in the areas of employment, real estate, probate, and estate planning. Her practice includes representing state agencies, colleges and universities in state and federal courts, and she has several successful appeals to her credit in the areas of employment and public records law. She graduated from University of South Florida and Stetson College of Law.

The Firm sponsored Flagler College’s Presidents Golf Classic on November 10, 2023 which raises funds that benefit Flagler College’s athletic scholarship fund.

On November 3, 2023, the Firm sponsored and participated in the first annual Cornhole for Cancer tournament benefitting TMH Foundation.

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

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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.