

SNIFFEN & SPELLMAN, P.A.

LABOR AND EMPLOYMENT LAW ALERT September 2023

The U.S. Department of Labor Fines Florida Skating Rinks for Employing Minors in Violation of the Law

A recent press release from the U.S. Department of Labor highlights the importance of making sure that employers are compliant with all facets of labor law including those provisions concerning child labor. The Department of Labor announced that they fined five Florida skating rinks for violations of child labor laws and specifically for allowing minors to work outside the permitted hours under the law. Indeed, federal labor law places restrictions on the time and amount of hours that a minor can work. From the press release:

Investigators found the employers allowed 33 employees – 14- and 15-year-olds – to work outside of legally allowed hours, a violation of the [child labor provisions](#) of the [Fair Labor Standards Act](#). Specifically, the employer let the minors work past 7 p.m. while school was in session, past 9 p.m. between June 1 and Labor Day, more than three hours when school was in session, more than eight hours on non-school days and more than 18 hours during school weeks.

Seventh Circuit Court of Appeals Holds that School Board Did Not Deprive Former Administrator of Her Due Process Rights to Continued Employment

Jessica Biggs, then interim principal of Edmund Burke Elementary School (Burke), was fired after a publicly disclosed investigation found she had violated multiple policies of the Chicago Public Schools (CPS) system.

A month after the investigation concluded, the Board fired Biggs and designated her Do Not Hire (DNH). DNH is an internal designation within the CPS system to note when a CPS employee was terminated for incompetence or misconduct. A DNH designation prohibits any CPS school from rehiring the employee.

The Board disclosed the reasons for Biggs's termination to the public on two separate occasions. On July 9, 2018, officials from the Board discussed Biggs's alleged policy violations at a Burke community meeting. The Chief of Schools for CPS stated at the meeting that Biggs's firing was "about integrity"; the comments were reported by the media. Two weeks later at another public meeting, Board officials distributed a redacted copy of the OIG report and read it aloud.

Biggs sued the Chicago Board of Education ("Board") under 42 U.S.C. § 1983, alleging that the Board deprived her of her liberty to pursue her occupation as a school administrator without due process when it made stigmatizing public statements about her in connection with her termination.

The district court granted the Board's motion for summary judgment, holding that no reasonable jury could find that Biggs had suffered a tangible loss of employment opportunities within her occupation. The Seventh Circuit affirmed.

To prevail on an occupational liberty claim, a plaintiff must establish that (1) the defendant made stigmatizing comments about her; (2) those comments were publicly disclosed; and (3) she suffered a tangible loss of other employment opportunities as a result of the public disclosure." Ultimately, the Seventh Circuit held that Biggs's claim failed as to the third element.

The Seventh Circuit reasoned (1) Biggs did not apply to enough school administration positions for a sufficiently lengthy duration of time to permit a reasonable jury to find that she has been excluded from that occupation altogether; (2) given the limited number of positions to which Biggs applied, no reasonable jury could find that she has experienced anything more than the customary difficulties and delay that individuals encounter when looking for a new job, especially where they were fired from their previous one; and (3) Biggs has not produced evidence that any difficulties she faced in obtaining employment were a "result" of the Board's public stigmatizing statements.

A copy of the full opinion can be viewed [here](#).

11th Circuit Affirms NLRB that Security Officer was Engaged in Protected Activity

On September 4, 2023 the 11th Circuit issued an opinion affirming the NLRB decision determining that Security Walls unlawfully fired an employee for actions protected under the National Labor Relations Act (NLRA). Security Walls petitioned the 11th Circuit to review the Board's decision. Randall Kelley worked as a security officer employed by Security Walls. Kelley was discharged after an investigation which found that Kelley had committed "gross misconduct" for post abandonment after Kelley was assigned to post and was using his cell phone.

Kelley filed unfair labor practice charges with the Board. The Board found that Kelley had engaged in protected concerted activity and that Security Walls violated the NLRA. The Board ordered Security Walls to cease and desist from engaging in unfair labor practices and reinstate Kelley.

The court found that Kelley was not attempting to negotiate new employment terms when he relayed employees' concerns about Security Walls's rumored change from five eight-hour shifts per week to three twelve-hour shifts per week. The court also concluded that the record did not support that Kelley attempted to renegotiate provisions contained in the collective bargaining agreement or undermine the union's role as its exclusive bargainer.

Find the decision [here](#).

EEOC and DOL WHD Collaborate for Information Sharing:

On September 13, 2023 the EEOC and WHD (Wage and Hour Division) executed a Memorandum of Understanding (MOU) with the purpose to "encourage enhanced law enforcement and greater coordination between the agencies through information sharing, joint investigations, training, and outreach."

