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GUNS AT WORK

Appeals court shoots down UNF's rule against guns in parked vehicles

by Robert J. Sniffen and Jeff Slanker
Sniffen & Spellman, P.A.

In a move that will affect the actions of state universities and other public entities, Florida's 1st District Court of Appeals (DCA) has struck down a regulation implemented by the University of North Florida (UNF) that prohibited students from having guns in vehicles on campus. In an opinion with several concurring opinions and a dissent, the court found that UNF couldn't regulate the possession of guns in automobiles on campus under such a policy.

Background

UNF implemented a policy that prohibited students from carrying guns on campus. The policy included a prohibition on students keeping guns in automobiles parked on campus. Alexandria Lainez, a UNF student who is a member of Florida Carry, Inc., an organization of gun owners, has a concealed weapons permit and carries a firearm for self-defense. Lainez commuted to the Jacksonville campus and wanted to store her gun in her vehicle while she attended classes. She and Florida Carry challenged the validity of UNF's policy in a Florida trial court.

In their lawsuit, Lainez and Florida Carry claimed the policy prohibiting students from keeping guns in cars parked on campus was outside the university's authority. They sought equitable and other relief, including an injunction prohibiting the enforcement of the policy.

Florida Carry and Lainez posited that the Florida Legislature has expressly preempted firearms regulation, which means that UNF's policy prohibiting guns in cars on campus was implemented without proper authority and is therefore contrary to law and not binding. They argued that Section 790.115(2)(a)3, Florida Statutes (2011), forecloses such policies being implemented by a university. Section 790.115(2)(a)3 states that firearms may not be possessed on school property except when they're encased in a vehicle, but it also provides that "school districts" may adopt certain policies or regulations that waive the exception to the general rule and prohibit firearms on campuses even when they're encased in a vehicle.

The trial court judge found that UNF is a "school district" under the law and therefore is authorized to adopt a regulation that prohibits possession of firearms on its property, including in vehicles on campus. Lainez and Florida Carry appealed that ruling. In a 12-3 decision, the 1st DCA disagreed with the trial court and invalidated the university's policy.

Appeals court's decision

The majority opinion, which was accompanied by several concurring

Harper Gerlach, PL, Stearns Weaver Miller, P.A., and Sniffen & Spellman, P.A., are members of the *Employers Counsel Network*

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AGENCY ACTION

E-Verify security change announced. The U.S. Citizenship and Immigration Services (USCIS) has announced a change in the E-Verify program aimed at combating identity fraud by identifying and deterring fraudulent use of Social Security numbers (SSNs) for employment eligibility verification. USCIS offers an example of an employer entering information into E-Verify that appears valid—such as a matching name, date of birth, and SSN—but was in fact stolen, borrowed, or purchased from another individual. The new safeguard enables USCIS to lock an SSN that appears to have been misused, protecting it from further potential misuse in E-Verify. If someone tries to use a locked SSN, E-Verify will generate a "Tentative Nonconfirmation," and the employee will have the opportunity to contest the finding at a local Social Security Administration (SSA) field office.

OSHA announces proposed rule on tracking injuries, illnesses. The federal Occupational Safety and Health Administration (OSHA) in November 2013 issued a proposed rule on tracking workplace injuries and illnesses. The public has until February 6 to submit written comments. OSHA was scheduled to hold a public meeting on the proposed rule on January 9 in Washington, D.C. The agency is proposing to amend its current record-keeping regulations to add requirements for the electronic submission of injury and illness information. The first proposed new requirement is for establishments with more than 250 employees (and that are already required to keep records) to electronically submit the records on a quarterly basis to OSHA. The agency also is proposing that establishments with 20 or more employees in certain industries with high injury and illness rates be required to electronically submit their summary of work-related injuries and illnesses to OSHA once a year.

New York latest state to sign misclassification agreement. Officials of the U.S. Department of Labor's (DOL) Wage and Hour Division (WHD), the New York State Department of Labor, and the New York attorney general have signed memoranda of understanding to prevent misclassification of employees as independent contractors. Similar agreements already are in force in California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Utah, and Washington. Memoranda of understanding with state governments arose as part of the DOL's Misclassification Initiative. A DOL statement announcing the agreement said that in the last two years, the WHD has secured over $18.2 million in back wages for more than 19,000 workers where the primary reason for minimum wage or overtime violations was that they weren't treated or classified as employees. ✤

opinions in which some of the judges claimed the majority's opinion covered constitutional issues it didn't have to address, as well as a vigorous dissenting opinion, which said the majority opinion defied common sense, held that the power to regulate firearms is ultimately reserved for the Florida Legislature. The majority opinion considered the long-standing constitutional right to bear arms and the legislature's enactments on firearms control and concluded that UNF lacked the power to issue a regulation infringing on constitutional rights in the way that its policy on firearms in vehicles did.

