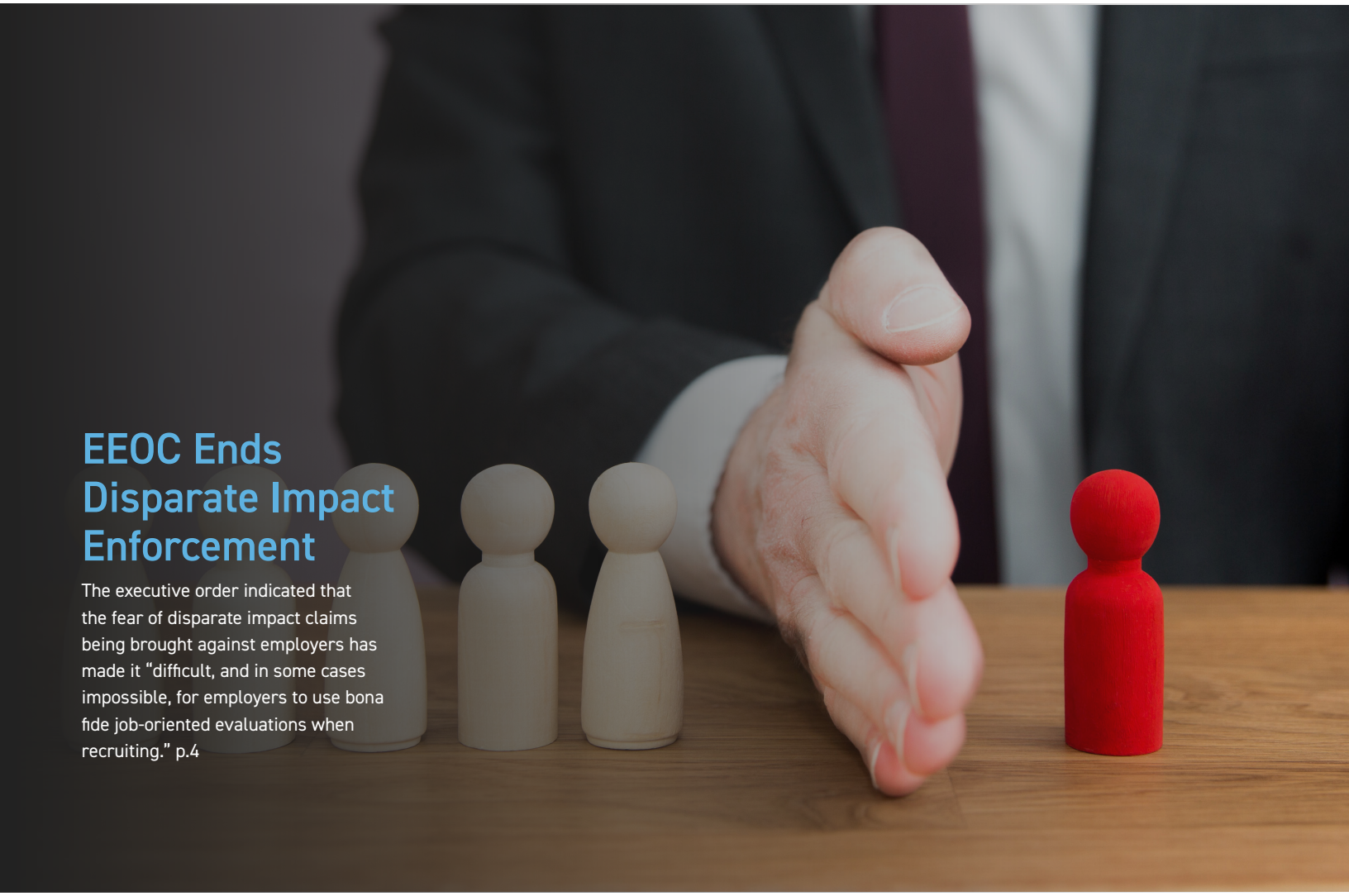
A PUBLICATION OF THE FLORIDA BAR LABOR & EMPLOYMENT LAW SECTION

The Checkoff

IN THIS ISSUE



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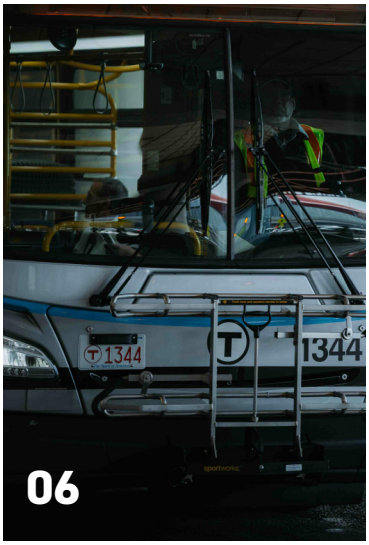

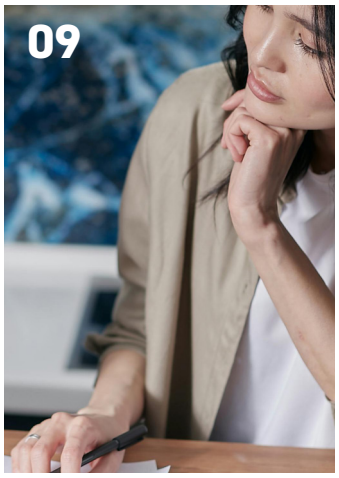

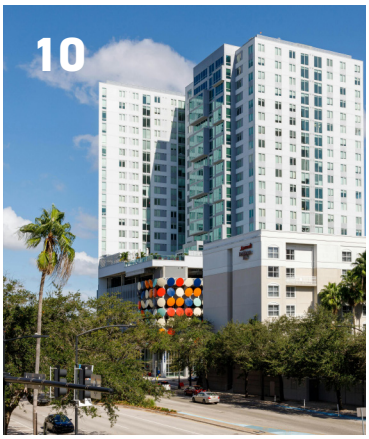

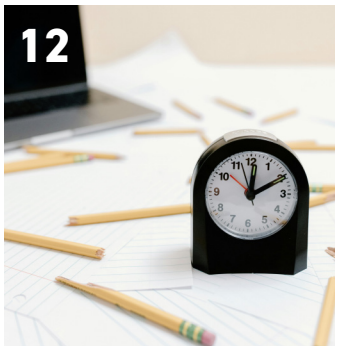

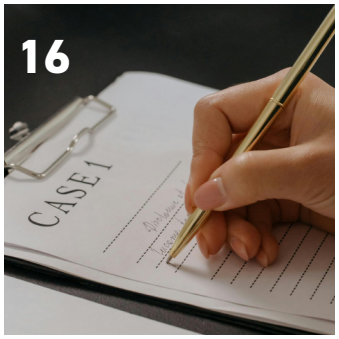

CONTENTS

CHAIR'S MESSAGE

Dear Labor & Employment Law Section Members,

In the 2025/2026 Bar year, your Section has been executing on a number of programs and initiatives, and planning is well under way for even more improvements. Our first major live CLE was the annual Public Employer Labor Relations Forum (PELRF). This program, presented jointly with the City, County and Local Government Law Section, is in its 51st year of bringing together the State's top government labor law experts, officials, and practitioners to educate our members on all things related to public sector labor law. The Section's Co-Chair for this year's session was Executive Council member Janeia Ingram. Her leadership, and many hours of hard work, was critical in achieving a sold-out event, with the highest attendance in many years. And this year's PELRF was even more special because it was the inaugural year for the "Donna Maggert Poole Award," which will be presented to a member of The Florida Bar who has made significant contributions to public sector labor and employment law in the State of Florida. Of course, the first award went to its namesake, Donna Poole, who is the longest serving member in the history of the Public Employees Relations Commission. We were honored that former Florida Governor Bob Martinez (who had appointed Chair Poole) made the trip to Orlando to bestow the award.

The Section's Judicial Outreach Committee, led by the Honorable Robert Kilbride, has already presented programs with a labor and employment law focus to judges in several circuits. These sessions have received significant positive feedback from the judges who have attended, and Judge Kilbride's team is continuing to plan additional sessions during the year with the goal of covering as many of the State's circuits as possible.

