Special COVID-19 Issue

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the Checkoff

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IN THIS ISSUE

For more information, see page 3.

Retaliation Protection for Employees Disclosing COVID-19 Fraud

By Jesse Hoyer Estes, Tampa

Vast sums of taxpayer dollars have been disbursed to combat the COVID-19 pandemic on many fronts. With the novel coronavirus affecting nearly everyone in one way or another and with the relative haste in which the government has been forced to respond, a wave of fraudulent and unlawful conduct relating to the $2.7 trillion in government aid has predictably occurred. Employers and individuals seeking to illicitly divert government aid for their own personal gain have had little difficulty doing so.

COVID-19 Fraud in Employment

On March 30, 2020, the U.S. Attorney's Office for the Middle District of Florida announced the creation of a COVID-19 Fraud Task Force by federal, state, and local law enforcement.[1] The Task Force utilizes information garnered from various sources to investigate and prosecute fraud relating to the coronavirus pandemic.[2] As with most instances of corporate fraud, insider employees

See "Retaliation Protection," page 12

Protecting Company Trade Secrets During the COVID-19 Pandemic

By Jason S. Miller, Coral Gables

The COVID-19 pandemic has forced many companies to direct most, if not all, of their employees to work remotely. As a result, trade secrets are no longer under the strict controls of the office environment and are instead being accessed and handled by employees at home. Consequently, to increase the likelihood that trade secrets remain protected under the law, companies confronted with this unprecedented shift in their business operations should reexamine their existing measures on protecting such information.

According to the federal Defend Trade Secrets Act (DTSA), a trade secret is defined as "any 'financial, business, scientific, technical, economic, or engineering information' that the owner has taken reasonable measures to keep secret and that derives independent economic value from not being generally known to, or readily ascertainable through proper means by, another person." Similarly, the Florida Uniform Trade Secrets Act (FUTSA) defines a trade secret as "information . . . that:

See "Protecting Company Trade Secrets," page 14

CHAIR'S MESSAGE

Robyn S. Hankins

Welcome to the Labor and Employment Law Section's *Checkoff*. I am honored to serve our section as Chair this year and hope that, despite the circumstances, we have opportunities to work together. Our goal for the year (and every year) is to provide meaningful resources to our section members in terms of access to substantive information, mentoring opportunities, and networking. Despite the COVID pandemic, we remain committed to these goals.

This year will undoubtedly look different than years past. We will have limits placed on our in-person gatherings, but we have a robust plan for increasing accessibility through a combination of in-person seminars, webcasting of those seminars, and a generous slate of GoToWebinars focused on cutting-edge employment law matters. With multiple recent Supreme Court decisions, ever-changing legislation, and rules, regulations, executive orders, and agency action being issued on virtually a daily basis, the Labor and Employment Section is devoted to keeping at the forefront of these developments and ensuring that our members have access to solid educational programming.

As of press time, we still have in-person meetings scheduled: Our 46th Annual Public Employment Labor Relations Forum is scheduled for October 22, 2020, in Orlando, the 21st Labor and Employment Law Annual Update and Certification Review is planned for January 14–15, 2021, at the Rosen Shingle Creek in Orlando, and we expect Advanced Labor Topics to be held in Washington, D.C. on April 8–10, 2021, at The Madison Hotel. However, these seminars will also be available via webcast for those who choose not to travel.

We also have an impressive array of GoToWebinars scheduled, which provide an in-depth analysis of a single, cutting-edge topic, including a free webinar that is a joint effort between our section and the Young Lawyers Division. The slate of upcoming webinars is in the Section Calendar at the end of this issue.

Thank you all for being members of our section and for your many contributions. I would encourage all of you to become more involved in the section: attend an executive council meeting, join a committee, write an *E-Update* or an article for *The Checkoff* or *The Florida Bar Journal*, or speak at a seminar. I promise that, in doing so, you will benefit both personally and professionally. Not only are we here for you, we are all here for each other. Thank you to our amazing Executive Council for all of your hard work. I am fortunate to be surrounded by such talented people.

the CHECKOFF

The Checkoff is prepared and published by
The Florida Bar Labor and Employment Law Section.

FREE WEBINAR

COVID-19 and Return to Work: What Employers and Employees Need to Know

Brian Hayden
JacksonLewis

Tyler White
JacksonLewis

Michelle E. Nadeau
Kwall Barack Nadeau PLLC

Wednesday,
September 16, 2020
12 PM –1:30 PM EST

RSVP NOW
Click here to RSVP for this free webinar

DESCRIPTION

The Young Lawyers Division and the Labor & Employment Law Section of The Florida Bar are partnering to discuss how the COVID-19 outbreak is impacting employment issues. Employers and employees face safety concerns and an uncertain legal landscape as they address the COVID-19 outbreak and attempt to return to both normal and new working conditions.

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Novel Coronavirus Sparks Novel Litigation: Employer Liability in the COVID-19 Era

By Beatriz M. Miranda, Tampa

As the country attempts to contain the spread of COVID-19, employers must navigate new guidelines and responsibilities while liability related to the pandemic lurks under traditional labor and employment laws.

Less than six months after the declaration of the pandemic, current and former employees have filed hundreds of COVID-19 lawsuits—including many class actions—throughout the country in federal and state courts. Regardless of whether businesses are staying open or are closing and reopening during the pandemic, employers' risk of liability is growing. As discussed below, the pandemic poses novel legal challenges related to leaves of absence, workplace safety, retaliation, and termination.

Leave Complaints

In March 2020, as the pandemic was unfolding, Congress passed the Families First Coronavirus Response Act (FFCRA), which provides paid sick leave to eligible employees.[1] The law, which went into effect April 1, 2020, requires employers with fewer than 500 employees to provide employees with paid sick leave for various reasons associated with COVID-19.[2] The FFCRA includes the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). The EPSLA entitles certain employees to take up to two weeks of paid sick leave for qualifying reasons linked to COVID-19.[3] The EFMLEA entitles certain employees to take up to twelve weeks of expanded family and medical leave, ten of which must be paid, under certain circumstances related to COVID-19.[4]

In the months since the start of the pandemic, employees have been filing claims against their employers, alleging violations of the FFCRA and the Family and Medical Leave Act (FMLA). Below are a few examples of Florida lawsuits alleging employer liability for denying leave requests and alleging retaliatory or discriminatory actions against employees for requesting or taking leave.

Donohew v. America's Insurance Associates Inc.[5]

Pursuant to the FFCRA, the plaintiff alleges she was denied expanded FMLA leave and thereafter constructively discharged when her employer forced her to take unpaid leave to care for her child, whose school was closed due to COVID-19. According to the plaintiff, her employer denied her request for leave and advised her that the YMCA could care for her child. The plaintiff alleges that she was placed on unpaid leave and consequently forced to resign.

