



Florida EMPLOYMENT

A monthly newsletter designed exclusively for Florida employers

Law Letter

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Harper Gerlach LLC

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LITIGATION

Finally! Payment for legal fees for frivolous suits!

A Florida court recently awarded legal fees to the Dillard's department store chain after it successfully defended itself against a former employee's discrimination claim under the Americans with Disabilities Act (ADA). Read on to find out why it deserved the award.

Facts

Lea Cordoba sued Dillard's Department Stores based on the ADA. Dillard's terminated her after she was insubordinate with a supervisor during an altercation at work. Kathy Groo, a manager at Dillard's, decided to fire her. After Groo told Cordoba that she was terminated, Cordoba told her that she was having heart surgery and couldn't afford to be fired. She had missed many days of work because of doctor's appointments, and she told Groo that she hadn't felt well because of her heart condition. She claimed in her suit that she had a heart disorder that required surgery.

After the suit was filed, Dillard's was forced through a costly discovery (or pretrial fact-finding) period that included Cordoba presenting medical evidence that her condition was a disability. Cordoba and her lawyers, however, ignored an obvious weakness in their case — there was no evidence that Groo *knew* of Cordoba's heart condition or that she was disabled.

Cordoba and her lawyers demanded \$900,000 for her claimed unlawful termination and ADA violation! The parties went to mediation, and Dillard's offered her \$10,000 to settle her claims. She rejected that offer without making any further counteroffer or response. At the close of the discovery period, Dillard's asked the court to dismiss Cordoba's case for lack of proof. The court agreed, dismissed her claims, and awarded a judgment to Dillard's.

After winning the case, Dillard's asked the court to award it attorneys' fees and other costs on the ground that Cordoba and her lawyers had continued to litigate her claims long after it should have been obvious to them that her claims were untenable. Judge Patricia Fawsett with the U.S. district court in Orlando awarded the company attorneys' fees and costs.

Attorneys' fees

Historically in the United States, each party pays its own attorneys' fees. (In England, the loser pays the attorneys' fees.) The ADA provides that a court, at its discretion, may allow the prevailing party reasonable attorneys' fees. In practice, however, the rule is that attorneys' fees are *presumptively appropriate* for a "winning" employee but are *presumptively inappropriate* when an employer/company wins.

U.S. courts have justified that policy based on the fact that:

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- (1) terminated employees typically have far fewer financial resources than their employers and the policy ensures employee access to the courts; and
- (2) unlike a “winning” employer, an employee who’s terminated and wins has actually *vindicated* a substantive, statutory, or constitutional right and thus deserves full compensation.

To win attorneys’ fees in Florida, employers have been required to show that the underlying claim was *frivolous, unreasonable, or without foundation*.

Court’s decision

In deciding that Dillard’s should be awarded fees and costs from Cordoba and her lawyers, the court required that (1) it be plainly apparent that the employee’s claim was groundless and (2) it be apparent that an award of attorneys’ fees wouldn’t undermine or thwart the purpose of the ADA.

As Cordoba’s case proceeded through discovery, the court explained that it should have been obvious to her and her lawyers that there was a glaring hole in her case — there was no evidence that Groo had *knowledge* of her disability. Decisions under the ADA have established that knowledge of an employee’s disability (or, for that matter, of any other protected status) is necessary for a finding that she was fired because of her disability.

Cordoba’s only evidence that Groo knew of her disability was her own statements to Groo that she was going to the doctor a lot because she wasn’t feeling well, that she was having tests done, and that her doctors weren’t sure what was wrong with her. The court reasoned wisely that if she wasn’t sure whether she had a disability, how could Groo have known or concluded that she was disabled?