Generally, there is a constitutional right to bear arms in Florida. The majority opinion highlighted Article 1, Section 8(a), of the Florida Constitution, which provides that it is "the right of the people to keep and bear arms in defense of themselves and the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." The majority held that "by law" means that regulation of the right to bear arms must be enacted in a law passed by the legislature, if at all.

The majority also held that the legislature expressly preempted the ability of any local or state governmental entity to enact regulations infringing on the right to bear arms set forth in Section 790.33(1), Florida Statutes. Lawmakers amended that law in 2011 to emphasize that the regulation of firearms is solely within the purview of the legislature, not within the jurisdiction of local governments or even agencies of state government.

One regulation the Florida Legislature enacted to regulate firearms was implemented in 1992 when gun possession in schools on school district property motivated lawmakers to enact Section 790.115(2)(a), Florida Statutes, which provides that no one may possess a firearm on school property unless it is being used as part of a school-sanctioned event. That law applies to all schools in Florida, including public and private primary, secondary, and postsecondary schools. There are exceptions to the law, however.

Indeed, a person may carry a firearm in a vehicle on a school campus as long as it is kept securely encased in the vehicle. The law specifically indicates that the lawful carrying of firearms in a secured vehicle must be construed liberally in favor of the constitutional right to keep and bear arms for lawful purposes. Nevertheless, the law allows school districts to adopt written and published policies waiving the exception for purposes of student parking privileges on campus.

Because of that exception, if a university is deemed a "school district"—as UNF argued it should be—it would be authorized by law to implement a policy restricting the ability of its students to possess firearms on campus, even if the guns are encased in their vehicles. The appeals court analyzed the plain language of the law to determine whether the term "school district" encompasses universities. The majority held that the term does not include universities and, in fact, that interpretation would be contrary to the plain meaning of "school district." Accordingly, the 1st DCA held that UNF's regulation was improper. *Florida Carry, Inc. v. Univ. of N. Florida,* 1D12-2174, 2013 WL 6480789 (Fla. Dist. Ct. App., Dec. 10, 2013).

Meaning for employers

Many employers, including public and private employers of all types and sizes, have implemented policies addressing weapons and the possession of firearms at work or on company property. Like any policy, those policies should be closely examined to ensure they are compliant with prevailing law. That is especially true for state and local governmental entities in light of the 1st DCA's decision.

Indeed, the appeals court clearly held that state entities and local governments may not prevent anyone from lawfully keeping a firearm in her car even if it's parked on government property. Of course, there are some exceptions, such as the exception allowing school districts to regulate firearms possession in cars under certain circumstances.

Finally, the opinion highlights a decision by Judge Robert Hinkle of the U.S. District Court for the Northern District of Florida in which he found that the state could compel businesses to allow individuals to lawfully maintain firearms in their vehicles parked on company property. You should be aware of the legislative enactments and case law applicable to firearms in Florida when you draft or revise your company's firearm policies so you can ensure that they don't run afoul of the constitutional right to bear arms. ✤

CONFIDENTIAL INFORMATION

Court refuses to keep company information in lawsuit protected and confidential

by Tom Harper
Harper Gerlach, PL

For years, when an employer was sued, the parties quickly worked out a protective order that maintained the confidentiality of the documents exchanged during discovery (pretrial fact-finding). Often, the order required that the documents be returned to the employer's counsel at the end of the litigation. The federal courts in Florida now have local rules that greatly restrict a party's ability to keep documents and information confidential. Of course, most discovery documents aren't filed with the court but instead are used by the parties to support or defend motions or as exhibits at trial. Let's look at a recent case in which a court denied the parties' request that it maintain the confidentiality of the employer's personnel records.

Loan officers file FLSA suit

Early last year, a group of seven loan officers who worked for Prospect Mortgage in South Florida filed suit under the federal Fair Labor Standards Act (FLSA), seeking unpaid minimum wages and overtime. Prospect is one of the nation's largest independent residential retail lenders. The loan officers worked out of its Miami, Coral Gables, Hallandale, and Vero Beach offices.