Benedetto v. Action Rentals of FLL, LLC[6]

The plaintiff alleges FMLA interference and retaliation because he was terminated two days after he requested medical leave. The plaintiff alleges he notified his employer that he was ten times more vulnerable to contract COVID-19 than the average individual because he was immunosuppressed. According to the plaintiff, he asked for medical leave because he had a fever of 103.4 degrees and medical documentation advised him to quarantine for three to fourteen days. The plaintiff claims that the temporal proximity of his leave request and his termination creates the presumption that his employer retaliated against him for seeking to exercise his FMLA rights.

O'Bryan v. Joe Taylor Restoration[7]

The plaintiff alleges his employer denied him paid sick leave and retaliated against him after he took leave. According to the plaintiff, he began coughing and reported this potential COVID-19 symptom to his employer. His employer sent him home and told him to complete sick leave forms. The plaintiff returned the completed forms and quarantined for fourteen days. The plaintiff alleged he was not paid during his leave. After the quarantine, the plaintiff claims he contacted his employer and asked whether he could return to work, and the employer requested a doctor's note clearing him to return to work. The plaintiff asserts he obtained a doctor's note stating that he could return to work. However, the employer did not accept the note and requested that the doctor's note state the employee was not contagious. The plaintiff informed the employer that he was being tested for COVID-19. The next day, the employer terminated the plaintiff.

Jackson v. Midnight Express Power Boats, Inc.[8]

The plaintiff alleges he was retaliated against for attempting to take leave under the EPSLA. According to the plaintiff, he requested leave because he was experiencing COVID-19 symptoms. The employer terminated the plaintiff after the plaintiff requested leave.

WARN Act

The federal Worker Adjustment and Retraining Notification Act (WARN Act) requires certain employers to provide employees with written notice prior to a permanent or temporary shut down or mass layoff of an employment site, facility, or operating unit, in order to help affected employees prepare for new employment.[9] The WARN Act has a number of exceptions, including one for layoffs or closings caused by unforeseeable business circumstances.[10]

In the months since the start of the COVID-19 outbreak, many employers have had to make difficult and often quick decisions regarding sudden layoffs and other workforce reductions due to COVID-19. As a result, employers

may not be able to provide proper notice, which could spark actions alleging employers failed to adhere to obligations under the WARN Act. Below are some examples of Florida lawsuits alleging employer liability for improper notice under the WARN Act.

Benson v. Enterprise Holdings, Inc.[11]

The plaintiff filed a class action alleging her employer failed to provide notice before laying off hundreds of employees in violation of the WARN Act. The plaintiff argues that the employer could have evaluated the impact of COVID-19 upon its employees days before the mass layoff but did not. The plaintiff cites the fact that the employer furloughed employees a month before the mass layoff; therefore, according to the plaintiff, the employer knew its business was suffering and a mass layoff was eminent.

Scott & Seales v. Hooters III Inc.[12]

The plaintiffs filed a class action alleging their employer violated the WARN Act by failing to give employees any advance notice before executing layoffs due to COVID-19. The plaintiffs allege that the employer could have evaluated the impact of COVID-19 on its employees before advising them of the layoff. The plaintiffs noted that Congress had made available to the employer and other businesses millions of dollars in forgivable loans through the Paycheck Protection Program, and the employer instead opted to institute a mass layoff.

Workplace Health and Safety

According to the U.S. Chamber of Commerce, the "largest area of concern for the overall business community" is the threat of class action lawsuits alleging that unsafe workplaces have caused employees to become infected with COVID-19 or have increased their risk of exposure.[13] Whistleblower claims are likely to rise in the COVID-19 era, especially when employees may face demotions, terminations, and reductions in schedules or pay, and may assert that their reports regarding alleged health and safety issues in the workplace caused those personnel actions.

According to the general duty clause of the Occupational Safety and Health Act (OSHA), employers are required to provide "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees."[14] OSHA has the authority to cite employers for violations of the general duty clause if a recognized hazard exists and the employer fails to take reasonable steps to prevent or abate it.

Workers' compensation protects employees who sustain injuries during the course and scope of their employment. In the context of COVID-19, it may be challenging for employees to prove they contracted COVID-19 while at work, rather than through other means, such as shopping at the grocery store or socializing with friends and family.

Behind all of this uncertainty, employers are holding their breath for some possible employer liability protection. A number of states have passed laws protecting employers from civil liability for injuries sustained from an individual's exposure to COVID-19. There is also a bill before the United States Senate that would provide employers with an extra layer of protection from negligence lawsuits if they follow guidance for protecting workers from COVID-19. The bill would preserve accountability in the event of gross negligence or intentional misconduct.

In the meantime, as demonstrated by the following Florida cases, employees have filed actions alleging that businesses negligently promoted the spread of COVID-19.

Sanchez v. 5 Star Building Services LLC[15]

The plaintiff alleges that her employer violated Florida's Whistleblower's Act and OSHA by refusing to provide protective gear to reduce her exposure to COVID-19. The plaintiff claims she requested face masks and gloves to use for protection in the course of her job cleaning local condominiums. According to the plaintiff, her employer refused her request. The plaintiff then requested two weeks off work. The employer allegedly construed her request as a resignation and notified her that the employer was an "essential business allowed to operate despite government shutdown orders" and that her position would be filled.

Macke v. HT Airsystems of Florida, LLC[16]

The plaintiff, an air conditioning technician, alleges that his former employer failed to provide him with personal protection equipment as required by OSHA standards, even though he was expected to frequently travel to public places, including hospitals, during the pandemic. According to the plaintiff, he was terminated after complaining about the lack of personal protection equipment. Additionally, the plaintiff alleges that his former employer failed to pay him for overtime hours worked.

Conclusion

The COVID-19 pandemic will be with us for the foreseeable future, but its impact, at least on employment litigation, will be felt for much longer. As time passes, we will have a better understanding of how COVID-19-related allegations will affect commonplace employment claims and available employer defenses.


B. MIRANDA

Beatriz M. Miranda *is an associate at JohnsonJackson PLLC in Tampa and represents public and private sector employers in matters related to labor and employment law.*

Endnotes

[1] Families First Coronavirus Response Act (FFCRA), Pub. L. 116-127 (2020).