Without *knowledge* on the part of Groo, who was Dillard’s decisionmaker, Cordoba then shifted to a *constructive knowledge* argument. Her lawyers argued that low-level employees knew about her health; therefore, that knowledge should be *imputed* to Groo. Judge Fawsett, however, didn’t buy that argument and instead found it nonsensical: “After all, the use of the word ‘knowledge’ in the locution ‘constructive knowledge’ is really a misnomer. Constructive knowledge is not knowledge at all. It is a convenient legal fiction to which courts resort when it is necessary to give people an incentive to acquire actual knowledge.” By clinging to arguments that were made without legal precedent, the court decided that Cordoba and her attorneys’ conduct was tantamount to bad faith.

In deciding to award Dillard’s its fees, Judge Fawsett said she wouldn’t ignore the serious social costs of frivolous litigation to companies, which are then forced to pass those costs on to shareholders and customers alike. The court explained that if it didn’t discipline a frivolous suit under the ADA, hiring an ADA-protected employee would become “an exercise in Russian roulette” in which Florida employers wouldn’t know if their policies and practices would end up exposing them to “crippling [financial] liability.” Allowing baseless suits would have the result of forcing employers *not to hire* disabled persons. That would be the opposite of the result Congress sought in enacting the ADA.

Judge Fawsett instructed Magistrate Judge Karla Spaulding to take into account Cordoba’s financial circumstances in deciding how the fee award should be split between her and her lawyers. Judge Fawsett also instructed that the fee split should be based on the following questions:

- (1) Will the fee splitting convey to Cordoba the court’s dissatisfaction with her lawyers’ conduct and the merits of her claim?
- (2) Will the fee splitting place similarly situated employees on notice that they have an affirmative duty to participate actively in their cases and exercise control over their lawyers?
- (3) Will the fee splitting create disincentives for the blind pursuit of claims that have been exposed as frivolous through discovery?

Lea Cordoba v. Dillard’s, Inc., Case No. 6:01CV11320RL19KRS (M.D. Fla. 2003).

Web Alert no hoax

Our website, HRhero.com, gives you the latest national news in employment law. Go to www.HRhero.com/news to read:

- **“Anthrax threat justified firing”** — The NLRB upholds an employer’s dismissal of an employee who sent e-mails to her co-workers about anthrax in the workplace.
- **“New regulations aim to increase unions’ financial accountability”** — New rules from the DOL will require more detailed financial reporting from 5,000 of the nation’s largest labor unions.
- **“Supreme Court denies social security payments to worker”** — The high court unanimously upheld the Social Security Administration’s denial of benefits to a worker who had lost her job and was unable to find similar employment.
- **Agency Action** — The NLRB redesigns its website, and the EEOC’s back at full strength. ❖

Importance for employers

This case lays out the factors courts will look at when awarding attorneys' fees for companies that have been subjected to *frivolous and meritless* claims from current and former employees. The standards aren't easy to meet. In this case, Cordoba's failure to establish a necessary key element in her case led the court to conclude that fees were justified. There have been few reported Florida cases in recent years awarding employers attorneys' fees and costs for defending against frivolous claims and lawsuits. This case sends a loud message to lawyers that frivolous claims shouldn't be pursued.

You can catch up on the latest court cases involving the ADA in the subscribers' area of HRhero.com, which is the website for Florida Employment Law Letter. Simply log in and use the HR Answer Engine to search for articles from 51 Employment Law Letters. If you need help or lost your password, call customer service at (800) 274-6774. ♦

Briefly Speaking What's happening in employment law

Appeals of unemployment decisions

In two recent decisions, Florida courts have affirmed the right to file appeals of unemployment decisions by facsimile. Although the courts allow for fax transmissions of appeals to the Florida Unemployment Appeals Commission, *it's the burden of the party seeking to file by fax* to present evidence of a timely fax confirmation that shows that the appeal was successfully transmitted by fax to the appeals office. Once a party produces the fax confirmation, the burden then shifts to the Unemployment Appeals Commission to show that the appeal wasn't timely filed. Of course, these rules apply to employees as well as employers. *Gold Coast Eagle Distributing, Inc. v. Unemployment Appeals Commission and Scott Sawin*, Case No. 1D03-992 (1st DCA, November 25, 2003), and *Lonnie Langworthy v. Unemployment Appeals Commission and Communication Installation and Cisco*, Case No. 2D03-717 (2nd DCA, November 7, 2003).