The loan officers claimed that they regularly worked more than 40 hours a week but didn't receive minimum wage or overtime compensation. They alleged that Prospect didn't keep any records of their hours worked. Prospect believed the loan officers were exempt from overtime and hours-of-work record keeping. Soon after the lawsuit began, lawyers for both Prospect and the loan officers agreed to ask the court to approve a protective order to keep all documents exchanged during discovery confidential and out of the public eye.

Pleadings and other documents filed by the parties in court cases are public, and if you know how, you can access the documents over the Internet. Usually, an employer has an interest in keeping its personnel files and other company information confidential. In this case, the parties worked out language for a protective order stating that they expected to exchange "personal information related to current and/or former employees of [Prospect] and [its] customers as well as confidential and proprietary data related to [Prospect's] business model, compensation of employees and other customer-related and proprietary information."

Prospect and the loan officers then filed a joint request asking the court to approve an order protecting the employer's confidential information in the case. After reviewing the request, however, the court found that the parties provided an insufficient basis for overturning the long-standing principle and practice of maintaining the public nature of court proceedings and documents. According to Miami Judge James Lawrence King, "The federal judiciary has zealously protected the right of all citizens to free, open and public trials. . . . Open judicial proceedings are 'rooted in the principle that justice cannot survive behind the walls of silence' and in the 'traditional Anglo-American distrust for secret trials.'"

The court found that judicial documents are presumptively available to the public and can be sealed only if the right to access them is outweighed by higher interests that favor keeping the documents sealed. For example, the court mentioned that on rare occasions, the disclosure of certain information would threaten national security or place an individual in grave physical danger.

In considering the parties' joint request for privacy, the court stated that it found the request difficult to reconcile with the long-standing tradition of keeping court proceedings open to the public: "As to the request to protect 'proprietary data related to [Prospect's] business model . . . and other customer-related proprietary information,' the court is left to wonder why this information is needed." The court also wondered why information about current and former employees' compensation and

WORKPLACE TRENDS

Survey shows importance of benefits in recruiting. A new survey shows that most workers say the benefits package an employer offers—especially health insurance—is important in their decision to accept or reject a job, but 26% of the respondents aren't satisfied with the package offered and 31% are only somewhat satisfied. More than three-fourths of employees said the benefits package an employer offers prospective employees is extremely (33%) or very (45%) important in their decision to accept or reject a job, according to the 2013 Health and Voluntary Workplace Benefits Survey by the Employee Benefit Research Institute and Greenwald and Associates. Workers continue to rank health insurance as the first or second most important benefit provided by employers.

Employers call stress top workforce risk issue. U.S. employers call stress the top workforce risk issue, ranking it above physical inactivity and obesity, according to the 2013/2014 Towers Watson Staying@Work Survey, conducted by global professional services company Towers Watson and the National Business Group on Health. The survey also showed that just 15% of employers identify improving employees' emotional/mental health (i.e., lessening the stress and anxiety) as a top priority of their health and productivity programs. Employers rank the top three causes of workplace stress as lack of work-life balance, inadequate staffing, and technologies that expand employee availability during nonworking hours. Employees rank inadequate staffing as the top source of stress, followed by low pay or low pay increases and unclear or conflicting job expectations, according to Towers Watson's Global Benefits Attitude Survey.

Survey finds college major often not related to occupation. Forty-seven percent of college-educated workers responding to a CareerBuilder survey said their first job after college wasn't related to their college major. Thirty-two percent of college-educated workers said they never found a job related to their major. Even when people didn't find employment related to their major, many report satisfaction with their educational decision. Sixty-four percent of the employees in the survey said they were happy with the degree they chose. While 13% of college graduates said the demand for their degree increased between the time they entered college and the time they graduated, 28% said the market for their degree got worse, and 59% said the market for their degree was unchanged. Thirty-six percent of all college-educated workers said they wished they had chosen a different major. ✤

salaries should be protected and confidential in an action that places such information at issue.

The court cited one of its own local rules, which states that proceedings in the federal courts of the Southern District of Florida are public and court filings are a matter of public record. Without more convincing evidence of the need for privacy, the court denied the parties' request and stated that the information would be open and available to the public. *Byron Andrews et al. v. Prospect Mortgage, LLC,* Case No. 13-CV-21453-JLK (So. Dist. Fla., December 5, 2013).