The Communications Committee, led by former Section Chair Gregg Morton, has already worked to revamp and reorganize the Section's several technology and public relations service providers to ensure there is greater coordination among them so that information is pushed to our members on multiple platforms in a timely manner. In addition, Gregg's team is working to create a location on the Section website that will be accessible only to members. This space will contain resources, including CLE-approved webinar materials, that members will be able to easily access from a single source.

Organizationally, at its October meeting, the Executive Council approved bylaw amendments that formally created a new officer position: Education Director Designate. This new office (now held by James Poindexter) will be responsible for planning the Section's CLE and other educational programming for the Bar year of the Chair-Elect, while also assisting the current Education Director in executing this year's programming. This new organizational structure will sharpen our focus on planning CLE programs (which entails co-chair and speaker recruitment, venue selection, Bar credit approval, and a host of other logistical events) far in advance so that we can let you, our members, know what to expect with enough time to set your professional schedules.

Speaking of CLE programming, current Education Director Alicia Koepke continues to oversee a year in which the Section is providing more webinars and live programs—and more free-to-members events—than the Section has ever offered. And on the education front, our *Checkoff* publication (produced and edited by Viktoryia Johnson) continues to bring members regular updates on statutory and case law developments and trends in the labor and employment field at the federal, state, and administrative levels.

Your Treasurer, Michelle Nadeau, is busily working with Section Administrator Amy Walker to bring more logic and consistency to our budget line items and to the budgeting process generally. While we are confined to the Bar's master account codes, the Section intends to draw clearer distinctions between expenses related to CLE programs versus normal operating expenses so that the Executive Council can know with greater certainty how programs financially perform, thus allowing for better planning and spending decisions. We are pleased that our programming remains on budget so far this year.

Finally, our Special Projects Committee, chaired by former Section Chair Sherril Colombo, is working with Chair-Elect Chelsie Flynn to develop a long-range planning retreat, to stand up a formal Section sponsorship process, and to implement a great social media initiative, which you will read more about when the wraps come off in coming months.In sum, your Section's leadership team is dedicated to bringing you value for your membership and creating new opportunities for your professional growth in the field of labor and employment Law. Let us know if you have any requests, suggestions, or even sarcastic remarks! Thank you for your ongoing support, and happy holidays to you all!

Robert Eschenfelder
Chair, Labor and Employment Law Section

EEOC Ends Disparate Impact Enforcement

By Hannah Rarick, Miami Lakes

As the result of an executive order issued by President Trump last spring, the United States Equal Employment Opportunity Commission (EEOC) is closing almost all pending charges that are based solely on allegations of disparate impact discrimination.[1]

The executive order—released on April 23, 2025, and titled "Restoring Equality of Opportunity and Meritocracy"—directed all federal agencies to cease using disparate impact theory under federal civil rights laws, such as Title VII of the Civil Rights Act of 1964 (Title VII).[2] The order indicated that the fear of disparate impact claims being brought against employers has made it "difficult, and in some cases impossible, for employers to use bona fide job-oriented evaluations when recruiting."[3] Subsequently, in a September 15, 2025, internal memorandum, the EEOC instructed its field offices to discharge all complaints based on disparate impact liability.[4] As of October 31, 2025, individuals who previously submitted a charge of discrimination to the EEOC involving only disparate impact claims will have received a "right to sue" notice from the agency stating that the EEOC has stopped investigating and/or will no longer investigate such claims but that the claimant will still be entitled to ninety days to pursue the claim in federal court.[5]

Charges that allege both disparate impact and disparate treatment will remain open; however, EEOC staff has been directed to focus on investigating the disparate treatment claims only.

Disparate Impact Liability

Reasoning that employment practices that are fair in form but discriminatory in operation undermine the purpose of Title VII, the United States Supreme Court first recognized the theory of disparate impact in *Griggs v. Duke Power Co.*[6] Twenty years later, in 1991, Congress codified disparate impact liability in Section 703(k) of Title VII. The disparate impact theory enables workers to challenge employment practices that disproportionately exclude groups of people based on race, gender, or other protected, non-job-related characteristics, where those are not valid measures of who can do the job. More specifically, disparate impact liability can be invoked when a facially neutral policy or practice (e.g., aptitude tests to screen applicants, grooming standards, AI-screening tools, etc.) has an unintentional, disproportionate negative effect on members of a protected class. Under this framework, once a plaintiff properly pleads a disparate impact claim, the employer must demonstrate that the challenged practice is job related and consistent with business necessity. Because these cases often require extensive statistical analysis, they tend to be both time consuming and costly for employers.