Comment. In Florida, when the unemployment determination is made, it becomes final unless a party appeals the determination (requests a hearing) within 20 days from its mailing date. Decisions often state, "Your request must be filed in writing by mailing a letter . . . or faxing a letter. . . . *The postmark or fax stamped receipt date shall be the date of filing*" (emphasis added). Under the Florida Administrative Code, appeals that are filed by facsimile are considered to have been filed when date-stamped received at the authorized location. Under this rule, the party asking for an appeal of a decision has the burden to timely transmit a faxed request for hearing. At least one Florida court has held that, by implication, this rule imposes a duty on the

Unemployment Appeals Commission to timely docket the request. If you're filing an appeal by mail, be sure that you keep *proof* of your letter's postmark.

Unemployment cases move quickly. Make sure you carefully watch all time limits. If handling a hearing by telephone, remember that during the hearing, all parties must have copies of all documents used or introduced into evidence. You should not only retain the fax confirmation slip but also call the unemployment office to confirm receipt of the appeal. Note the name of the person who confirms receipt of your fax and the time of your conversation.

Workers' comp: Just when you thought you were covered . . .

In a county court decision from Pensacola, Judge G.J. Roark, III, has ruled that Florida employers are required to reimburse insurance companies that make Florida personal injury protection endorsement (PIP) payments to injured employees under automobile insurance policies. The court held that although an employee's injuries are covered by workers' compensation, if PIP benefits are paid to the employee under an insurance policy, the employer is required to reimburse the insurance company.

Make sure you carefully watch all time limits.

Antione McPherson was injured in an automobile accident while driving for Tucker Transportation Company. Tucker Transportation didn't claim that it had made workers' comp payments for either medical or indemnity benefits to him. Although the accident was covered by workers' comp, McPherson recovered \$9,999.80 in PIP benefits from State Farm Insurance under a private automobile insurance policy. The case was decided in county court because the damages were less than \$15,000. Florida requires that all insured drivers carry \$10,000 of PIP coverage that can pay for medical expenses, wage loss, replacement services, and accidental death benefits.

Florida law states that an insurance company that provides PIP benefits on a private passenger motor vehicle has a right of reimbursement against the owner or the insurer of the owner of a commercial motor vehicle under certain circumstances. The county court held that workers' comp coverage immunizes the employer only against tort (personal injury) liability — not liability arising from contract or some other obligation incurred by the employer (in this case, by a Florida law).

Since another Florida court had declared the reimbursement law unconstitutional in the 1980s, however, the court certified this issue to the Florida Supreme Court as a *question of great public importance*. In the coming months, the supreme court will decide whether an employer is immune from the reimbursement requirement and the constitutionality of the reimbursement law. *State Farm Mutual Automobile Insurance Company v. Tucker*

Transportation Co., Inc., Case No. 2002-CC-5505, County Court, 1st Judicial Circuit (October 27, 2003).

Comment. Add this issue to your checklist when there's an employee accident. In this case, the employer's workers' comp insurance would have covered the injured employee's medical treatments. If a PIP insurance policy pays for injuries instead, you can be liable for reimbursement to the insurance company. The reimbursements likely won't come from an insurance policy but instead will come from your funds.

Workers' comp: coverage for occupational diseases

Employee Thomas Brown filed a workers' comp claim and asked for benefits for long-term exposure to asbestos from his work with Florida Power Corporation. In a November 2003 decision, a district court of appeals held that in occupational disease cases, it's the *disability* of the employee, not the *diagnosis of the disease*, that determines compensability under Florida law.

Brown was awarded medical monitoring benefits based on his claim of exposure to asbestos. Florida Power and its insurance carrier appealed the award. In Florida, workers' comp is paid when an employee suffers an "injury by accident." Under Florida law, two situations meet the criteria of "injury by accident": (1) an unexpected or unusual event or result that happened suddenly and (2) when an employee suffers *disablement* resulting from an occupational disease.

