EMPLOYMENT CASE LAW UPDATE

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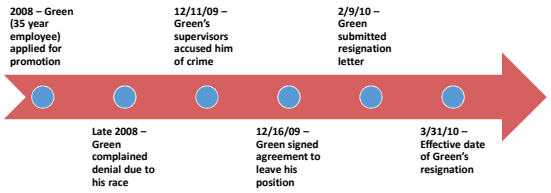
Time-barred Allegations Re: Constructive Discharge

GREEN v. BRENNAN
136 S.Ct. 1769 (U.S. Supreme Court May 23, 2016)



Green v. Brennan

- **Issue**: When does the limitations period for a constructive discharge claim begin to run for the purpose of filing an EEOC Charge?

- **Holding:** The limitations period starts for a constructive discharge claim:
  (1) the employer's last alleged discriminatory conduct AND
  (2) the employee's decision to resign in response to the employer's last act.

Free Speech Rights In Political Campaigns

HEFFERNAN v. CITY OF PATERSON
136 S.Ct. 1412 (U.S. Supreme Court April 26, 2016)

- Facts:
  - Heffernan, a Police Detective, was spotted delivering campaign signs to the opponent of the City's Mayor.
  - Heffernan was not actually supporting this candidate but was doing a favor for Heffernan's mom.
  - The City's Police Chief, who was aligned with the current Mayor, assumed that Heffernan was supporting the Mayor's opponent so Heffernan was demoted to regular Patrol Officer.
  - Heffernan's lawsuit alleged that his First Amendment rights were violated when he was demoted.
- Lower Courts:
  - All held dismissal proper because Heffernan had not engaged in protected speech.

Heffernan v. City of Paterson

- Issue for Supreme Court: Was Heffernan entitled to First Amendment protection even though he admittedly had not engaged in protected free speech but, instead, because his Police Chief thought Heffernan had engaged in protected speech?

FLSA Class/Collective Action Litigation and FLSA Record-keeping

TYSON FOODS v. BOUAPHAEKEO
136 U.S. 1036 (U.S. Supreme Court March 22, 2016)

- **Facts:**
  - Plaintiffs were class of employees who worked in Tyson's pork processing plant.
  - They worked in the kill, cut and trim departments where hogs were slaughtered, trimmed and prepared for shipment.
  - They were required to wear protective equipment depending on their assignment.
  - Plaintiffs alleged that times spent donning and doffing their protective equipment was "integral and indispensable" to their hazardous work and they should be paid for this time.
  - Tyson did not record time spent individually for donning and doffing
  - Plaintiffs hired an expert who conducted a study and determined the average time spent donning and doffing and applied class-wide.
  - Tyson argued class should not be certified because not sufficiently similar due to different jobs and equipment.

Tyson Foods v. Bouaphaekeo

- Practical impact:
  - Unfriendly to employers.
  - Ease in certifying class/collective action.
  - Easier time using expert testimony.

Indefinite Light Duty

FRAZIER-WHITE v. GEE

818 F3d 1249 (11TH Cir. April 7, 2016)

- Facts:
  - Plaintiff suffered a work-injury as a CSO.
  - Plaintiff placed on temporary light duty status at full pay and remained for 299 days.
  - Plaintiff requested indefinite light duty.
  - Plaintiff refused to apply for any vacant positions.
  - HCSO issued a non-disciplinary termination of plaintiff.

Frazier-White v. Gee

- 11th Circuit held:
  1) A request for an indefinite extension of light-duty status is unreasonable as a matter of law and is not a required reasonable accommodation.
  2) ADA does not require an employer to act in violation of its own civil service rules as a reasonable accommodation.

Independent Contractor v. Employee

CREW ONE PRODUCTIONS v. NLRB
812 F.3d 945 (11th Cir. Feb 3, 2016)

- Facts for Employee status:
  - Crew One provides orientation for stage hands.
  - Crew One requires stagehands to purchase and wear a hard hat and work boots and recommends they wear work gloves.
  - Crew One provides a reflective vest marked "Crew One" for events.
  - Crew One requires stagehands to follow Stage One policies
  - Stagehands must wear presentable clothing.
  - Stagehands must sign in and out to record their time of work.