Unlike disparate treatment claims, which require proof of intentional discrimination, disparate impact liability focuses on the consequences of a neutral practice and does not require any showing of discriminatory intent. Historically, discrimination claims based on disparate impact have been less frequent than those alleging disparate treatment. However, as discussed below, discriminatory outcomes are more likely to arise under a disparate impact theory when artificial intelligence (AI) systems are used in the hiring process.[7]

Impact of the Executive Order

Federal law on disparate impact claims remains in effect, but the April 23, 2025, executive order reflects a shift in approach to federal enforcement of workplace discrimination laws. Eliminating the EEOC's oversight of disparate impact claims comes at a time when AI is increasingly prevalent in the workplace. For example, one of the most widely used sites for job seekers—Indeed—has integrated generative AI tools, including virtual hiring assistants designed to match employers with candidates.[8] However, in training these systems, companies have observed that AI models may replicate and even amplify existing biases present in their data, resulting in outcomes that disproportionately affect certain groups—the type of harm disparate impact liability seeks to prevent. As the demand

for AI-integrated services rises, the need for meaningful oversight, transparency, and accountability mechanisms becomes increasingly critical to mitigate discriminatory effects on marginalized communities. Thus, less governmental oversight makes it more difficult for complainants who previously relied on government-supported investigations. Additionally, unlike private attorneys who may pursue claims on behalf of these individuals, the EEOC has subpoena authority to require employers to disclose information at the outset of an investigation.[9] In fact, the executive order's impact might be the opposite of its intended effect and lead to more lawsuits due to claimants being allowed to bypass the administrative process and proceed straight to court on these claims.

Further, because EEOC action does not affect disparate impact liability under numerous state and local laws, states could also see an increase in forum-shifting, as many states' civil rights statutes still allow or even require disparate impact analysis. Moreover, several states (including New York, New Mexico, and Massachusetts) have current and pending laws that expressly require employers using AI in employment-related decision-making to conduct disparate impact analyses to ensure the systems do not result in disparate outcomes. Notably, the Florida Commission on Human Relations (FCHR) has not issued any directive resembling the EEOC's 2025 memo and thus can accept disparate impact claims. As a result, the claims will be handled solely by the FCHR. Regardless, courts may see a spike in disparate impact filings. Therefore, employers should continue to monitor facially neutral workplace policies, practices, use of AI tools, and termination decisions for potential disparate impact to minimize litigation risk.

Hannah Rarick *is an associate at SMM Law in Miami Lakes.*

Endnotes

[1] Karen Villagomez, *EEOC to Close All Pending Disparate Impact Investigations by September 30, 2025*, JDSUPRA (Sept. 26, 2025), https://www.jdsupra.com/legalnews/eeoc-to-close-all-pending-disparate-8881352/?fbclid=IwdGRjcANRPyFleHRuA2FlbQIxMQABHnnGgSyal4dz9qy8_qEUyE9cSqy3OLFgGRa3YdDMoUELzGEEAlWjZaww7ueK_aem_E4uIicjWuqWjT6mxj6l_vg.

[2] Exec. Order, *Restoring Equality of Opportunity and Meritocracy* (Apr. 23, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/.

[3] *Id.*

[4] Claire Savage and Alexandra Olson, *Civil Rights Agency Drops a Key Tool Used to Investigate Workplace Discrimination*, Assoc. Press (Sept. 30, 2025), https://apnews.com/article/trump-discrimination-ai-eeoc-disparate-impact-a2e8aba11f3d3f095df95d488c6b3c40.

[5] Villagomez, *supra* note 1.

[6] 401 U.S. 424 (1971).

[7] Savage and Olson, *supra* note 4.