[2] *Families First Coronavirus Response Act: Employer Paid Leave Requirements*, U.S. Dep't of Labor, Wage & Hour Div., https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave (last accessed Aug. 21, 2020). An employee qualifies for leave if the employee is unable to work because she/he: (1) is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) has been advised by a health care provider to self-quarantine for reasons related to COVID-19; (3) is experiencing COVID-19 symptoms and is seeking a medical diagnosis; (4) is caring for an individual pursuant to reasons in (1) and (2); (5) is caring for a

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child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or (6) is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. These provisions apply through December 31, 2020. *Id.*

[3] Families First Coronavirus Response Act (FFCRA), Pub. L. 116-127, div. E.

[4] Families First Coronavirus Response Act (FFCRA), Pub. L. 116-127, div. C.

[5] Case No. 8:20-cv-01442 (M.D. Fla. June 23, 2020). For this case summary and other summaries of cases cited in this article, see also N. Zeitler et al., *COVID-19 Related Workplace Litigation Tracker*, Barnes & Thornburg LLC, https://btlaw.com/en/insights/publications/covid-19-related-workplace-litigation-tracker?p=1 (last accessed Aug. 21, 2020).

[6] Case No. 1:20-cv-22029 (S.D. Fla. May 14, 2020).

[7] Case No. 9:2020cv80993 (S.D. Fla. June 23, 2020).

[8] Case No. 1:2020cv22160 (S.D. Fla. May 25, 2020).

[9] 29 U.S.C. §§ 2101–2109.

[10] 29 U.S.C. § 2102(b)(2)(A); *see also* 20 CFR 639.9.

[11] Case No. 6:20-cv-00891 (M.D. Fla. May 27, 2020).

[12] Case No. 8:20-cv-00882 (M.D. Fla. Apr. 16, 2020).

[13] Suzanne Clark, *Implementing a National Return to Work Plan*, U.S. Chamber of Com. (Apr. 13, 2020) https://www.uschamber.com/coronavirus/implementing-national-return-to-work-plan?utm_source=email&utm_medium=enl&utm_campaign=laboroflaw&utm_content=20200416&utm_term=law#liability.

[14] 29 U.S.C. § 654(a)(1).

[15] Case No. CACE20010512 (Fla. 17th Cir. Ct. June 26, 2020).

[16] Case No. 6:20-cv-00787 (M.D. Fla. May 5, 2020).

PERC Emergency Rule Variances in Response to the COVID-19 Outbreak

By Gregg Riley Morton, Tallahassee

Over the course of several months, the Public Employees Relations Commission (PERC or the "Commission") received a number of emergency petitions from unions around the state seeking a variance from Florida Administrative Code Rule 60CC-4.002.[1] The rule requires that ratification votes for collective bargaining agreements be conducted either at an in-person ratification meeting or by mail.[2] Moreover, irrespective of the method used to conduct the ratification vote, the rule requires that ballots be publicly counted.[3]

In compliance with the rules governing emergency variance requests, the petitioning unions alleged specific facts regarding the nature of the emergency surrounding the COVID-19 pandemic and argued that they would suffer an immediate adverse effect if the petitions proceeded pursuant to the normal time frames that govern variance petitions.[4] To address the emergency nature of these requests, the Commission expedited the processing of the petitions.

When an employer and union reach a final tentative agreement on a collective bargaining agreement or modification to an existing agreement, section 447.309, Florida Statutes (2019), and Florida Administrative Code Rule 60CC-4.002 govern the process that must be followed to conduct ratification votes. To avoid in-person contact, each of the petitions requested that the union be permitted to electronically conduct all bargaining unit communications, all balloting and tallying, and the announcement of results. Based on the ongoing threat posed by COVID-19, the Commission recognized the legitimate health and safety reasons for allowing a variance from the portions of the rule that might require public meetings or in-person contact. In addition to relying on the statutory and rule authority that permit variances, the Commission relied on a number of executive orders by Governor Ron DeSantis that recognized COVID-19 as an emergency and that granted state agencies additional authority to provide relief in situations where people might otherwise come into close contact with one another.

While recognizing the nature of the current emergency, the Commission also reiterated the rationale behind the rule. Historically, the Commission has expressed concerns over electronic voting because of questions about the integrity of the process.[5] In each of the cases, the Commission granted relief that provides a variance from the strict requirements of the rule. However, in granting the requested relief, the Commission expressly stated that the petitioners are not insulated from voters' complaints about the fairness of the utilized electronic process.

Recognizing the limitations in the relief granted, the Commission also granted alternative relief in each of the cases. Each of the petitions stated that time was of the essence in conducting the ratification vote. In support of these statements, the petitioners cited to Commission case law concerning the need to "promptly" present agreements to bargaining unit members for consideration and ratification.[6] The Commission has noted that prompt submission of the agreement for a ratification vote "reduces the opportunities for changed circumstances to occur which might result in a party's reluctance or refusal to ratify the agreement."[7] Nevertheless, because some petitioners might elect to postpone a ratification vote rather than conduct an electronic vote that could be challenged, the Commission also granted relief from the "prompt" submission requirement of Florida Administrative Code Rule 60CC-4.002(1). This relief allows for additional time to determine whether it is preferable to use the traditional ratification methods under the rule—and thereby forego any potential voter complaints about a new electronic voting process—or to proceed with electronic voting.

Evidently, concerns about COVID-19 will persist for the foreseeable future. As more employers and unions reach agreements that need to be ratified, the Commission anticipates that more parties will request relief from Rule 60CC-4.002.

G. MORTON

***Gregg Riley Morton** is a hearing officer and deputy general counsel with the Public Employee Relations Commission. A prior version of this article appeared in PERC News, Vol. 20, Issue 2 (2020).*