Independent Contractor v. Employee

- Facts for Independent Contractor status:
  - Stagehands sign "independent contractor agreement".
  - Stagehands have discretion to wear comfortable clothing (if presentable).
  - Stagehands must pay for workers' compensation insurance.
  - Crew One does not withhold taxes.
  - Stagehands are risk-free to accept or decline offers to staff an event.
  - Crew One does not require fitness for duty tests to stagehands.
  - Crew One does not subject stagehands to discipline.
  - Crew One does not maintain an employee handbook.
  - Crew One does not reimburse stagehands for incidental expenses.
  - Crew One does not offer benefits to stagehands.
  - Crew One does not ban stagehands from outside work.
  - Stagehands take all direction from the third party client.

Crew One Productions v. NLRB

- Result:
  - Independent contractors as a matter of law.
- Key factors in determination were:
  - Crew One did not control the work of stagehands.
  - Stagehands provided their own basic supplies on the jobs.
  - Stagehands received no benefits from Crew One.
  - Stagehands paid for their own workers' compensation insurance.
  - Contract defined as independent contractor.

Public Whistleblower Act

SHAW v. TOWN OF LAKE CLARKE SHORES
174 So.3d 444 (Fla. 4th DCA Aug. 5, 2015)

- Facts:
  - Shaw was a police officer for the Town of Lake Clarke.
  - Wife was a dispatcher for the Village of Palm Springs.
  - Wife filed a charge of discrimination against her supervisor.
  - Shaw sent an anonymous letter to the Village.
  - The Village suspected Shaw and reported to the Town.
  - Shaw admitted to writing the letter on duty but was not questioned regarding the substance of the letter.
  - The Town terminated Shaw.

Shaw v. Town of Lake Clarke Shores

- Interesting theory: Shaw sought Whistleblower liability due to his WB activities with another agency (i.e. – his wife's employer).
- Result:
  - No WB liability under those facts
  - WB liability possible under this theory

Rustowicz v. North Broward Hosp. Dist.

174 So.3d 414 (Fla. 4th DCA September 9, 2015)

- Facts:
  - Rustowicz worked as an audit associate for Hospital District and she reported directly to Director R.
  - Rustowicz reported to Director R that District paid former CEO $35K to relocate but he never moved.
  - Director R authorized Rustowicz to investigate.
  - Rustowicz's report caused Director R's firing.
  - Director P was hired 5 months later.
  - Rustowicz was on medical leave the next two months.
  - Director P's reorganization eliminated Rustowicz's position.
  - Rustowicz deemed not qualified for four positions she applied and was separated from employment.

Rustowicz v. North Broward Hospital District

- 4th DCA reversed summary judgment:
  1) Rustowicz not required to submit a signed, written complaint.
  2) The Director of District's Internal Audit Department was "appropriate local official".

Restrictive Covenants

EVANS v. GENERIC SOLUTION ENGINEERING
178 So.3d 114 (Fla. 5th DCA October 30, 2015)

- Facts:
  - Evans and Chinn were independent contractors for Tech Guys who built and optimized automated online sales and marketing systems for customers.
  - Chinn's non-compete agreement prohibited him from working directly or indirectly with Tech Guy customers for 24-months.
  - Evans had no non-compete agreement.
  - RRI was a customer of Tech Guys but stopped doing business with them while Evans and Chinn were still affiliated with Tech Guys.
  - Evans formed X-Tech and did business with RRI.
  - Chinn became business partner with X-Tech.

Evans v. Generic Solution Engineering

- Trial Court - Granted injunctive relief against Chinn and X-Tech prohibiting them from doing business with RRI for the remainder of the non-compete period (14 months left).
- 5th DCA decision – Reversed and held that the protection of former customers generally does not qualify as a legitimate business interest.