At the workers' comp hearing, Brown *didn't establish* that he was disabled or had suffered a sudden accident. His exposure to asbestos standing alone wasn't enough to qualify as an "injury by accident," and the court reversed the award of benefits for his prolonged exposure to asbestos since he hadn't shown that he was *disabled* by the exposure. *Florida Power Corporation and RSKCO v. Thomas S. Brown*, Case No. 1D02-3894 (Fla. 1st DCA, November 21, 2003).

Comment. Florida employers are responsible for providing workers' comp benefits to an employee who suffers from an occupational disease only when the employee suffers *disablement* as a result of the disease. ❖

SOLICITATION AND DISTRIBUTION

Time to reexamine policies limiting off-duty employees' access to your work site

A recent National Labor Relations Board (NLRB) ruling from Florida examines the lawfulness of limiting off-duty employees' solicitations of their on-duty co-workers.

Background

Employers routinely institute policies restricting solicitation, distribution, and off-duty access to their business premises to minimize workplace distractions, prevent co-worker harassment, and maintain the orderliness and cleanliness of the workplace. Those kinds of policies also have the effect of restricting traditional union organizing methods at work sites. For that reason, unions have frequently challenged the policies as illegal, citing them as overly broad restrictions on employees' rights in violation of Section 8(a)(1) of the National Labor Relations Act (NLRA).

Facts and findings

On September 19, 2003, in the NLRB's most recent decision about an employer's right to prevent solicitation and distribution on company property, the Board found that a blanket prohibition of access by off-duty employees to *all* of an employer's property — including exterior, non-working areas — violates Section 8(a)(1) of the Act. The Board found that language in an employee handbook prohibiting employees from "entering company property after hours without authorization" was unlawful.

The NLRB relied on a previous ruling and reasoned that an employer couldn't bar off-duty employees from coming onto the *exterior, nonworking areas* of its property unless it could show some business justification for doing so. Thus, language that prohibits off-duty employees from entering a company parking lot will likely violate Section 8(a)(1).

Despite the decision, as an exercise of your property rights and managerial prerogative, you may still restrict an employee from entering the *interior* of buildings on your property and/or the *exterior, working areas*. *Mediaone of Greater Florida, Inc.*, 340 NLRB No. 39 (9/19/03).

Bottom line

The NLRB's ruling shouldn't be a problem for those of you with well-drafted, narrowly tailored distribution/solicitation policies. But in light of currently reinvigorated union organizing activity throughout the country, now would be a good time to review any policies currently in place to determine whether they prevent employees from entering parking lots, service gates, and/or other nonworking areas after hours, which could be considered illegal under the NLRA.

Solicitation, distribution, and off-duty access policies can vary depending on your company's situation. If you don't have a legal policy, contact your company attorney, or for a sample policy, e-mail your editor at gth@HarperGerlach.com. ❖

REGULATIONS

Revised hours-of-service rule for truck drivers takes effect

The U.S. Department of Transportation (DOT) will begin enforcing its new hours-of-service regulation for truck drivers on January 3, 2004. The new rule changes the required rest time and duty time for commercial vehicle drivers and the manner in which duty time is calculated. The government estimates that the new regulation will cost trucking companies about \$1.3 billion a year, although some affected by the changes believe the cost will be greater.

The new regulation, which was published in April 2003, is the first revision of the hours-of-service regulation since it was enacted in 1939. The purpose is to improve highway safety and help reduce the number of truck crashes and related fatalities and injuries by addressing commercial motor vehicle drivers' fatigue.

The new rule increases the time that truck drivers must set aside to rest in a 24-hour duty period from eight hours to 10. The total time that a driver can be on duty will fall from 15 hours to 14 hours. The new regulation, however, allows drivers to spend 11 hours on duty, which is one more than they're currently permitted. Similar to the way that it works under the existing rules, drivers may not drive after being on duty for 60 hours in a seven-consecutive-day period or 70 hours in an eight-consecutive-day period. That on-duty cycle may be restarted when a driver takes at least 34 consecutive hours off-duty.