[8] Indeed Employer Content Team, *How Indeed Uses AI: Employer Tools and Responsible Use*, Indeed (Sept. 17, 2025), https://www.indeed.com/hire/resources/howtohub/how-indeed-uses-ai#:~:text=Employers%20who%20invite%20AI%2Dmatched,AI%2Dgenerated%20outreach%20messages.

[9] *EEOC Office of General Counsel Litigation Services to the Public*, U.S. Equal Emp't Opportunity Comm., https://www.eeoc.gov/eeoc-office-general-counsel-litigation-services-public.

U.S. DEPARTMENT OF LABOR REVERSES COURSE ON NEED FOR MASS TRANSIT WAIVERS

By Janeia D. Ingram, Tallahassee

Under the Federal Transit Act, 49 U.S.C. § 5301(a), Florida public employers receive substantial federal funding for their public transportation systems, subject to conditions set forth in the Urban Mass Transportation Act of 1964, 49 U.S.C. § 5333(b). This provision, also referred to as Section 13(c), specifies that arrangements, which are administered by the U.S. Department of Labor (DOL), must be made to protect certain rights of mass transit employees affected by grants of federal funds, including the preservation of rights, privileges, and benefits under existing collective bargaining agreements and the continuation of collective bargaining rights.[1]

In May of 2023, the Florida Legislature enacted Senate Bill 256 (SB 256), which brought sweeping reforms to public sector collective bargaining in Florida. Anticipating that DOL might, as a result, deny federal funding to Forida, SB 256 included a provision [codified at Fla. Stat. § 447.207(12)] authorizing the Public Employees Relations Commission (PERC) to "waive" parts of the new law "to the extent necessary for the public employer to comply with the requirements of [§ 5333(b)]."[2] Shortly thereafter, DOL issued a written determination finding that SB 256 prevented public transit employers from complying with their previously certified protective arrangements covering mass transit employees and with the requirements of Section 13(c). DOL directed Florida employers to obtain waivers from PERC exempting the unions representing their transit workers from the relevant provisions of SB 256.[3] Those provisions covered the prohibition on dues and assessment deductions (known as "dues check-offs"),[4] the requirement to petition PERC for recertification,[5] and the revocation of certification.[6]

Within months, PERC issued nearly thirty transit waivers to various public transit employers and regional authorities throughout the State of Florida (State).[7] PERC initially limited the duration of the waivers to the expiration of the parties' existing collective bargaining agreements. Responding to the unions' objections that the time-limited waivers failed to ensure that transit employers could continue collective bargaining rights as required by Section 13(c), DOL directed the transit employers to return to PERC for waivers that extended at least for the duration of their federally funded projects. Specifically, DOL averred that Section 13(c) prohibited infringement of the collective bargaining process during the entirety of a federally funded project. DOL further opined that SB 256 removed a critical mandatory subject of collective bargaining by eliminating dues check-offs. With respect to the recertification and revocation provisions, DOL stated that SB 256 impermissibly

expanded the means and methods by which transit employees could lose their certified bargaining agent, which undermined the presumption of its continued majority status.

On August 31, 2023, considering the financial hardship facing transit employers and their public employees given DOL's refusal to certify various pending federal grants absent an extended waiver, PERC cautiously issued the first of several orders granting what were deemed "permanent" waivers to the petitioning employers.[8] PERC called into question DOL's interpretation of § 5333(b) requirements as they related to the application of SB 256. In particular, PERC was not convinced that the provisions regarding dues check-offs, licensure obligations, and possible recertification elections undercut the continuation of collective bargaining rights protected by applicable federal law.[9]

PERC's newly issued waivers were crafted to be effective for as long as any protective arrangement was required by 49 U.S.C. § 5333(b). The waivers would immediately expire "upon any final decision of DOL or a court of competent jurisdiction declaring that [SB 256's] provisions do not violate the protections imposed by 49 U.S.C. § 5333(b), or if Congress changes the effect of that law."[10] Once the waivers were submitted, DOL issued Section 13(c) certifications that incorporated the waivers.