The message

As this decision makes clear, protective orders that maintain confidentiality for employment records used in litigation will no longer routinely be approved. It remains to be seen whether parties can negotiate their own private agreements protecting confidentiality and requiring the return of sensitive documents at the end of the litigation. Whether a court would enforce such an agreement if one party failed to adhere to it is unknown, but it's perhaps unlikely. Although this case involved the FLSA, a court would probably reach the same result in other types of employment law cases. ✤

FCRA PROCEDURES

It's 2014: Are you using the correct forms to conduct background checks?

by Lisa Berg
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

Under regulations issued by the Consumer Financial Protection Bureau (CFPB), which replaced the Federal Trade Commission (FTC) as the enforcer of most provisions of the Fair Credit Reporting Act (FCRA), employers were required to begin using a revised "summary of rights" form for background checks as of January 1, 2013. It's a year later—has your organization updated its forms?

What is the FCRA?

The FCRA is a federal law that applies to employers that use a third party—i.e., a consumer reporting agency (CRA)—to conduct background checks and obtain "consumer reports" (broadly defined to include credit, criminal background, motor vehicle, and educational records checks, among other things) on employees or applicants for hiring, promotion, or other employment-related decisions. If an employer conducts background checks on its own without a CRA's assistance, the FCRA doesn't apply.

Before receiving a consumer report, the employer must certify to the CRA that it will follow all the steps set forth in the FCRA. The certification must state that the employer will:

- Use the information for employment purposes only.

- Not use the information in violation of any federal or state equal employment opportunity law.
- Obtain all the necessary disclosures and consents.
- Give the appropriate notices if it decides to take an adverse action against an applicant based in whole or in part on the contents of the consumer report.
- Provide the additional information required by law if it requests an investigative consumer report.

What does the FCRA require?

Before obtaining a consumer report from a CRA, an employer must obtain written consent from the job applicant and provide her with a clear and conspicuous written notice that a background report may be requested. The disclosure must be in a stand-alone document, not part of an employment application. The disclosure and consent may be in the same document. If an employer wants authorization to obtain consumer reports throughout an employee's employment, the written authorization must state that clearly and conspicuously.

A special procedure is necessary when the employer asks the CRA to obtain employment references.

A special procedure is necessary when the employer asks the CRA to obtain employment references. An "investigative consumer report" involves personal interviews with people who know the applicant or employee to obtain information about his character, general reputation, personal characteristics, and lifestyle. In requesting an investigative consumer report, an employer must adhere to the following special procedures:

- The applicant must be given notice containing specific language that an investigative consumer report is being requested. Unless it is contained in the initial disclosure, the applicant must receive the notice within three days after the request for an investigative consumer report is made.
- The disclosure must tell the applicant that he has a right to request additional information about the nature of the investigation.
- If the applicant makes a written request, the employer has five days to respond with additional information and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

Before taking an adverse action based on any information contained in the report (e.g., termination, demotion, failure to hire or promote), the employer must give the applicant or employee:

- Notice of its intent to take an adverse action and a copy of the consumer report it relied on in making the decision (commonly referred to as the "preadverse action" letter); and
- A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

The employer also must wait a reasonable period of time before making a final decision (e.g., five days).

After the adverse action is taken, the employer must give the employee or applicant a notice of adverse action. The notice must contain:

- A statement that the adverse action was taken based on the consumer report;
- The name, address, and telephone number of the CRA that supplied the report;
- A statement that the CRA did not make the adverse decision and cannot explain why the decision was made;
- A statement that the employee may obtain a free copy of her consumer report from the CRA within 60 days; and
- A statement that the employee may dispute the accuracy or completeness of the consumer report with the CRA.

Penalties for failure to comply with the FCRA

Failure to comply with the FCRA can have serious consequences. The Act allows individuals to pursue litigation against employers that fail to satisfy any of its requirements. Negligent failure to comply with the law's requirements can lead to actual damages and attorneys' fees, while willful failure to comply can lead to statutory damages ($100 to $1,000 per violation), attorneys' fees, and punitive damages.

Bottom line

In November 2013, a proposed class action was filed against The Walt Disney Company. The complaint alleges that Disney relied on background checks obtained through a CRA but never provided employees with legally required notice of any adverse action or access to the reports. Whether the lawsuit will succeed individually or on a classwide basis remains to be seen, but it serves as a good reminder of the importance of complying with the technical requirements of the FCRA when conducting background checks.