Endnotes

[1] *See, e.g.*, *In re Karla Hernandez-Mats and United Teachers of Dade, Local 1974*, Order No. 20MS-146 (PERC June 26, 2020); *In re Deandre Poole and United Faculty of Florida*, Order No. 20MS-130 (PERC June 9, 2020); *In re Samuel Badger and United Faculty of Florida*, Order No. 20MS-124 (PERC June 5, 2020); *In re Scott Launier and United Faculty of Florida*, Order No. 20MS-122 (PERC June 3, 2020); *In re Karen Resciniti and Martin County Education Association*, Order No. 20MS-120 (PERC June 2, 2020); *In re Patrick Luck and United Faculty of Florida*, Order No. 20MS-113 (PERC June 1, 2020); *In re Deborah McClintock and Pensacola Junior College Faculty Association*, 47 FPER ¶ 6 (2020); *In re Scott Freeman and United Faculty of Florida-Seminole State College of Florida*, 47 FPER ¶ 5 (2020); *In re Adela Ghadimi and United Faculty of Florida-Florida State University-Graduate Assistants United*, 46 FPER ¶ 304 (2020); *In re Holly Hummell-Gorman and the United Teachers of Monroe*, 46 FPER ¶ 303 (2020); *In re Raul Sanchez and United Faculty of Florida*, 46 FPER ¶ 302 (2020); *In re Renee Wiley, Mark Holt, The Charlotte FEA and the Charlotte County Support Personnel*, 46 FPER ¶ 297 (2020); *In re Daniel Saunders and United Faculty of Florida*, 46 FPER ¶ 296 (2020); *In re Mark Avery and Marion Education Association*, 46 FPER ¶ 294 (2020); *In re Melissa Meriweather and Marion County Essential Support Personnel*, 46 FPER ¶ 293 (2020); *In re Ann Fisher and the United Faculty of Florida*, 46 FPER ¶ 286 (2020); *In re Kari Ann Kinkey and the Walton County Education Association*, 46 FPER ¶ 281 (2020); *In re Justin Katz and the Palm Beach County Classroom Teachers Association, Inc.*, 46 FPER ¶ 280 (2020).

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PERC EMERGENCY RULE, *continued*

[2] Fla. Admin. Code R. 60CC-4.002.

[3] *Id.* at 60CC-4.002(3).

[4] *See* Fla. Admin. Code R. 28-104.004, 28-104.005 (listing the requirements and time frames for processing emergency petitions requesting variance from a rule).

[5] *See, e.g., Beightol v. United Teachers of Dade*, 38 FPER ¶ 293 (2012).

[6] *See Village of Key Biscayne Professional Firefighters, Local 3638 v. Village of Key Biscayne*, 32 FPER ¶ 119 (2006) (noting that Florida Administrative Code Rule 60CC-4.002(1) requires the certified bargaining agent to promptly present the proposed agreement to the members of the bargaining unit for consideration and ratification).

[7] *Id.*

PERC Shifts to Alternative Hearing Platforms Due to COVID-19

By Janeia D. Ingram, Tallahassee

Like many courts and tribunals throughout the country, the Public Employees Relations Commission (PERC or the "Commission") was forced by the COVID-19 pandemic to reconsider the manner in which it conducts formal evidentiary hearings and other proceedings. Historically, Commission proceedings usually occurred on-site, either at its headquarters in Tallahassee or at a remote location convenient to the parties. The hearing officer assigned to a case would travel to the hearing site or conduct the hearing via video or telephone between Tallahassee and the hearing site. Parties and witnesses were permitted to appear at either location.

However, statewide stay-at-home orders and social distancing protocols instituted to slow the spread of COVID-19 quickly disrupted these traditional methods for holding hearings. In response, the Commission now offers remote appearance alternatives that minimize in-person contact and maximize use of teleconferencing or videoconferencing for everyone's health and safety during this continuing public crisis. These methods are employed in a manner that ensures that formal hearings continue to be conducted as efficiently and securely as possible.

A slight modification to the traditional telephonic hearing is the opportunity to appear via audio over multiple phone lines. The Commission subscribes to a service through SunCom that allows hearing participants to call in to a conferencing number from various locations using a PIN unique to the presiding officer. This method minimizes the need for multiple persons to assemble for a prolonged period in an enclosed environment that may not be conducive to social distancing. If a hearing is set to occur by telephone, but there are concerns about gathering at the scheduled hearing site, parties can elect to convert to the teleconferencing option.

The Commission also has the ability to conduct remote proceedings via Zoom, a videoconferencing platform that allows parties to participate by video or audio. This is especially advantageous for parties preferring in-person hearings to telephonic hearings. Zoom can be accessed via the internet or by telephone (cell phones and landline phones). Within seven days of the hearing, the Commission will send a Zoom invitation to the parties via e-mail that will contain a clickable Web link to access the hearing. The parties will be responsible for providing the invitation and any applicable instructions to their clients, representatives, and witnesses.

The simplest way to request a Zoom or teleconferencing hearing is to speak with the Commission Clerk, Barry Dunn, before the hearing is initially set. Once a hearing is set, the parties can file a motion to convert the hearing to a different format, citing a justifiable reason for doing so. As with in-person hearings, real-time transcription will still occur for online and telephonic hearings, using a court reporter retained by the Commission.

To reduce unnecessary disruptions and to avoid disadvantaging any participant in the hearing, the parties should consider certain matters in advance of the hearing, such as whether they can stipulate to the admission of any proposed exhibits or whether any evidentiary objections can be addressed. Additionally, parties should confer on the necessity of having a notary present with any witness appearing remotely, in order to identify the witness and administer the oath. If parties agree to waive the notary requirement, they must agree not to challenge the identity of witnesses. Failure to waive this requirement or arrange for a notary to be present with a remote witness may result in the hearing being continued or the witness being precluded from testifying. Strict adherence to all other directives found in the notice of hearing and the prehearing order is encouraged.

As we all learn to maneuver in this new virtual world, a hefty dose of patience and cooperation will go a long way.

J. INGRAM

Janeia D. Ingram *is a hearing officer with the Public Employee Relations Commission where she presides over labor and employment cases. A prior version of this article appeared in PERC News, Vol. 20, Issue 2 (2020).*

A Return-to-Work Checklist for Florida Businesses

By Adriana Paris, Tampa

With Florida businesses eager to resume in-person operations, the well-being of their employees must be of the highest priority. Attorneys for employers are encouraged to review local, state, and federal guidelines, but the following checklist should help companies safely navigate the reopening process.

▪ **Implement a written reopening plan**

A company's reopening plan should be similar to what would be included in the employee handbook. For the time being, living with COVID-19 is the new normal, so employers should have a formal, written reopening plan to distribute to personnel. The plan should highlight that the health and safety of all employees is a top priority and that all measures outlined in the plan reflect the company's effort to follow CDC, OSHA, and other state and federal guidelines. The plan should be sent to all employees via e-mail or mail and posted in all visible areas throughout the physical workspace. If feasible, employers should consider asking employees to acknowledge in writing that they have received and read the plan.

If not already done, the company should appoint an employee to be the workplace coordinator for all COVID-19 policies and related issues and should verify that the coordinator stays up to date with local, state, and federal guidelines, and ensures compliance with all requirements.

▪ **Consider staggering employees' schedules**

Since at least March, most companies have had some percentage of their workforce working remotely. If this arrangement has not significantly disrupted operations, a company should consider keeping certain employees virtual even when reopening the worksite. The rationale is simple: the fewer employees there are in one building, the less likely the risk of a mass outbreak. If employees cannot work remotely, businesses should stagger employees' return dates and, potentially, the days on which employees work. For instance, companies could bring back their workforce in phases, e.g., 25% of the workforce in phase one, an additional 25% in phase two, and so forth. Alternatively, some staff members would work in the office on Mondays and Wednesdays, while others would go in on Tuesdays and Thursdays. Polling the workforce on different arrangements could build consensus.

