LAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | NOVEMBER - DECEMBER 2019 | VOL. 30, NO. 2

CELEBRATING 30 years OF THE LAWYER MAGAZINE

RECENT DEVELOPMENTS IN FLORIDA PUBLIC WHISTLEBLOWER LAW

Labor & Employment Law Section

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Whistleblower law is a constantly evolving area of law, and two recent decisions demonstrate the nuances of the Public Whistleblower Act in Florida.

Two Florida statutes protect persons who "blow the whistle" on an employer's illegal practices. One covers private sector employees (Fla. Stat. § 448.102), and another protects individuals in the public sector (Fla. Stat. § 112.3187). The latter, known as the Florida Public Whistleblower Act (FPWA), protects employees and independent contractors who expose legal violations, fraud, malfeasance, or gross mismanagement by public employers or independent government contractors. Whistleblower law is a constantly evolving area of law, and two recent decisions demonstrate the nuances of the FPWA.

The most striking recent FPWA decision came on July 24, 2019, in *Iglesias v. City of Hialeah*,[1] when the Third District Court of Appeal held compensatory damages were recoverable under the FPWA. Prior to *Iglesias*, no controlling authority from the appellate courts or the Florida Supreme Court existed on the recovery of emotional damages under the FPWA, although a few lower courts were split on the issue.

Under the FPWA, relief awarded must include:

- Reinstatement to the same or equivalent position, or reasonable front pay;
- Full reinstatement of fringe benefits and seniority rights, as appropriate;
- Compensation for lost wages, benefits or other lost remuneration, as appropriate;
- Reasonable attorneys' and court fees;
- Issuance of an injunction, if appropriate;
- Temporary reinstatement to the former or equivalent position in certain circumstances.

The Third District held the statutory language was "a floor, rather than a ceiling." Since the statute did not expressly prohibit other recoverable damages, a prevailing plaintiff could seek non-economic damages in addition to the relief specifically outlined in the FPWA. Over a decade ago, the First District Court of Appeal applied similar reasoning in *O'Neal v. Fla. A&M Univ. ex rel. Bd. of Trs. for Fla. A&M Univ.*[2] when upholding the right to a jury trial under the FPWA, a decision relied upon in the *Iglesias* decision.

The other recent decision involved exhaustion and notice requirements. On April 26, 2019, in *School Board of Hillsborough County v. Woodford*,[3] the Second District Court of Appeal reversed (in a split decision) a district court's denial of motion to dismiss a FPWA claim for the failure to exhaust administrative remedies, holding that the district court departed from the essential requirements of law by improperly inserting two requirements into the statute not supported by its text that: (1) the contract between the School Board and the Division of Administrative Hearings (DOAH) explicitly reference the FPWA; and (2) the local governmental authority provide notice to a prospective claimant. The Court held the law required neither. Rather, the plaintiff "had a legal obligation to exhaust her administrative remedies and failed to do so," even without having been given notice of those requirements. The Court therefore quashed the order denying the Board's motion to dismiss. ■

[1] No. 3D18-639, 2019 WL 3309040 (Fla. DCA July 24, 2019).

[2] f989 So. 2d 6 (Fla. 1st DCA 2008).

[3] 270 So. 3d 481 (Fla. DCA 2019).

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