



HRHero.com

FLORIDA

EMPLOYMENT LAW LETTER

Part of your Florida Employment Law Service

G. Thomas Harper, Editor
www.HarperGerlach.com

Vol. 25, No. 6
August 2013

What's Inside

Same-Sex Marriage

Supreme Court strikes down DOMA provision—how will the ruling affect you? 2

Wage and Hour Law

Misunderstanding the FLSA's exemption requirements could prove costly 4

Overtime

Florida RV park fails at qualifying for exemption from paying overtime 5

Workplace Trends

New survey says 22 percent of employers plan to hire in third quarter 5

Liability

High court issues positive ruling limiting your liability for harassment 7

On HRHero.com

Furloughs

Sequestration has brought furloughs to the front of the news as employers cut back on employees' workweeks to save money. But furloughs bring with them potential wage and hour law and benefits issues. At www.HRHero.com, you can find the following tools to ensure you're complying with the law:

- HR Sample Policy: Wage and Salary Administration, www.HRHero.com/lc/policies/401.html
- HR Sample Policy: Employee Classification, www.HRHero.com/lc/policies/402.html

© BLR®

WORKERS' COMPENSATION

Workers' comp law prohibits retaliation, doesn't mandate reinstatement

Often, when an employee is terminated or let go, the actual reason may not be clear. If an employee has filed a workers' compensation claim before being terminated, she may assume the termination was the employer's way of getting back at her for filing the claim. If so, the disgruntled former employee is likely to file suit for retaliation. Florida law protects employees from this type of retaliation and allows civil remedies for such behavior.

Ironically, however, Florida law doesn't specify what remedies are available in these situations. Therefore, attorneys often will argue about what type of relief—if any—a court should award.

Florida case law has made it clear that the state law prohibiting workers' comp retaliation doesn't mandate that an employer reinstate or rehire a former employee who claims she was the victim of workers' comp retaliation. A recent case out of the federal court in Tallahassee points out this interesting quirk in the Florida workers' comp law.

An odd proposition

Judy Stripling worked for BIS Industrial Services Inc., a large construction and engineering company with multiple office locations throughout Florida. At some point during her employment, she sustained a work-related injury and filed a workers' comp claim. For reasons unknown, she eventually lost her job with BIS Industrial. Stripling

alleged that she was fired in retaliation for filing the claim, and she lawyered up and filed a lawsuit.

In her retaliation lawsuit, Stripling claimed not only that she should be entitled to an award for money damages but also that she should get her old job back. BIS Industrial thought otherwise. The employer's defense team asked the judge to strike Stripling's reinstatement claim. The lawyers pointed out that the Florida statute prohibiting workers' comp retaliation doesn't authorize a court to order the reinstatement of a former employee.

The court found the defense team's claim to be an odd proposition. The court acknowledged that BIS Industrial's position was an accurate suggestion of the law. However, its request was somewhat perplexing. As the company pointed out, the Florida law prohibiting workers' comp retaliation creates a private claim but doesn't set out the available remedies.

The court acknowledged that the Florida Supreme Court has said that the workers' comp retaliation law "does not authorize the court to order reinstatement of the employee." The court stated, "That is an odd proposition. A statute that creates a private [claim] without setting out the available remedies ordinarily is enforceable at least with equitable relief; the dispute usually is

Harper Gerlach PL—Florida Labor & Employment Attorneys—
www.HarperGerlach.com—is a member of the *Employers Counsel Network*



over whether such a statute also authorizes a damages award. . . . And reinstatement is ordinarily an available—indeed, preferred—remedy for an employee’s unlawful termination.”

The court found BIS Industrial’s position to be an odd proposition because the less costly remedy of simply reinstating an employee is usually the preferred remedy for employers accused of unlawful termination. Ordinarily, those on the defense side are more concerned

about shelling out money damages than reinstating a former employee. Defense teams usually argue that the appropriate remedy in such cases should be reinstatement rather than money

damages such as an award for lost future wages. In his order, Judge Robert Hinkle stated, “The defendant here should perhaps be careful what it wishes for.”

In the end, whether Stripling is entitled to reinstatement may have become a moot point because BIS Industrial appeared to have lost the construction contract under which she had been employed. The company may have been correct in its assertion that the court can’t force an employer to reinstate a former employee who has alleged workers’ comp retaliation. Therefore, it likely won’t have to worry about giving Stripling her old job back. However, fighting her claim for money damages will be a different story. *Stripling v. BIS Indus. Serv. Inc.*, No. 4:12-cv-628-RH/CAS, 2013 U.S. App. LEXIS (N.D., 2013).

Takeaway

The Florida workers’ comp law prohibits any form of retaliation against an employee for filing a claim. Under Florida law, you can’t engage in any adverse activity or terminate an employee for filing a workers’ comp claim. If you were to take such an adverse action, you may be

in for a very serious lawsuit. The law may not authorize a court to force you to reinstate or rehire a former employee, but that doesn’t mean a disgruntled former employee won’t put up a fight for other types of damages. ❖

For a copy of this article please send an e-mail request to Tom Harper at:
gth@harpergerlach.com

To subscribe to the Florida Employment Law Letter or for more information on this monthly newsletter visit:
<http://hrhero.com/flemp.shtml>

The Florida workers’ comp law prohibits any form of retaliation against an employee for filing a claim.



Introducing Fast-Paced Guidance-Rich DVD Training:

Super Supervisors: 5 Employment Law Essentials
Improve how your company’s managers execute their most important responsibilities.

- **Discrimination, Retaliation, and Harassment:** What supervisors absolutely have to do, and what they never should forget
- **Hiring:** Legal pitfalls to avoid
- **Performance Reviews, Progressive Discipline, and Documentation:** Keys to these vital yet unpopular tasks
- **Firing:** Best practices for cutting ties
- **Fairness:** How respect earns respect and creates a positive working environment

To learn more visit HRHero.com/supersupervisors. Or call 800-274-6774.