▪ **Prepare the workspace for reopening**

Regardless of whether employees' return-to-work schedules are staggered, the workspace should be prepared beforehand in accordance with CDC guidelines.[1] First, the entire workplace (including restrooms, common equipment such as printers and coffeemakers, and ventilation systems) should be thoroughly cleaned and disinfected.

Second, to the extent possible, social distancing measures should be implemented throughout the workplace. If feasible, workspaces should be at least six feet apart or encased in Plexiglas or another safety barrier. Floor markers should be set at intervals of six feet throughout the hallways to encourage employees to maintain their distance. Breakrooms should be rearranged to ensure proper social distancing or should be closed off if social distancing cannot be implemented. Limits should be set on the number of people who can be in elevators or restrooms.

Finally, depending on the business, employers should consider additional measures to decrease frequent contact between employees. If employees clock in at a station, the business should consider touch-free methods for clocking in and out. The sharing of physical materials, office equipment, or other jointly used objects in the workplace should be discouraged. Employees should be advised to share documents by e-mail to minimize the exchange of paper. To the extent possible and in

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compliance with applicable fire codes, doors should remain open throughout the workday to avoid frequent touching of door handles.

▪ **Prepare employees for their return**

The use of face masks or face coverings while indoors is currently mandated by several counties in Florida in certain situations. Issuing personal protective equipment (PPE) to each employee who is expected to return to the office will ensure that everyone adheres to these regulations. Additionally, businesses should consider providing employees with hand sanitizer and disinfectant wipes for their workspaces.

Although Florida does not currently require that companies screen their employees for COVID-19 symptoms, it is nonetheless wise to implement a screening process if possible. Methods range from a daily self-assessment by each employee to temperature checks at entry points throughout the workplace.

▪ **Review company PTO policies and health plans**

Last but not least, company PTO policies should be reviewed in order to assess whether furloughed or recently rehired employees may have accrued PTO or vacation time. Employers should also check their health, cafeteria, and fringe benefit plans and determine if the status of these plans has been impacted in the last several months.

A. PARIS

Adriana Paris *is Of Counsel to Shook, Hardy & Bacon LLP in Tampa and focuses her practice on the defense of corporations in complex tort cases, class actions, and product liability matters.*

Endnotes

[1] Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), Ctrs. for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html (last accessed July 26, 2020).

★ HALL OF FAME ★

William E. Powers Inducted into Section Hall of Fame

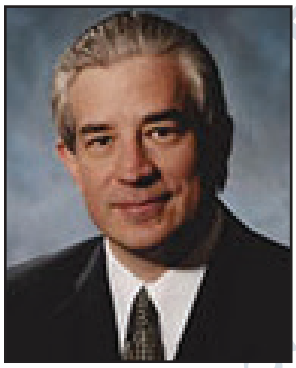
Induction into The Florida Bar Labor and Employment Law Section Hall of Fame is a posthumous honor given to persons who had significant involvement in both the Section and the active practice of labor and employment law in Florida for a substantial portion of his or her career. This year's inductee is William E. Powers, Jr. (1939–2020).

Bill Powers graduated from the University of Dayton and the Cleveland-Marshall College of Law and then obtained an LL.M. in labor law from the New York University School of Law. He began his legal career with the National Labor Relations Board in Cleveland, Ohio, before becoming General Counsel for the Florida Public Employees Relations Commission. He later served as its chair. Bill then entered private practice as a partner with a large firm prior to founding his own firm. He also served as General Counsel for the Florida Sheriffs Association. In all, Bill practiced law for forty years.

Bill was co-chair of the American Bar Association Committee on Government and Employment Law and was an adjunct professor at Nova College of Law and Florida State University. He was a charter member of the Stetson Law Center for Labor Management Disputes and served on the National Advisory Board of Cleveland State's Marshall College of Law. He was a frequent lecturer at seminars across the country and was inducted as a fellow into the College of Labor and Employment Lawyers.

**Biographical information from the* Tallahassee Democrat.

Lifetime Achievement Award Presented to Hon. Frank E. Brown



At its annual meeting, held virtually on June 18, 2020, The Florida Bar Labor and Employment Law Section presented the Lifetime Achievement Award to the Honorable Frank E. Brown, Chair of the Florida Reemployment Assistance Appeals Commission. Chairman Brown was appointed to the Commission after thirty years of practicing labor and employment law in both the public and private sectors. He has been peer-recognized in leading publications as an outstanding labor and employment lawyer and was one of the first Florida lawyers to be Board Certified by The Florida Bar in Labor and Employment Law. In 2019, he was named by *Florida Trend's* "Legal Elite" as one of Florida's top government lawyers and was also selected for induction into the College of Labor and Employment Lawyers. Chairman Brown has been involved in legal scholarship, writing, and education throughout his career. He was chapter editor for the annual supplements to the ABA treatise on The Fair Labor Standards Act for ten years, served as editor of the L&E Section column in *The Florida Bar Journal* for nine years, and has given over sixty continuing legal education presentations for the American Bar Association, The Florida Bar, and other organizations. Since 2002, he has been a member of the Executive Council of The Florida Bar Labor and Employment Law Section and served as chair of the Section for the 2015-16 Bar year. He also currently serves on The Florida Bar's Labor and Employment Law Certification Committee and The Florida Supreme Court's Standard Jury Instructions Committee for Civil Cases.

**Biographical information from the Florida Department of Economic Opportunity.*

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are positioned to be the best source of information for the government.

Examples of fraud that the Task Force will be investigating include the sale of fake COVID-19 treatments and cures to the public, the solicitation of donations related to COVID-19 for illegitimate charities, and the submission, by medical providers, of fraudulent claims for COVID-19 tests and treatments.[3] The government's announcement asks law enforcement, public safety and health personnel, and first responders to report suspected wrongdoing to the National Center for Disaster Fraud.[4]

Given the new opportunities for those who would commit fraud, and the critical role that employees can play in preventing fraud, it is important for employees and employers alike to have at least a cursory understanding of some of the many laws that protect whistleblower employees and create liability for employers.