As we enter another new year, employers should review HR processes and procedures and verify that the appropriate forms are being used. If questions about the various steps required under the FCRA arise, consult with experienced employment counsel. ✤

UNEMPLOYMENT COMPENSATION

Employee gets unemployment benefits after quitting work to care for ailing father

by Sean Douthard
Harper Gerlach, PL

Florida law provides unemployment compensation for employees who lose their jobs through no fault of their own. An employee will be disqualified from receiving unemployment benefits if she is discharged for misconduct or voluntarily leaves her job without good cause attributable to the employer.

Recently, an employee was awarded benefits after voluntarily leaving her job to care for her ailing father without her employer's permission. A Florida appeals court ruled that taking an indefinite amount of time off to tend to a family emergency without the employer's permission or against its wishes is good cause to leave a job sufficient to justify unemployment benefits.

Facts

Fior Ramirez worked as a housekeeper for Remington Lodging & Hospitality, a hotel in Atlantic Beach. After learning that her father, who resided in the Dominican Republic, had suffered a stroke, Ramirez asked her manager for time off to be with him. The problem was, she couldn't say how long she would be gone or when she was planning to come back. The manager, Katie Berkowski, claimed she told Ramirez that she wouldn't be able to give her a leave of absence. However, she allegedly offered Ramirez leave under the Family and Medical Leave Act (FMLA). Ramirez never followed up on the FMLA leave offer.

Two days later, Ramirez called Berkowski and told her that she was in the Dominican Republic. She explained that her brother bought her a plane ticket so she just left without letting Berkowski know. Her father died about a week after she arrived. The following week, she returned to the hotel to pick up her paycheck. At that point, Berkowski told her that she had abandoned her job.

Ramirez applied for but was denied unemployment benefits after it was determined that she quit her job for personal reasons that weren't attributable to her employer. An appeals referee affirmed that initial determination.

The appeals referee found that Ramirez had essentially asked for an indefinite amount of time off for a family emergency, and the employer's denial of her request couldn't be considered so unreasonable that it would cause an average able-bodied worker to quit. The appeals referee also noted that Ramirez didn't seek leave under the FMLA after being advised to do so. Because she quit without good cause attributable to her employer, she was denied unemployment benefits.

After the initial determination and the hearing before the appeals referee, the next step is a review by the unemployment appeals commission (or the Reemployment Assistance Appeals Commission, as it is now known). Ramirez appealed the referee's decision to the commission, which affirmed her disqualification from unemployment benefits. The commission concluded that even if she had been constructively discharged rather than voluntarily leaving her job, the evidence showed that she would have been discharged for excessive absences without permission, which would amount to misconduct connected with work. Ramirez then filed an appeal with the 1st DCA.

DCA finds good cause to quit

In a split decision, the court held that Ramirez should be entitled to unemployment compensation. The court explained that there is a long-standing body of case law that excuses an employee's departure from work without the employer's permission or against its wishes when there is a bona fide family emergency.

Under Florida law, an employee is disqualified from unemployment benefits if she voluntarily leaves work without good cause attributable to the employer or was discharged for misconduct connected with work. The term "good cause" includes cause attributable to the employer that would compel a reasonable employee to cease working or cause attributable to an illness or disability requiring separation from work.

In this case, the court pointed out that when there is evidence of a genuine family emergency, an employee cannot be denied benefits because she voluntarily quit or committed misconduct since leaving work for such an emergency constitutes good cause rather than disregard of the employer's interests. The court held that Ramirez's father's stroke and death easily qualified as a family emergency. As a result, she had good cause to leave work to go see him.

The court also pointed out that the appeals referee's conclusion that Ramirez quit in part because she didn't seek leave under the FMLA didn't change the result. The court reasoned that there was no evidence to suggest Berkowski ever explained the FMLA to Ramirez or that Ramirez understood her rights under the law. Berkowski's own testimony may have played a part in the court's reasoning. She testified that she should have responded to Ramirez's request for leave by telling her that she could take leave without pay under the FMLA. *Ramirez v. Reemployment Assistance Appeals Commission*, No. 1D12-5009 (Fla. 1st DCA, November 26, 2013).

Takeaway

If an employee seeks time off to tend to a family emergency, the first thing you should consider is FMLA leave if the employee is eligible for it. You should then take steps to ensure she understands the basic provisions of the Act. If an employee refuses or disregards FMLA leave, it's not completely unreasonable to assume that her expected absence for an indefinite amount of time is a terminable offense. After all, the employee is basically saying, "I'm not going to be coming into work for a while."

