



Florida EMPLOYMENT

A monthly newsletter designed exclusively for Florida employers

Law Letter

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Vol. 19, No. 7
September 2007

PUBLIC EMPLOYERS

Marital strife, turmoil may mitigate the discipline of some public employees

When an employee hits someone, doesn't common sense dictate that you're justified in terminating him? Not necessarily, a Florida court said recently. In determining the appropriate discipline, you must consider what's occurring in the employee's personal life that affects his emotional state. Read on to see how the court reached that conclusion.

Counting to 10 may have been wise

Julius Smith was a 22-year veteran of the Florida Department of Corrections (DOC). While arguing with his estranged wife, he got into a "violent confrontation with a fellow law enforcement officer." Although the state attorney's office declined to prosecute the matter, the DOC fired Smith.

Smith appealed to the Public Employees Relations Commission (PERC). The hearing officer recommended a 60-day suspension without pay because of Smith's length of employment and the emotional turmoil surrounding the incident. Although the full commission accepted the hearing officer's factual findings, it rejected the recommended penalty — because "marital strife and emotional states are not mitigating factors" — and therefore upheld the termination. Smith then appealed to the Florida First District Court of Appeal.

Court's decision

The court began by reviewing the statute that deals with the discipline of most public employees, Florida Statutes, Section 110.227(6)(c)(2001). The court noted that the law in effect before the enactment of that statute limited PERC's discretion to four criteria. The criteria didn't include consideration for an employee's daily

stresses, such as marital strife. The new law, however, removed those criteria and allowed PERC discretion with regard to the degree of punishment in cases involving law enforcement and correctional officers, firefighters, and professional health care providers.

PERC may consider many mitigating factors when determining if a penalty should be reduced, the court said. Therefore, the court sent the case back to the commission for it to consider Smith's marital strife and emotional turmoil in deciding on the appropriate discipline.

Bottom line

Remember, Smith's case deals only with public employees, and PERC has discretion only for certain

What's Inside . . .

Labor Law	
Salts must prove intent to remain employed to receive back pay for discrimination	2
Minimum Wage	
Florida's minimum wage likely to remain higher than federal wage in 2008	3
Hostile Work Environment	
Palms West Hospital shows how to investigate, defeat sexual harassment claim	4
Florida News in Brief	
Sweep finds 23 businesses operating without required workers' comp coverage	5
Public Employers	
Court upholds firing of Florida principal who lobbied for charter conversion	6
Federal Contractors	
New rules for hiring of veterans to affect federal contractors, subcontractors	7

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Statutory amendments limit PERC's discretion regarding most public employees

Although Smith's case fell within one of the exceptions allowing PERC to reduce the recommended penalty, most public employees wouldn't enjoy the same options. The statute says:

If the commission finds that cause did not exist for the agency action, the commission shall reverse the decision of the agency head and the employee shall be reinstated with or without back pay. If the commission finds that cause existed for the agency action, the commission shall affirm the decision of the agency head. The commission may not reduce the penalty imposed by the agency head, except in the case of law enforcement or correctional officers, firefighters, and professional health care providers, if the commission makes specific written findings of mitigation.

categories of public employees. Nevertheless, it does raise some questions:

- When is bad behavior understandable?
- To what extent should public employers consider an employee's personal life when determining appropriate discipline?

Future PERC decisions may help to clarify those issues. We'll keep you posted on any developments. ❖

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