Sources of Whistleblower Protection

There are dozens of whistleblower protections for employees in state and federal statutes. Perhaps the most notable statutes for the types of COVID-19 schemes described by the Task Force and reported by media are the Florida and federal False Claims Acts,[5] the Florida Private Sector Whistleblower Act,[6] and section 806 of the Sarbanes-Oxley Act.[7]

In determining which whistleblower laws apply to a given fact pattern, it is generally best to start with the nature of the fraud, including those affected by the fraud, and the nature of the employer's business. If the fraud involves any form of government money, counsel should look to the Florida and federal False Claims Acts.[8] These laws bar false claims to the government for payment and generally prohibit employers from retaliating against an employee who takes one or more lawful steps to stop what the employee reasonably believes to be a violation of the respective False Claims Act.[9]

For example, if an employee in a medical office were to object to healthcare providers submitting claims to Medicaid for COVID-19 tests that were never performed, or were knowingly performed improperly, that employee would likely be protected by both the Florida and federal False Claims Acts.[10]

The federal False Claims Act also provides protections for employees who report fraud relating to any of the loan programs administered by the Small Business Administration, including the Paycheck Protection Program Economic Injury Disaster Loans created by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).[11]

The False Claims Acts have a broad reach and apply to both direct and so-called indirect false claims, such as those made to contractors and grantees who hold money on behalf of the government. To invoke the protections of the False Claims Acts, an employee does not need to use any special language, nor does the employee need to even be aware of the existence of the Acts. These laws permit employees to bring a private cause of action in the appropriate state or federal court and to seek "make whole" relief.[12]

While the anti-retaliation provisions of the False Claims Acts are broad, they are of no use to an employee disclosing fraud against the general public, such as where an employer is selling fake COVID-19 cures or treatments but not attempting to bill Medicare or Medicaid. In such situations, counsel should look to the Florida Private Sector Whistleblower Act.[13]

This Florida law more generally protects an employee from retaliatory action by an employer when the employee has:

> (1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.
>
> (2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.
>
> (3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.[14]

While broader in terms of subject matter, the Florida Private Sector Whistleblower Act (Subsection 1 of § 448.102) is far more restrictive when it comes to what constitutes protected conduct. First, an employee must provide written internal disclosure of the fraudulent activity to the employer and allow the employer a "reasonable opportunity" to cure before disclosing the action to the government.[15] Second, the disclosure to the government must be under oath and in writing.[16] These constraints potentially conflict with the goal of the COVID-19 Fraud Task Force, which encourages disclosures via a hotline phone number or a web form.[17] If a private employee were to utilize these tools to contact the government and report the employer for selling snake oil COVID-19 treatments without first making a written internal disclosure, the employee may well find himself or herself without any legal protections from retaliation. However, if the employer was selling its snake oil to a government entity or to a contractor spending government money, the same employee would likely be protected under one or both False Claims Acts.

Courts have also interpreted provisions of the Florida Private Sector Whistleblower Act as requiring employees to identify an actual violation of law, as opposed to having a reasonable, good faith belief that their employer is engaging in wrongdoing, yet further weakening the protections of the Florida Private Sector Whistleblower Act.[18]

Protections for Employees of Publicly Traded Companies

The rush to find a cure or vaccine for COVID-19 has also spurred numerous claims by various persons and companies seeking to cash in on the obvious jackpot that awaits the maker of the first cure or vaccine brought to market. While not specifically mentioned as a Task Force target, this is an area ripe for fraud and, fortunately, an area where federal law provides some of its most robust protections for whistleblowers.

In spring 2020, biopharmaceutical company Inovio Pharmaceuticals Inc. (NASDQ: INO) announced it was closing in on a COVID-19 vaccine. In just a few days, the company's stock price nearly tripled. Not long after, critics pointed out that Inovio's announcement was made an astonishing three short hours after the release of COVID-19's genetic sequence.[19] The stock plummeted, and the company is now a defendant in a shareholders' derivative action.[20] Similarly, after Moderna Inc. (NASDQ: MRNA) announced positive results from its phase one study in July 2020, its stock took off, only to be grounded when JPMorgan reduced its rating of the company's stock from "overweight" to "neutral" a few days later.[21]

While the merits of the news reports and the companies' and critics' claims are far beyond the scope of this article, these fact patterns do point out the ease with which an unscrupulous company seeking to defraud investors could execute classic pump and dump schemes in the current environment. Fortunately, federal law provides powerful protections for insiders at publicly traded companies.

Section 806 of the Sarbanes-Oxley Act (SOX) prohibits publicly traded companies and their subsidiaries and contractors from retaliating against employees who report what they reasonably believe to be a violation of various federal laws prohibiting mail, wire, bank, or securities fraud.[22]

Broader than the Florida Private Sector Whistleblower Act, SOX protects both internal and external disclosures without restrictions as to the method or form of disclosure, and it does so without requiring an internal disclosure and opportunity to cure. An employee of a publicly traded company, its subsidiary, or even its contractor who objects to a scheme to manipulate share prices is protected under SOX, provided that the employee's belief is reasonable and the employee voices the objection to either a supervisor or a government enforcement agency. An aggrieved employee can file a complaint with the Department of Labor's Occupational Safety and Health Administration with the option, ultimately, to seek a jury trial in federal court after exhausting administrative remedies.

How Employers Should Respond to Reported Fraud

Employers should take all internal reports of alleged fraud and other wrongdoing seriously, regardless of whether the employer agrees with the merits of the disclosure. As noted previously, many laws apply a "reasonable belief" standard that protects mistaken but good-faith disclosures by employees.

Employers should ask employees for evidence to support their concerns and conduct a thorough investigation into the allegations. Importantly, employers should keep the employee abreast of the status of the investigation, lest the employee assume that the employer has done nothing with the report. Employees who feel that that their employers do not take their concerns seriously often become alienated and feel compelled to make external disclosures or go to the media.

Perhaps most importantly, employers should never retaliate, even if the employee is wrong about the disclosure. Instead, employers should realize that for many whistleblowers, it is loyalty to and affinity for their employer that drives the decision to speak up while others remain silent.[23]

How Employees Should Blow the Whistle

Employees contemplating blowing the whistle should consult with an employment attorney who is well versed in state and federal whistleblower law before speaking up.

As described in this article, there are many nuances to whistleblower law. Indeed, there are situations where, though well-intentioned, the government's own instructions and guidance may lead an employee astray and into a career-ending situation.

Conclusion

COVID-19 has changed nearly all aspects of society. The ensuing flood of government aid and drive for a cure has created an unprecedented opportunity for a variety of fraudulent schemes. In such an environment, it is important that employees be protected from retaliation for disclosures, whether they are reporting fraud against the government or the general public.