Prolonged absences may seem like misconduct sufficient to justify terminating an employee without having to worry about her drawing unemployment. However, as the court held in this case, refusing to allow an employee to take time off to tend to a family emergency gives her good cause to quit. If an employee has good cause for leaving her job attributable to the employer, she will be eligible for unemployment compensation, which will be taxed to the employer's account. ✤

LITIGATION

Supreme Court to settle long-standing employment issues during new term

The U.S. Supreme Court will hear arguments for and issue opinions on numerous cases with ties to the labor and employment realm during the 2013-14 term, which began in early October. For brief summaries of select cases pending before the court, read on.

NLRB recess appointments

The authority of the National Labor Relations Board (NLRB) has been significantly hampered by legal controversy since 2007, when the expiration of three members' terms and a lack of confirmation of new members left the five-member Board with no quorum. Though recess appointments were made in 2010, by the end of 2011, the NLRB again was without a quorum. In 2012, President Barack Obama announced recess appointments in an effort to fill the Board's three vacancies.

The president's recess appointments were heavily criticized as unconstitutional, and in January 2013, a panel of the U.S. Court of Appeals for the District of Columbia Circuit declared the appointments invalid because the vacancies (1) didn't arise between Senate sessions and (2) the appointments weren't made during an actual recess between sessions.

In *NLRB v. Noel Canning,* the Supreme Court will determine whether the appointments were valid. If the Court finds the appointments improper, the NLRB wouldn't have had a quorum or the authority to render decisions during the appointees' tenure, and hundreds of Board decisions will be invalid (including one against bottling company Noel Canning).

Compensation for donning and doffing

Finally. For years, the wage and hour arena has been filled with uncertainty regarding compensation for donning and doffing in unionized workplaces.

Section 203(o) of the Fair Labor Standards Act (FLSA) allows employers to exclude "any time spent in changing clothes or washing at the beginning or end of each workday" when the time is excluded "under a bona fide collective bargaining agreement." In other words, the FLSA makes payment for "changing clothes" a subject of bargaining rather than a guaranteed statutory right.

Yet for many years, case law has held that time spent changing into (donning) and out of (doffing) required protective gear before beginning hazardous work is compensable work time regardless of bargaining agreements. The theory behind this distinction is that unlike a work uniform, handling protective gear is generally more time-consuming, employees don't have the option of changing into it at home, and the work can't be performed safely without the gear.

In light of this confusion and differences of opinion among lower courts, the Supreme Court has agreed to hear *Sandifer v. U.S. Steel, Corp.,* to determine what "changing clothes" means within the context of the FLSA.

In *Sandifer,* steelworkers from the U.S. Steel plant in Gary, Indiana, sought payment in court for the time they had spent each day donning and doffing what they considered protective gear—flame-retardant pants and jacket, work gloves, work boots, a hard hat, safety glasses, ear plugs, and a hood. U.S. Steel argues that the workers are under a collective bargaining agreement that clearly specifies that time spent changing clothes isn't compensable.

Also at issue in the *Sandifer* case is compensation for the time spent walking to and from the worksite after changing clothes.

Contraceptive coverage

A recent addition to the Supreme Court docket, the cases of *Sebelius v. Hobby Lobby Stores, Inc.,* and *Conestoga Wood Specialties Corp. v. Sebelius* will determine whether for-profit corporations may, based on the religious objections of company owners, deny contraceptive coverage required under the Affordable Care Act (ACA).

The cases on appeal represent a split between two federal circuits, one of which held that a for-profit company is entitled to the same religious freedom

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protections as individuals, while the other circuit held that for-profit companies don't enjoy those same rights.

Although nonprofit religious organizations already may circumvent the contraception requirements of the ACA, similar exemptions don't exist for for-profit corporations such as Hobby Lobby.

Other topics of interest

Among other cases the Court will hear is one of interest to public employers that will examine the rights of and proper procedures for public employees who file age discrimination claims against public officials.

Another case will determine whether the whistleblower provision of the Sarbanes-Oxley Act applies only to employees of publicly traded companies or whether it also extends to employees of contractors and subcontractors of the company.

Other decisions will examine the statute of limitations for disability benefits review under the Employee Retirement Income Security Act (ERISA), whether a requirement that certain state employees pay a fair share of union dues is a violation of First Amendment rights, and whether severance payments are taxable under the Federal Insurance Contributions Act (FICA).

Stay tuned

Stay tuned to *Florida Employment Law Letter* for further updates as these and other significant U.S. Supreme Court decisions develop in 2014. ✤

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