Hiles v. Americare Home Therapy

183 So.2d 449 (Fla. 5th DCA December 31, 2015)

- Facts:
  - Americare provides in-home patient medical care services.
  - Americare relies heavily on patient referrals from physicians.
  - Hiles worked as a health liaison for Americare and signed a non-compete, non-solicitation and non-disclosure agreement.
  - Agreement specified that Americare's "business depends on referral sources" and described Hiles role forging relationships with referral sources.
  - 12-month non-competition and no-contact with referral sources.
  - Hiles left to work for Americare's primary competitor.
  - The day before announcing that she was leaving, Hiles pirated documents with Americare's customers, referral sources, patients and patients medical history.

Hiles v. Americare Home Therapy

- Result: 5th DCA held that referral sources are not a protectable legitimate business interest.
- Rationale: The statutory language excludes "prospective patients" as a protectable business interest. The Court relied on this exclusion by stating that Americare's referring physicians supplied "a stream of unidentified prospective patients" with whom Americare had no prior relationship.

Infinity Home Care v. Amedisys Holding

180 So.3d 1060 (Fla. 4th DCA November 18, 2015)

- Facts:
  - Amedisys provides home health care services such as in-home nursing and hospice care.
  - Sylvie Forjet had been hired to work as a Care Transition Coordinator for Amedisys.
  - Forjet's only referral sources for Amedisys were from Cleveland Clinic.
  - 12-month non-competition and prohibition against soliciting Amedisys' customers, patients and referral sources.
  - Forjet left to work for a direct competitor.

Infinity Home Care v. Amedisys Holding

- Holding: The 4th DCA upheld temporary injunction and held that referral sources are a protectable legitimate business interest.

Florida's Workers' Compensation Statute

WESTPHAL v. CITY OF ST. PETERSBURG
2016 WL 3191086 (Fla. Supreme Court June 9, 2016)

Statutory amendment reducing the cap on temporary total disability benefits from 5 years to 2 years deemed unconstitutional.

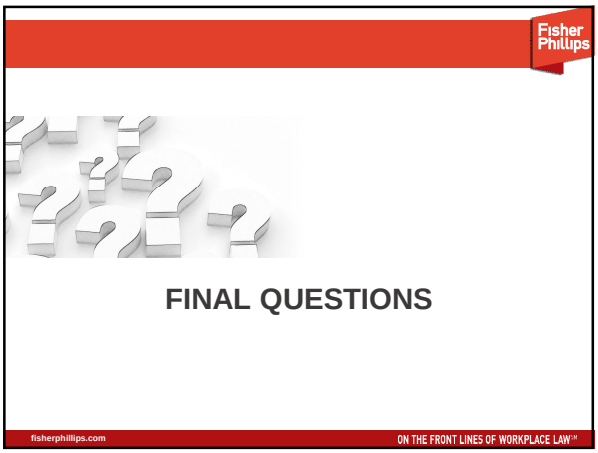
CASTELLANOS v. NEXT DOOR COMPANY
2016 WL 1700521 (Fla. Supreme Court April 28, 2016)

Statutory amendment limiting a claimant's ability to recover attorney's fees to a sliding scale based on the amount of worker's compensation benefits obtained was unconstitutional.

Computer Abuse And Data Recovery Act

§668.801 et. seq. – Effective October 1, 2015

- Purpose: To protect Florida business owners who are victimized by computer hackers, including disgruntled former employees
- Damages include actual damages, violator's profits, injunctive relief, reasonable attorney's fees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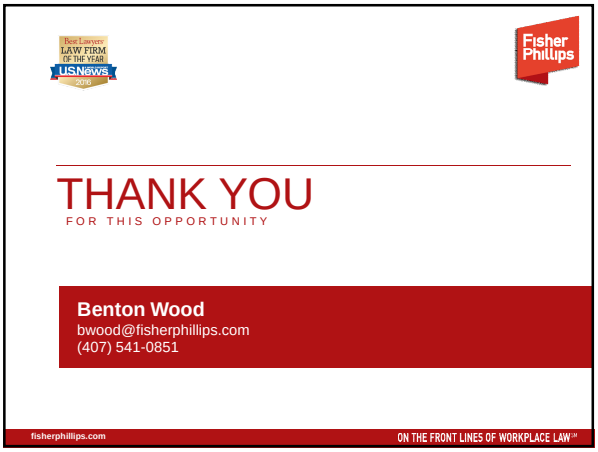
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