J. H. ESTES

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Endnotes

1 U.S. Dep't of Justice, U.S. Attorney Announces Multi-Agency Group To Investigate And Prosecute COVID-19 Fraud, (Mar. 30, 2020), https://www.justice.gov/usao-mdfl/pr/us-attorney-announces-multi-agency-group-investigate-and-prosecute-covid-19-fraud.

2 *Id.*

3 *Id.*

4 *Id.*

5 31 U.S.C. § 3730(h); Fla. Stat. § 68.088 (2019).

6 Fla. Stat. § 448.102 (2019).

7 18 U.S.C. § 1514A.

8 31 U.S.C. § 3730(h); Fla. Stat. § 68.088.

9 *See, e.g., United States ex rel. Cody v. ManTech Int'l Corp.*, 207 F. Supp. 3d 610, 621-22 (E.D. Va. 2016) (applying the reasonable belief standard to a claim of retaliation under 31 U.S.C. § 3730(h)) (Dave Scher, partner at Hoyer Law Group, PLLC, represented the plaintiffs); Fla. Stat. § 68.088, which prohibits discrimination by employers "because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this act." Section 68.088 further states that aggrieved employees "shall have a cause of action under s. 112.3187." Fla. Stat. § 112.3187(5) clarifies that protected conduct includes disclosures of a "suspected violation of any federal, state, or local law, rule, or regulation . . . ."

10 *Id.*

continued, next page

RETALIATION PROTECTION, *continued*

[11] Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (2020).

[12] 31 U.S.C. § 3730(h)(2); FLA. STAT. §§ 68.088 and 112.3187(8)(c)-(9).

[13] FLA. STAT. § 448.102.

[14] *Id.*

[15] FLA. STAT. § 448.102(1).

[16] *Id.*

[17] *See supra note 1.*

[18] *See White v. Purdue Pharma, Inc.*, 369 F. Supp. 2d 1335, 1337 (M.D. Fla. 2005) (contrasting the language of FLA. STAT. § 448.102(3), which requires protected disclosures to be about an employer's conduct "which is in violation" with FLA. STAT. § 112.3187, which protects disclosures about a "suspected violation," and holding that § 448.102(3) requires a disclosure about an actual violation of law). *See also Graddy v. Wal-Mart Stores East, LP*, 237 F. Supp. 3d 1223, 1227 (M.D. Fla. 2017) ("The statute's requirement that an employer's policy be 'in violation of a law' is unequivocal. It does not provide protection to employees for 'alleged' or 'suspected' violations of the law."). FLA. STAT. § 448.102(1) uses the same "in violation" language as § 448.102(3).

[19] John George, *Inovio's Stock Soars on Accelerated Timeline for Potential Coronavirus Vaccine* (Mar. 3, 2020, 1:48 PM EST), https://www.bizjournals.com/philadelphia/news/2020/03/03/inovios-stock-soars-on-accelerated-timeline-for.html.

[20] *Devarakonda v. Kim*, Case No. 2:20-cv-02829 (E.D. Pa.).

[21] Yun Li, *JPMorgan downgrades Moderna on valuation concerns after 380% rally this year* (July 20, 2020, 8:50 AM EDT), https://www.cnbc.com/2020/07/20/jpmorgan-downgrades-moderna-on-valuation-concerns-after-380percent-rally-this-year.html.

[22] 18 U.S.C. § 1514A. For a discussion on the breadth and reach of SOX, see generally *Lawson v. FMR LLC*, 571 U.S. 429 (2014).

[23] 18 U.S.C. § 1514A(b)(1)(A)-(B).

PROTECTING COMPANY TRADE SECRETS, *continued from page 1*

(a) [d]erives independent economic value . . . from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) [i]s the subject of efforts that are reasonable to maintain its secrecy."

Therefore, an essential element of establishing a viable trade secret misappropriation claim under the federal DTSA and Florida's equivalent, the FUTSA, is demonstrating that reasonable measures have been implemented to preserve secrecy. The reasonableness of the measures implemented is often a fact-intensive analysis and depends on the unique circumstances of the company itself. Nonetheless, all companies with employees working from home as a result of the COVID-19 pandemic should be prepared to identify the specific measures they have implemented to preserve the secrecy of their trade secrets in a telework situation. Failure to readily identify such measures could potentially expose companies to a future argument that the information in question is not a trade secret if sufficient steps were not taken to preserve secrecy.

Accordingly, all companies with employees working from home as a result of the COVID-19 pandemic should immediately remind their employees, through an e-mail, of their ongoing duty to preserve secrecy. Moreover, companies should also assess whether their existing trade secret policies and procedures adequately protect against potential security concerns regarding telework and, if not, companies should consider adjusting their policies and procedures accordingly. The bulleted list below includes straightforward examples of additional measures companies should consider implementing to maintain or increase the security of their trade secrets when their employees are working from home:

- Employees should always use company-issued devices, e-mail accounts, and videoconferencing applications that have sufficient security features to safeguard the company's trade secrets from the public or should otherwise ensure secrets are not distributed beyond individuals with a specific business need. Companies should consider working in partnership with their respective IT professionals to discuss what those security features may be.
- Employees using videoconferencing applications should be mindful of the fact that other individuals participating in the conference could potentially take photographs or screenshots of the information being displayed on the computer screen. Thus, when appropriate, employees should clearly label all trade secrets as "confidential" and advise all participants that the confidential information being displayed on the screen is a company secret and should not be distributed to the public or beyond individuals with a specific business need.
- Employees should always review the company's trade secrets in a secluded part of their homes and should not access, use, or discuss the company's trade secrets while in the presence of others, including family members.
- Employees should never print or copy the company's trade secrets by using personal printers, copiers, or scanners. To the extent possible, employees should always review and use the company's trade secrets in electronic form and on company-issued devices.
- Employees should never download and e-mail the company's trade secrets from company-issued devices and e-mail accounts to personal devices and e-mail accounts.
- Employees who are granted permission to maintain tangible copies of the company's trade secrets while working from home should not dispose of these documents in their home trash. Instead, all trade secrets should be temporarily stored in a secure location within the home where others, including family members, cannot gain access. Companies should instruct these employees to return all tangible trade secrets upon returning to the office, so that the trade secrets can be disposed of in a secure manner.

Companies that decide to implement additional security measures beyond their existing policies and procedures should notify their employees by e-mail with clear instructions on the additional measures. In this same notification, companies should identify a company representative who will be able to answer any questions regarding the content of the written notification, the handling and use of the company's trade secrets while working from home, as well as the employees' ongoing duty to preserve secrecy. Lastly, companies should require their employees to confirm receipt of the written notification, which can be accomplished through e-mail. Companies should also consider remote-based training if necessary.