Short-haul truck drivers (those who routinely return to their place of dispatch after each duty tour and then are released from duty) may have an increased on-duty period of 16 hours once during any seven-consecutive-day period.

Another significant change is that the new regulation requires drivers to include the time spent waiting at loading docks or refueling as work hours. Under the current rule, that time isn't counted as working time. Thus, under the new rule, delays at loading docks and refueling could become quite costly to trucking companies.

The rule applies to drivers transporting freight in interstate commerce in a property-carrying commercial vehicle with a gross vehicle weight rating of 10,001 pounds or more and operating vehicles carrying hazardous materials in quantities requiring vehicle placards. With only one month left before the DOT begins enforcement efforts, companies affected by the new regulation should take prompt action to confirm that they're in compliance. ❖

INTERNET RESOURCES

New 'Employ Florida' link

by Lucia Fishburne

*To attract, retain, and grow businesses, Florida must be able to help employers **recruit** skilled workers and **retain** and **retrain** their existing workers. Florida must also help its citizens find and keep jobs that provide a good quality of life. A competitive workforce means competitive businesses, which keeps Florida competitive. A grand plan, but how do you bring the talent together with the opportunities?*

Employ Florida

Employ Florida was created in response to the need for a single entry point for Florida's workforce system. At the state level, we have Workforce Florida, the state policy and oversight board, and the Agency for Workforce Innovation, the state agency that administers workforce funds. At the local level, there are 24 workforce regions in Florida — each has a unique name and brand. Many, but not all, of the regions incorporate geographic identifiers into their names, such as the Tampa Bay Alliance or Workforce Escarosa. The 100-plus one-stop centers the regional boards administer at the local level also have different names or brands, which may or may not reference the regional board name. Examples include JobsPlus, One Stop Career Center, Workforce Center, Workforce Career Center, WorkSource Career Services, Jobs, etc., and One Stop Center.

Some workforce regions serve all their business customers at one location, some send out business reps to the employers' businesses, and others provide business services at all of their locations. Confusing, isn't it? Employers that recruit in more than one region express concern about having to deal with multiple boards and one-stop names/brands with no apparent link between them.

To build on the power of the existing local brands, Workforce Florida has created a new "linking brand," Employ Florida, similar to the FTD affiliate model used to link floral services. Businesses and individuals can now locate workforce services and resources wherever they are by calling the new Employ Florida toll-free number, (866) FLA-2345, or logging onto www.employflorida.net.

Example services to businesses

- employee recruitment services;
- applicant prescreening and job referrals;
- recruitment and retention services;
- employee skills information and services;
- labor market analysis and information; and
- rapid-response services in the event of a ramp up or reduction in workforce.

Example services to individuals

- job leads and listings;
- labor market information;
- information on filing unemployment claims;
- access to labor market and salary information;
- assessments;
- veteran's assistance;
- fax, telephone, and copy machine equipment use;
- employability workshops;
- a resource library with the latest books, periodicals, and newspapers; and
- a computer resource room for updating resumes and conducting an Internet job search.

To locate our services, call toll-free at (866) FLA-2345 or visit the website at www.employflorida.net.

Lucia Fishburne is the communications director for Workforce Florida. She may be contacted at lfishburne@workforceflorida.com. ❖

EMPLOYER LIABILITY

Litigation trends

In recent years, Florida companies have been named in traffic accident suits in which a manager or another employee was using a cell phone at the time of the accident. Personal injury lawyers have targeted employers as “deep pockets” and have drawn companies that issue and pay for cell phones for managers and executives into personal injury suits. Lawyers for the injured individuals argue that the company knew and expected the manager to communicate with cell phones and thus is responsible for the manager's negligence.

Now lawsuits in other states have raised the possibility that companies may be targeted for suits in which employees are driving while *sleepy*. Lawyers are starting to argue automobile personal injury cases in which there's evidence that the employee driver had been working long hours and was sleepy at the time the accident occurred.