In October 2023, then-Florida Attorney General Ashley Moody filed a lawsuit against DOL in the United States District Court for the Southern District of Florida alleging, among other things, that federal officials violated federal law by threatening to withhold grant funding and that the officials' determination regarding SB 256 harming collective bargaining was "arbitrary and capricious," which violated the Administrative Procedure Act (APA).[11] The State also filed a motion seeking to preliminarily enjoin the federal government from enforcing the requirements of § 5333(b) against Florida entities or, alternatively, to require that mass transit funding be released without requiring PERC to waive SB 256's provisions.[12]

Following extensive briefing and oral argument in the case, Judge Melissa Damian rejected the State's position and denied its motion for preliminary injunction. The court reasoned that "a reading of the statute's plain text reflects that Congress gave the DOL the authority to construe § 5333(b) to determine whether provisions that affect employee collective bargaining rights are 'fair and equitable.' The State offer[ed] no authority to support a finding that the DOL violated the APA where the DOL did what Congress said it could do."[13]

Concurring with the D.C. Circuit's observation in *Amalgamated Transit Union International v. Donovan*,[14] Judge Damian noted that the text of § 5333(b) "expressly and unambiguously confers broad discretion on the DOL to determine whether DOL certification for funding may be lawfully given based on the parameters set forth in the statute."[15] In particular, the court agreed with the D.C. Circuit that the statute's mandatory and express requirements provide "clear guidelines" for determining whether DOL certification for funding may be lawfully given.[16]

Florida appealed the district court's decision to the United States Court of Appeals for the Eleventh Circuit. During the pendency of the appeal, on May 29, 2025, DOL issued a letter[17]

reversing course on its earlier determination under the Biden administration. DOL admitted that its previous certifications were based on a flawed and overly rigid interpretation of Section 13(c). Thus, DOL concluded that a waiver is unnecessary to ensure that Florida's transit employers can continue to comply with their Section 13(c) obligations and receive federal mass transit funding assistance.[18]

Moreover, DOL acknowledged that its prior reliance on *Donovan* failed to distinguish the changes to public sector bargaining instituted by SB 256 from those at issue in *Donovan*.[19] First, SB 256 affected only one subject of collective bargaining—dues check-offs—and in so doing, did not prohibit bargaining over all aspects of dues deduction. Second, the DOL noted that Florida's public employees continue to have collective bargaining rights despite SB 256's requirements regarding registration and recertification, which merely "promote greater transparency between unions and their members."[20]

DOL concluded it should not have found that the unions' objections based on SB 256 raised the kinds of material issues in legal or factual circumstances that would make the objections "sufficient" under federal law. Therefore, DOL should not have determined that public transit employers were required to obtain a waiver of SB 256's requirements from PERC for DOL to issue its certification.

DOL's reversal had significant impact on the entities that previously enjoyed waivers from various provisions of SB 256. For example, those unions and their members would have to implement alternatives to payroll dues deductions within a short turnaround. Also, the unions would be required to ensure their registration renewal applications to PERC were not only accurate but also complied with Florida law. Additionally, unless a union reports in its registration renewal application that at least 60% of bargaining unit members paid dues, the union must file a sufficient petition for recertification within thirty days of submitting that application or risk revocation of its certification.

Recognizing the reliance concerns of its changed position, and the consequences that flowed therefrom, DOL stated that its reconsideration would not take effect for forty-five days after its issuance, affording unions time to ensure compliance with the prevailing laws. Following the forty-five-day effective date of July 13, 2025, DOL stated it will no longer consider protective arrangements already in effect to be supplemented by the PERC-issued waivers.

In turn, PERC swiftly issued notices to each public employer and union that previously received a transit waiver that their waivers would expire on July 13, and they must thereafter fully comply with the statutory requirements implemented by SB 256. On July 17, PERC issued orders officially vacating all previously issued waivers. Although Fla. Stat. § 447.207(12) is still applicable, it is doubtful that PERC will be issuing more transit waivers any time soon.