In addition, the COVID-19 pandemic has unfortunately resulted in many layoffs across many different industries. If a layoff occurs, a company should immediately eliminate the affected employees' ability to access the company network and, by extension, the company's trade secrets. The company should also require the immediate return of all company-issued devices, as well as any tangible trade secrets, and remind all affected employees that dissemination of the company's trade secrets is prohibited. Similarly, if a furlough occurs, a company should also eliminate affected employees' ability to access the company's trade secrets during the furlough period, and remind all affected employees of their ongoing duty to preserve secrecy while furloughed.

There is no bright-line benchmark for determining whether companies have implemented enough measures to preserve the secrecy of their trade secrets, as this depends on the unique circumstances of the company itself. Nevertheless, all companies with employees working from home as a result of the COVID-19 pandemic should immediately evaluate their security measures in a telework situation. If no measures are in place, or if existing measures are not adequate, then companies should swiftly yet thoroughly adjust their existing policies and procedures to increase the likelihood that their trade secrets remain protected under the law. Furthermore, companies should be proactive in prohibiting access to and use of their trade secrets in the unfortunate event of a layoff or furlough.


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Endnotes

[1] *Highland Consulting Grp., Inc. v. Soule*, Case No. 9:19-cv-81636-ROSENBERG/REINHART, 2020 WL 1272516, at *2 (S.D. Fla. Mar. 17, 2020) (quoting 18 U.S.C. § 1839(3)).

[2] *Compulife Software Inc. v. Newman*, 959 F.3d 1288, 1311 (11th Cir. 2020) (quoting FLA. STAT. § 688.002(4)).

[3] *See, e.g., Measured Wealth Private Client Grp., LLC v. Lee Anne Foster*, Case No. 20-cv-80148-SINGHAL, 2020 WL 3963716, at *3-4 (S.D. Fla. July 13, 2020); *Matrix Health Grp. v. Sowersby*, Case No. 18-61310-CIV-ALTMAN/Hunt, 2019 WL 4929917, at *6-7 (S.D. Fla. Oct. 7, 2019); *Agostinacchio v. Heidelberg Eng'g, Inc.*, Case No. 0:18-cv-60935-UU, 2019 WL 3243408, at *6 (S.D. Fla. Feb. 5, 2019); *St. Johns Vein Ctr., Inc. v. Streamline MD LLC*, 347 F. Supp. 3d 1047, 1070 (M.D. Fla. 2018).

[4] *Matrix Health Grp. v. Sowersby*, Case No. 18-61310-CIV-ALTMAN/Hunt, 2019 WL 4929917, at **6-7; *Se. Mech. Servs., Inc. v. Brody*, Case No. 8:08-CV-1151-T-30EAJ, 2008 WL 4613046, at *10 (M.D. Fla. Oct. 15, 2008).

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2020-2021 Section Calendar

Mark these dates on your calendar, and keep your eyes open for registration information that will be provided by e-mail and on the Section's website.

September 16, 2020, 12:00 (Noon)–1:30 p.m. (Free GoToWebinar in conjunction with YLD)

COVID-19: What Employers and Employees Need to Know

The Young Lawyers Division and the Labor & Employment Law Section of The Florida Bar are partnering to provide a FREE webinar on how the COVID-19 outbreak is impacting employment issues. Employers and employees face safety concerns and an uncertain legal landscape as they address the COVID-19 outbreak and attempt to return to both normal and new working conditions. By identifying and anticipating the issues that will arise, employers can better develop plans to minimize the legal risks associated with operating during a pandemic, and employees can know their rights with regard to safe working conditions. Employment law experts Brian Hayden, Tyler White, and Michelle Nadeau will speak on issues of interest to lawyers who are both employers and employees.

September 23, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

U.S. Supreme Court Update: Title VII and LGBTQ Discrimination—What Florida Employers and Employees Need to Know

Presenters: Robert Sniffen and Jeffrey Slanker, *Sniffen & Spellman*

The United States Supreme Court's recent decision in *Bostock v. Clayton County* held that federal law prohibits discrimination against LGBTQ employees. Speakers will discuss the decision, how the decision might be implemented by lower courts, and how it impacts the landscape for employees and employers in Florida.

October 14, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Title: NLRB Update: Where Do We Stand Now? (Part 1)

Presenters: Robert Turk and Lisa Berg, *Stearns, Weaver, Miller*

During the Trump administration, The National Labor Relations Board has issued a number of precedential decisions and undertaken rulemaking that have reversed actions that the NLRB took during the Obama administration. In Part 1 of this update, speakers Bob Turk and Lisa Berg will address these changes and how they have reshaped the landscape of federal labor law.

October 22–23, 2020

46th Annual Public Employment Labor Relations Forum

Location: Rosen Plaza Hotel, Orlando

Co-Chairs: Glenn Thomas & Janeia Ingram

Now in its 46th year, the Public Employment Labor Relations Forum is the longest running annual seminar jointly sponsored by two sections of The Florida Bar. PELRF focuses on the labor and employment issues that affect public employers, public employees, and the unions that represent public employees. This year's PELRF will focus on a number of hot topics in public labor and employment law.

November 18, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Keeping Tabs on the COVID Crisis

Presenter: Linda Bond Edwards, *Rumberger Kirk*

The COVID-19 outbreak represents an ongoing challenge for employers and employees, particularly given the constantly changing landscape. Linda Bond Edwards will provide an update on the key issues that employment law practitioners should be aware of when advising clients on COVID.

December 9, 2020, 12:00 (Noon)–1:00 p.m. (GoToWebinar)

Hot Topics in Public Sector Bargaining

Presenters: Michael Mattimore, *Allen Norton & Blue,* and Marcus Braswell, *Sugarman & Susskind*

Current events continue to shape the challenges that government employees and employers face in the public sector labor arena. Labor law experts Michael Mattimore and Marcus Braswell will speak about the new issues that are impacting collective bargaining and what may be on the horizon.

January 14–15, 2021

21st Labor and Employment Law Annual Update and Certification Review

Location: Rosen Shingle Creek, Orlando

Co-Chairs: Jennifer Fowler-Hermes and Michelle Nadeau

February 10, 2021 (GoToWebinar) – TBD

March 17, 2021 (GoToWebinar)

NLRB Update Part II

Presenters Bob Turk & Lisa Berg

April 8–10, 2021

Advanced Labor Topics

Location: The Madison, 1177 15th Street Northwest, Washington, DC 20005

Co-Chairs: Don Slesnick & Greg Hearing

May 5, 2021 (GoToWebinar) – TBD

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