Legal Update

ROPER TOWNSEND & SUTPHEN

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NO INCREASE TO THE FEDERAL MINIMUM SALARY REQUIREMENT FOR WHITE COLLAR EXEMPTIONS UNDER THE FLSA

On April 23, 2024, the Department of Labor ("DOL") issued its Final Rule to increase the minimum salary requirements for "white collar" exemptions (executive, administrative, and professional) ("EAP exemptions") from minimum wage and overtime pay requirements under the Fair Labor Standards Act ("FLSA"). The increase was set to take effect in two stages: first, on July 1, 2024, the standard salary level was set to increase from $684 per week ($35,568 annually) to $844 per week ($45,888 annually). Then, on January 1, 2025, the salary was set to increase to $1,128 per week ($58,656 annually). The Rule also increased the highly compensation exemption (HCE) total annual compensation level from $107,432 per year to $132,964 per year on July 1, 2024, and $151,164 per year on January 1, 2025.

However, on November 15, 2024, a Texas federal court struck down the rule in *State of Texas, et al., v. U.S. Dept. of Lab., et al*., No. 4:24-CV-00468-SDJ (E.D. Tex. 2024) wherein the court granted summary judgment in favor of the state of Texas and a coalition of business organizations, striking down the DOL's regulations mandating significant increases to the salary basis for white-collar employees. The court held that the DOL exceeded its

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NEW FLORIDA STATUTE CRIMINALIZES INTERFERING OR IMPEDING A FIRST RESPONDER'S ABILITY TO PERFORM DUTIES

On January 1, 2025, a new Florida Statute, §843.31, became law. Fla. Stat. §843.31 criminalizes interfering or impeding a first responder's ability to perform their duties when engaged therein. The statute applies to law enforcement officers, correctional probation officers, firefighters, and emergency medical care providers.

The statute makes it unlawful to approach a first responder who is engaged in the lawful performance of a legal duty, after receiving a warning to not approach the first responder, and then knowingly and willfully violate such warning and approach or remain within 25 feet of the first responder with the intent to:

1. Impede or interfere with the first responder's ability to perform such duty;

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A PLAINTIFF'S MEDICAL RECORDS AND TAX RETURNS ARE RELEVANT AND DISCOVERABLE

There has been a recent trend, amongst attorneys representing plaintiffs in Federal Court, to object to the production of medical records and tax returns, even when they are claiming said damages in their Complaint. We recently faced this situation in two of our cases and prevailed on both occasions by reiterating what Federal Courts have consistently held.

Federal Rule of Civil Procedure 26(b)(1) provides:

> "Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable."

For purposes of discovery, relevance "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *See Drone Nerds Franchising, LLC v. Childress*, 2021 WL 7543800 at *3 (S.D. Fla.) *citing Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Courts have long held that relevance for discovery purposes is much broader than relevance for trial purposes. *Id*.

In *Johnson v. Scott*, 2014 WL 4322320 (M.D. Fla.) Plaintiff claimed to have suffered "emotional damages and depression" as a result of the incident which was the subject of the lawsuit. The Court found that Plaintiff had asserted claims both for physical and mental injuries, including mental anguish, depression, anxiety and fear. He had placed his mental health at issue. Therefore, the Court held that the documents and information sought in Defendant's Motion to Compel were relevant to the claims and defenses raised in the action, and thus were discoverable. *Id*. at *3.

Similarly, in *McIntyre v. Delhaize America, Inc.*, 2008 WL 11336308 (M.D. Fla.) the Court granted Defendant's Motion to Compel, and stated that even if plaintiff has not sought treatment for the alleged emotional distress or does not intend to proffer expert testimony in support of the damages claim does not make the plaintiff's medical history any less relevant to the claim. *Id*. at *2. *See also Dickerson v. Barancik*, 2019 WL 9904279 (M.D. Fla.) (finding that courts in the Middle District of Florida have ruled that a plaintiff's medical records are discoverable where they are relevant to the plaintiff's claims for physical or mental injuries.); *Wilcox v. La Pensee Condominium Association, Inc.*, 2022 WL 2948888 at * 3 (S.D. Fla.) (So long as there are emotional or mental distress damages at issue, a plaintiff shall produce responsive documents.)

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authority indicating that the DOL "simply does not have the authority to effectively displace the duties test with such a predominant salary-level test." The court also noted that its analysis applied equally to the HCE exemption and the related increases to the minimum compensation amounts.

Finally, the court found that the DOL lacked the authority to implement automatic increases to the required salary level for executive, administrative and professional employees and the HCE compensation amounts every three years. The court's order invalidated the rule nationwide and was effective immediately.

As a result, the increases in salary implemented in July of 2024 as well as the increase that was to go into effect on January 1, 2025, have been nullified. So, now what? This means that employers subject to FLSA overtime rules will **not** be required to comply with the **January 1, 2025**, increase and that the salary level in effect prior to July 1, 2024 ($684 per week, $35,568 per year) is restored and the salary level for the highly compensated employee exemption, $107,432 per year, is reinstated.