For example, a few months ago, New Jersey became the first state to pass a law that makes operating a vehicle or vessel while fatigued a crime if someone is killed. The New Jersey law is called “Maggie's Law” for Maggie McDonnell, a 20-year-old college student killed by a driver who fell asleep behind the wheel. The new law makes vehicular homicide while fatigued a second-degree felony punishable by up to 10 years in prison and a \$150,000 fine if the driver stayed awake at least 24 hours straight before a fatal accident.

You should be careful not to use scheduling or other compensation schemes that result in employee work situations that lead to extreme fatigue. Of concern are companies that operate outside a standard nine-to-five workday, such as trucking firms, health care facilities, and manufacturing companies that operate double shifts and mandatory overtime. Even public-sector agencies can be vulnerable when their employees are exposed to 24-hour work shifts. Monitoring overtime and developing policies on cell phone usage and required rest periods may help you avoid liability. ❖

AMERICANS WITH DISABILITIES ACT

EEOC unveils new fact sheet

The U.S. Equal Employment Opportunity Commission (EEOC) has released a fact sheet designed to educate job applicants about their rights under Title I of the ADA. The fact sheet, which addresses issues in a question-and-answer format, is part of the EEOC's efforts to advance the employment of individuals with disabilities under President George W. Bush's “New Freedom Initiative.”

The new publication explains employers' reasonable accommodation obligations under the ADA during the hiring process, including examples of reasonable accommodations and accommodations that are too difficult or expensive. For example, in response to the question of whether you must give employees a specifically requested reasonable accommodation, the fact sheet states that when more than one accommodation meets the employee's needs, you may choose which one to provide.

The fact sheet also outlines the types of questions you're prohibited from asking on applications, during interviews, and after making an offer. According to the fact sheet, you may not ask an applicant how many days she was sick last year. In addition, the fact sheet notes that except under specific circumstances, you may not ask an obviously disabled applicant medical questions during an interview.

On the other hand, the fact sheet clarifies the circumstances under which you may seek medical information from applicants. For instance, questions such as “Do you have a disability that would interfere with your ability to perform the job?” and “What prescription drugs are you currently taking?” may be asked after extending a job offer so long as you ask the same questions of other applicants offered the same type of job.

The fact sheet also provides resources on how to file a discrimination charge and how to obtain further information about the ADA. To obtain a copy, visit the agency's website at www.eeoc.gov/facts/jobapplicant.html. ❖

PROTECTED ACTIVITY

Workers who walked off the job may not be fired

A federal appellate court has upheld an order to reinstate six nonunion workers who walked off the job to protest actions by their supervisor. According to the court, the work stoppage constituted protected activity under federal labor law. This ruling is important because it reminds employers that workers have the right to engage in protected concerted activity even in a nonunionized workplace.

Complaints go unanswered

Trompler, Inc., employs 30 workers at its machine shop in Waukesha, Wisconsin. Eight of those employees work during the second shift (which runs from 2:00 p.m. to 10:00 p.m.).

On July 9, 1998, six workers walked off the job shortly after the second shift began. Although the second-shift supervisor and one employee didn't join the walkout, production ceased until the workers assigned to the third shift arrived at 10:00 p.m.

The company president met with the workers the next day. During the meeting, the workers lodged three complaints against the second-shift supervisor: (1) he had failed to prevent the sexual harassment of one of the six workers by a co-worker (the one employee who didn't join the walkout); (2) he had failed to deal competently with a worker's drug problem; and (3) he didn't know how to operate the machines used by the workers and they had to interrupt their own work to help each other solve any problems. After hearing the employees' concerns, the president fired them.

The workers filed unfair labor practice charges, and the NLRB ultimately determined that the employer had violated federal law. An order was then issued requiring reinstatement of the six employees with back pay. The case was later heard by the Seventh U.S. Circuit Court of Appeals.