The MOU allows the WHD and EEOC to share “any information or data that supports the other agency’s enforcement activities, whether obtained in the course of an investigation or through any other sources, to the extent permitted by law.” The MOU also outlines that “during the course of an investigation, agency personnel have reason to believe that conduct may have occurred that the other agency could deem unlawful under its laws, the investigating agency personnel will advise the potential complainant or filing party that they may be able to file a charge or complaint with the other agency.” Further, the EEOC may share employer EEO-1 reports with WHD.

Find the Memorandum of Understanding [here](#).

Florida Increases Minimum Wage

On September 30th, the minimum wage increased from \$11.00 to \$12.00 per hour, in keeping with Article X Section 24 of the Florida Constitution. As a reminder, pursuant to this provision, the minimum wage will continue to increase at a rate of \$1 per hour automatically until it reaches \$15.00 per hour on September 30, 2026. For reference, this means that the effective rate for eligible tipped employees under the Fair Labor and Standards Act is \$8.98 per hour, and the effective overtime rate is \$18.00 per hour for all employees required to be paid at time and a half rates for work over 40 hours a week.

For additional information on this increase, please refer [here](#).

Department of Labor Proposes Dramatic Increase to Minimum Salary Threshold for Exempt Employees

On September 8, 2023, the Department of Labor announced that it would be enacting sweeping changes to the regulations propounded under the Fair Labor and Standards Act (FLSA), the set of nationwide laws which govern minimum wage, the payment of overtime, and who is eligible for salaried pay. Currently, the minimum salaried threshold for most positions exempt from the minimum wage and overtime requirements of the FLSA is \$684 per week or \$35,578 per year, and the minimum compensation for a “highly compensated” employee is \$107,432 per year, inclusive of this minimum salary requirement. Under the proposed rule, the minimum salary for exempt status would increase to \$1,059 per week (\$55,068 annually) and \$143,988 per year for highly compensated employees. Additionally, the proposed rule will require the Department of Labor to increase these thresholds annually.

It is anticipated that these changes will cause approximately 3.4 million employees who are currently classified as exempt to lose their exempt status. This would require these employees to be paid hourly and receive overtime for working more than 40 hours per week. Aside from the obvious increase in costs for businesses, this would further complicate an already difficult system of recording hours for remote and hybrid employees. The comment period for this Proposed Rule will remain open until November 7, 2023.

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

Tesla Cited for Silencing Workers

In a recent opinion in the above captioned case, that was tried in Tampa, Administrative Judge Rosas ruled that Telsa;

1. Committed unfair labor practices by instructing its employees not to discuss their wages, discipline, suspension, discharges, newly hired employees, or other terms and conditions of employment with coworkers or outside parties.
2. Committed unfair labor practice by requiring its employees to follow the chain of command by prohibiting them from bringing grievances or concerned complaints with co workers and terms and conditions of employment to the attention of higher-level managers.

In this case, several employees were told at a meeting by their supervisors not to discuss their pay or working conditions and not to file complaints to higher level managers. Some employees complained that new hires were being paid more money. As a result of this decision, Telsa was required to post a notice to all employees explaining that rights given to them by Federal law.

Employers should be aware that attempting to silence employees who discuss the terms and conditions of their employment can be viewed as a violation of Federal Law, and should be cautious in explicitly prohibiting employees from discussing basic employment terms, such as wages, with others.

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

From The Lighter Side **Joe Exotic Issues Open Offer to Attorneys over “Tiger King” Moniker**

On September 24, 2023, Joseph Allen Maldonado aka Joe Exotic aka the “Tiger King” issued an open offer on X, formerly known as Twitter, to attorneys, offering a staggering 80% of any settlement procured in a prospective suit against Jordan Travis, Florida State University’s current quarterback. Jordan Travis, who has lead FSU to victories over LSU and Clemson this season has begun marketing t-shirts depicting him in a throne with a crown two tigers at his feet in a pose reminiscent of one stricken by Mr. Maldonado in a number of photos taken when Mr. Maldonado owned the now closed Greater Wynnewood Exotic Animal Park. Thus far, there has been no word if any attorneys have stepped forward to take the case.

Firm News

Christen Petruzzelli participated in the Florida Bar Administrative Law Section's DOAH Trial Academy. The DOAH Trial Academy is a week-long course intended to sharpen litigation skills and stimulate a real administrative hearing.

Sniffen & Spellman is proud to have 5 lawyers recognized by Best Lawyers® in 2024 in America:

- Lisa Fountain: Litigation – Labor and Employment in Tallahassee
- Robert “Rob” Hauser: Appellate Practice in West Palm Beach

- Michael Spellman: Employment Law – Management, Labor Law – Management, and Civil Rights Law in Tallahassee
- Robert Sniffen: Employment Law – Management, Labor Law – Management, and Litigation – Labor and Employment in Tallahassee
- Dawn Whitehurst: Civil Rights Law and Personal Injury Litigation – Defendants in Tallahassee

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

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