By: Cindy A. Townsend

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2. Threaten the first responder with physical harm; or
3. Harass the first responder.

We may see the application of this law in negligence and civil rights violation allegations against law enforcement officers after civilians are detained or arrested for disobeying a law enforcement officer's order to stay away and not approach. A person who violates Fla. Stat. §843.31 commits a misdemeanor of the second degree.

By: Chris Prusinowski

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Plaintiffs sometimes object by stating that the request would violate a certain privilege. However, under the sword and shield doctrine, a party who raises a claim that will necessarily require proof by way of a privilege cannot maintain the claim while invoking the privilege. *See Strong v. GEICO General Insurance Company*, 2017 WL 1006457 at *3 (M.D. Fla.); *Ahern v. Pacific Gulf Marine, Inc.*, 2007 WL 9723901 at *3 (M.D. Fla.). Fairness considerations arise when a party to the litigation attempts to use a privilege as both a shield and a sword. *Id*.

When a plaintiff places their medical condition and their financial damages at issue, the requested information and documentation are relevant and discoverable. If the plaintiff decides to not disclose these alleged damages, they can file a pleading stating that they are withdrawing the same and then they are not required to produce the information and documentation at issue. *Wilcox v. La Pensee Condominium Association, Inc.*, 2022 WL 2948888 at * 3 (S.D. Fla.). Otherwise, discovery addressed towards these claims is relevant and appropriate.

By: Ramon Vazquez

FLORIDA'S SUNSHINE LAW IN FOCUS: RECENT CASE CLARIFIES DIFFERENCE BETWEEN ADVISORY AND DECISION-MAKING COMMITTEES

A recent significant ruling in The Florida Citizens' Alliance, Inc. v. School Board of Indian River County case underscores the critical importance of government transparency and adherence to Florida's Sunshine Law. This decision clarifies the extent to which committees formed by government entities must operate with public access and accountability, directly impacting how school boards and other government bodies conduct their business.

The case involved two separate claims by Florida Citizens' Alliance (FLCA) against the School Board of Indian River County, alleging Sunshine Law violations. The first claim concerned the School Board's textbook committee, which reviewed and recommended social studies textbooks for adoption. The second claim involved a library committee formed to review challenged library books. The circuit court ruled in favor of the School Board on both claims, but the appellate court reversed in part, holding that the textbook committee was subject to the Sunshine Law, while the library committee was not.

The Fourth District Court of Appeal held that the textbook committee was subject to the Sunshine Law because it had been delegated decision-making authority, as it "crystalized" the School Board's ultimate textbook adoption decisions. The committee's structured recommendations effectively limited the School Board's ability to exercise independent judgment. Conversely, the court found that the library committee did not fall under the Sunshine Law because it was comprised solely of district staff performing an advisory function without delegated decision-making authority.

This ruling has significant implications for government entities, particularly school boards and agencies that form committees to assist in policy making. The decision reaffirms that when a committee exercises decision-making authority or significantly narrows options for a final decision-making body, it must comply with public notice, open meetings, and record-keeping requirements under the Sunshine Law. The decision underscores the necessity of ensuring that government bodies provide proper public notice, access, and record-keeping when making policy decisions that impact the community. Government entities must carefully evaluate the nature of their committees and whether their functions require public transparency. This case serves as a cautionary precedent, emphasizing that procedural oversights in public access can lead to legal challenges and potential reversals of decisions.

By: Susan G. Gainey

UNITED STATES DISTRICT COURT HOLDS THAT AI SOFTWARE COMPANY, *WORKDAY INC.*, ASSISTS EMPLOYERS BY SCREENING THROUGH APPLICANTS, CAN BE HELD LIABLE PURSUANT TO ANTI-DISCRIMINATION STATUTES

The United States District Court in *Mobley v. Workday Inc.*, analyzed the use of a software program, that utilizes AI and machine learning technology after a Plaintiff alleged that the program discriminated against applicants based on their race, age, and disabilities. The United States District Court found that although Plaintiff did not sufficiently allege the same, the software program, Workday Inc. could be found liable under Title VII of the Civil Rights Act; (2) the Age Discrimination in Employment Act (ADEA); and (3) American with Disabilities Act pursuant to the employer agency theory. The United States District Court further held that the software company is not considered an employment agency because it did not procure employees for employers but rather screened through applicants and that the software does not relieve employers, i.e. Workday Inc.'s customers, of liability if it is determined that they intentionally discriminated against protected classes.

This suit arises from a complaint in which Derek Mobley alleged employment discrimination against Workday, Inc. Specifically, Mobley alleged that Workday's algorithm-based applicant screening tool discriminated against him, and other applicants based on race, age, and disability.

