



# Florida EMPLOYMENT

A monthly newsletter designed exclusively for Florida employers

## Law Letter

Vol. 18, No. 1  
March 2006

G. Thomas Harper, Editor  
www.HarperGerlach.com

### PUBLIC EMPLOYERS

## Florida Civil Rights Act damages limited to \$100k in public sector

In a decision of great importance to state agencies, counties, and subdivisions of state government, a Florida appellate court has ruled that a \$100,000 cap in the Sovereign Immunity Tort Law (a Florida law that allows persons to sue state and governmental agencies for injuries but limits recovery) applies to all damages that an employee can recover under the Florida Civil Rights Act (FCRA).

### Facts

Jeffery Gallagher was employed by Manatee County. He filed suit under the FCRA against the county, claiming gender discrimination and retaliation. The case proceeded to trial, and a jury returned a verdict in his favor. The jury awarded him back pay of \$20,000 and compensatory damages (for both discrimination and retaliation) of \$230,000. In addition, he was awarded attorneys' fees of \$291,743.75 and costs and expenses of \$18,282.50. The total verdict awarded to him was \$560,026.25.

After the jury returned its verdict, however, the county asked the trial court to limit Gallagher's damages to \$100,000. The court ruled that his attorneys' fees, court costs and expenses, compensatory damages, and back pay were all subject to the \$100,000 cap in Florida's Sovereign Immunity Tort Law.

The FCRA provides that punitive damages awarded mustn't exceed \$100,000. Such damages are awarded to punish an employer — to send a message that its conduct won't be tolerated. In private-sector cases, most courts have interpreted the \$100,000 cap to apply only to punitive damages. In those cases, employees have received back pay, front pay, and attorneys' fees and costs *in addition*

to punitive and compensatory damages. Since there's no mention of a cap on compensatory damages, most employment lawyers believe that the remedies available to an employee under the FCRA are greater than under federal discrimination laws, which cap both compensatory and punitive damages.

The damage provisions in the FCRA also state that "the total amount of recovery against the state and its agencies and subdivisions shall not exceed the limitation as set forth in [the Sovereign Immunity Tort Law]." That law provides that the state, state agencies, and political subdivisions won't be liable to pay a claim or a judgment by any one person that exceeds the sum of \$100,000. Punitive damages aren't available against public employers under the Sovereign Immunity Tort Law.

### What's Inside . . .

#### **Covenant Not to Compete**

Court rules Florida noncompete binds employee who lives and works out of state ..... 2

#### **Quick Tips**

Primer on how the labor law — the NLRA — affects *nonunion* Florida employers, too ..... 4

#### **Employee Theft**

A CPA suggests 10 ways to keep employees from ripping you off ..... 5

#### **Health Care Costs**

Many states, and federal court, weigh Fair Share Health Care bills for large employers ..... 5

#### **Settlement Agreements**

Employee allowed to receive payout in spite of breaching confidentiality ..... 7

[www.HRhero.com](http://www.HRhero.com)



Harper Gerlach PL — [www.HarperGerlach.com](http://www.HarperGerlach.com) — is a member of the **Employers Counsel Network**

---

## ***Appeals court's decision***

Gallagher appealed the trial court's decision, arguing that the \$100,000 cap applied only to his compensatory damages award and not to the other awards he received. The court of appeals disagreed. In the Sovereign Immunity Tort Law, the Florida Legislature stated that the "total amount of recovery" should be limited to \$100,000. The court reasoned that the words "total amount of recovery" referred to all elements of the monetary award an employee could obtain against a governmental agency. The court recognized that its decision placed great limits on the rights of fired employees, but it believed that the legislature made that decision when it limited suits against the government. *Jeffrey Gallagher v. Manatee County*, Case No. 2D04-3724 (Fla. 2d DCA, February 1, 2006).

## ***Significance for employers***

Limiting an employee's total recovery to \$100,000 will reduce employment suits in the public sector. As you see in this case, the attorneys' fees were the largest part of the verdict. Employment litigation is expensive. It isn't uncommon for attorneys' fees for employees to reach into six figures. When a lawyer representing a fired employee realizes that the total award is limited to \$100,000, that will affect the lawyer's decision to represent the employee. Quasi-governmental authorities will want to review their status to decide if they want to be recognized as a governmental agency that's covered by the Sovereign Immunity Tort Law.

*the HR Answer Engine to search for articles from our 50 Employment Law Letters. Need help? Call customer service at (800) 274-6774. ❖*

*For a copy of this article, please send an e-mail request to Tom Harper at [gth@HarperGerlach.com](mailto:gth@HarperGerlach.com)*

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