Walkout held to be 'concerted activity'

Section 7 of the NLRA provides that workers have the right to engage in "concerted activity" for the purpose of collective bargaining or "other mutual aid or protection." Although the statute doesn't define the term "concerted activity," the U.S. Supreme Court has held that "the only unprotected concerted activities (provided they relate to the terms and conditions of employment) are those that are unlawful, violent, in breach of contract, or otherwise 'indefensible' but that the mere fact that they are not 'reasonable' does not forfeit the protection of the Act."

Carefully review any decision to discipline employees.

In a previous case, the Seventh Circuit held that a walkout to protest the firing of a supervisor was "unreasonable" and therefore unprotected. According to the court, a walkout is protected as concerted activity *only if* the work stoppage is "reasonable" in relation to the workers' goals and the injury it inflicts on the employer. The NLRB asked the court to overturn that decision, citing its concern with imposing a general duty of "reasonableness" regarding the timing and nature of concerted activities.

The Seventh Circuit refused to review its prior ruling, noting that "this is not the case in which to attempt to resolve the [NLRB's] challenge to our decision." According to the court, "There is less of a difference than meets the eye between the [NLRB's] approach and ours, and indeed it is too small a difference . . . to affect the outcome of this case." By walking off the job, the court reasoned, the six employees caused the second shift to shut down. They came back to work the next day, however, and the company was able to make up the lost production in subsequent shifts at no higher cost or loss of revenue.

"In these circumstances," the court continued, "we cannot say that the [NLRB] was unreasonable in holding that the walkout was a reasonable means of protest, and by the same token the walkout was not unlawful, a breach of contract, violent, or otherwise indefensible." Thus, the NLRB's order to reinstate the six workers with back pay was upheld. *Trompler, Inc. v. NLRB*, Nos. 01-3606, 01-3987, Seventh U.S. Circuit Court of Appeals (August 1, 2003).

Bottom line

Employee complaints that result in slow-downs or work stoppages often fool employers into overlooking the potential legal issue of protected concerted activity under federal labor law. During the heat of the moment, supervisors may not recognize the warning signs of concerted employee activity, particularly when the complaints and behavior appear to be without merit and unreasonable. Thus, you should carefully review any decision to discipline employees — individually or as a group — based on such conduct.

You can research protected concerted activity or any other employment law topic in the subscribers' area of www.HRhero.com, the website for Florida Employment Law Letter. Access to this online library is included in your newsletter subscription at no additional charge. ❖

Union Activity Labor update

Representation petitions filed

City	Date	Company/Union
Pinellas Park	10/27/03	Lockheed Martin/IAM
Lake Wales	10/30/03	Florida's Natural Growers, Inc./ IBEW Local 108

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Orlando	11/03/03	The Valvoline Co., a Division of Ashland Inc./International Brotherhood of Teamsters, Local 385	Miami	12/05/03	Alanis Security, Inc./Security Police and Fire Professionals of America
Tallahassee	11/07/03	General Dynamics Corporation/United Steel Workers of America	<i>Decertification petitions filed</i>		
Miami	11/20/03	Pan American Hospital/Service Employees (SEIU)	City	Date	Company/Union
Miami	11/24/03	AHTNA (law enforcement detention center)/Teamsters, Local 769	Hialeah	12/01/03	Comcast/CWA Local 3121
Venice	11/24/03	Heritage Healthcare Center (nursing home)/SEIU 1199 Florida	Miramar	11/12/03	National Broadcasting Company/National Association of Broadcast Employees and Technicians
Palm Beach Gardens	11/24/03	Wackenhut Corporation at Miami/Dade Transit Agency/Security Police and Fire Professionals of America	Ocala	10/29/03	CarQuest Distribution Center/Petition filed by John J. Burrell
			Orlando	10/29/03	Westgate Resorts/Petition filed by John Tarabocchia/Teamsters, Local 385

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FLORIDA EMPLOYMENT LAW LETTER does not attempt to offer solutions to individual problems but rather to provide information about current developments in Florida employment law. Questions about individual problems should be addressed to the employment law attorney of your choice. The Florida Bar does designate attorneys as board certified in labor and employment law.