Workday, Inc. allegedly provides human resource management services including an applicant screening service, to collect, process and screen applications. Workday, Inc. allegedly embeds artificial intelligence (AI) and machine learning into its algorithmic decision -making tool enabling these applications to make hiring decisions. Workday, Inc. also allegedly integrates "pymetrics" that "use neuroscience data and AI" in combination with existing employee referrals and recommendations. Mobley alleged that these tools determine whether an employer should accept or reject an applicant and are designed in a manner that reflects employer biases and relies on biased training data.

Mobley falls under a number of protected classes. He is an African American, over the age of forty (40), and suffers from a reported disability, anxiety. Mobley alleged that he holds a Bachelor's Degree from an HBCU, is also an honors graduate from ITT Technical Institute, and is Server+ certified. Mobley reportedly also had experience with various IT help-desk and customer-service-oriented jobs.

Mobley allegedly applied to over 100 positions through Workday since 2017. Mobley alleged that he would upload his resume, which would reveal his education and work experience. Mobley would then be prompted to undergo an assessment and/or personality test. Mobley alleged that the software discriminated against both applicants and himself based on race as the software would pick up on his HBCU education. Mobley also alleged that the software discriminated against him through the use of its assessment/personality test. Mobley alleged that the assessment/personality test discriminated against applicants with mental

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health disorders and cognitive impairments. Upon uploading the pertinent information and undergoing the assessment/personality test, the software would then determine whether the employer applicant should be accepted or rejected for the position.

Mobley reported that he was denied for every one of the one hundred plus (100+) applications he submitted through the Workday software. Mobley alleged that although he had the qualifications required for the positions he applied for, he would receive rejection emails for those applications. At times, Mobley's application would be denied within an hour, exhibiting that the denial was an automated response.

As such, the Court assessed whether Workday, Inc. could be liable for employment discrimination pursuant to the anti-discrimination statutes. Although not sufficiently alleged in Mobley's Complaint, the Court found that Workday could be liable as an agent of the employer who utilizes the software because Workday's customers delegated their traditional function of rejecting or advancing candidates to the interview stage.

The Court noted that Workday's use of an automated agent and not a live agent did not affect the analysis as it is the "function" that the principal has delegated to the agent, not the manner in which the agent carries out the delegated function." The Court found that Workday would qualify as an agent because its tools are used to perform a traditional hiring function of rejecting candidates at the screening stage and recommending who to advance to subsequent stages, through the use of artificial intelligence and machine learning. The Court provided that "Workday's role in the hiring process is no less significant because it allegedly happens through artificial intelligence rather than a live human being who is sitting in an office going through resumes manually to decide which to reject."

The Court also made the distinction with respect to liability between employers and employment agencies. Specifically, the Court held that employment agencies face a different set of restrictions than employers. Specifically, employment agencies are liable when they fail or refuse to refer individuals for consideration by employers on a prohibited basis. However, employment agencies are not subject to the prohibitions applicable to employers in carrying out their traditional functions, such as hiring, discharging, compensating or promoting employees. Liability as an employment agency and liability as an agent of the employer are not coextensive. Specifically, the Court provided that an entity that is liable as an employment agency is not necessarily liable as an agent of an employer or vice versa.

The Court further provided that a company like Workday, Inc. may be liable for aiding and abetting its customers to engage in unlawful race, disability and age discrimination if the person bringing the action can establish that (1) the employer subjected him to discrimination; (2) the alleged aider and abettor knew that the employer's conduct violated FEHA; and (3) the alleged aider and abettor gave the employer substantial assistance or encouragement to violate FEHA.

By: Farideh E. Tadros

FIRM NEWS

WELCOME TO THE FIRM!

Roper Townsend & Sutphen proudly announces:

Jeffrey Ashton
Partner

Jeff's practice will include the representation of clients in civil litigation and trial practice.

Ryan Williams
Partner

Ryan's practice will include general tort liability, personal injury, premises liability and trail practice.

FIRM NEWS

WELCOME TO THE FIRM!

Jamie A. McManus
Associate

Jamie's practice will include the representation of clients in general litigation and trial practice.

Roper, Townsend & Sutphen is proud to spotlight the volunteer work of Susan Gainey. Susan has been volunteering as a Guardian ad Litem (GAL) for over two decades. Susan is a compassionate attorney dedicated to protecting the rights and well-being of vulnerable children in Central Florida. As a volunteer for the Legal Aid Society's GAL Program, Susan provides pro bono legal representation to children who have been abused, abandoned, or neglected. Her work ensures these children have a voice in the courtroom and access to the advocacy they need to navigate the complexities of the legal system. The GAL Program has been a vital resource for children in need for over four decades, pairing legal expertise with children in the foster care system to deliver the highest standard of care and representation. Susan's efforts, along with those of over 400 other volunteers, help make a life-changing difference for the 1,400 children served annually by this program.

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