Janeia D. Ingram *is Deputy General Counsel, Public Employees Relations Commission.*

Endnotes

[1] 49 U.S.C. § 5333(b)(2)(A), (B).
[2] *Florida v. Buttigieg*, 751 F.Supp.3d 1333, 1339 (S.D. Fla. 2024) (quoting Fla. Stat. § 447.207(12)).
[3] Fla. Stat. § 447.207(12) ("Upon a petition by a public employer after it has been notified by the Department of Labor that the public employer's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. s. 5333(b) and would jeopardize the employer's continued eligibility to receive Federal Transit Administration funding, the commission may waive, to the extent necessary for the public employer to comply with the requirements of 49 U.S.C. s. 5333(b), [certain provisions of SB 256] for an employee organization that has been certified as a bargaining agent to represent mass transit employees . . . .").
[4] Fla. Stat. § 447.303(1).
[5] *Id.* at § 447.305(6).
[6] *Id.* at § 447.305(6)–(7).
[7] *See, e.g.*, *In re Petition for Waiver of Broward Co. Bd. of Co. Comm'rs.*, 50 FPER ¶ 45 (2023).
[8] *Id.* at ¶ 95.
[9] *Id.*
[10] *Id.* For reasons stated in the special concurrence in *In re Petition for Waiver of Broward County Board of County Commissioners*, then-PERC Chair Don Rubottom did not agree with the indefinite term of the waivers granted but instead preferred a waiver that extended only for the length of the federally funded project(s) at issue.
[11] *Buttigieg*, 751 F.Supp.3d at 1340.
[12] *Id.*
[13] *Id.* at 1356.
[14] 767 F.2d 939 (D.C. Cir. 1985).
[15] *Buttigieg*, 751 F.Supp.3d at 1352.
[16] *Id.* (citing *Amalgamated Transit Union International v. Donovan*, 767 F.2d 939, 945–46 (D.C. Cir. 1985).
[17] Letter from Elisabeth Messenger, Dir. of the Office of Labor-Management Standards, U.S. Dep't of Labor (May 29, 2025).
[18] Considering the DOL's recent determination, the State filed an unopposed motion to vacate the district court's October 7, 2024, final judgment. The Eleventh Circuit granted the motion, vacating the order as moot. *See Florida v. Sec'y, U.S. Dep't of Transp.*, No. 24-13261, 2025 WL 2315316 (11th Cir. Aug. 7, 2025).
[19] *See California v. U.S. Dep't. of Labor*, No. 2:13-cv-02069-KJM-DB, 2016 WL 4441221, at *20 (E.D. Cal. Aug. 22, 2016) (reasoning that *Donovan*'s holding does not show that "any unilateral action by a state, however modest, precludes certification under section 13(c)(2)").
[20] Messenger, *supra* note 17.

Galarza v. One Call Claims, LLC: ELEVENTH CIRCUIT HIGHLIGHTS "ECONOMIC DEPENDENCE" IN DETERMINING WORKER STATUS UNDER FSLA

By Aaron Tandy, Miami

Recently, in *Galarza v. One Call Claims, LLC*,[1] the Eleventh Circuit made clear that in determining whether a person is an employee or an independent contractor for the purposes of the Fair Labor Standards Act (FLSA), lower courts should avoid rigidly adhering to formulas or weighing factors and should instead assess the "economic reality of the [parties'] relationship."[2] While not abandoning the six-factor test it had adopted in *Scantland v. Jeffrey Knight, Inc.*,[3] the Eleventh Circuit cautioned that "no one factor dominates, and even the sum of factors should be rejected if they do not reflect the economic reality."[4] Thus in *Galarza*, the court reversed the grant of summary judgment to the defendants, finding that the circumstances demonstrated a jury could reasonably conclude the "workers were economically dependent on the companies" such that they should be classified as employees and not independent contractors.[5]

While the question of proper classification of the plaintiffs was in dispute—and, as a consequence, so was the question of whether the plaintiffs were entitled to overtime wages under the FLSA—the underlying facts of the case were straightforward. Following Hurricane Harvey, the Texas legislature created the Texas Windstorm Insurance Association (TWIA) to provide insurance to Texas homeowners. The principal defendant, One Call Claims (OCC), is a company that maintains a roster of licensed insurance adjusters and has a service agreement with TWIA to provide adjusters to investigate claims. Plaintiffs were among the group of adjusters assigned by OCC to assist TWIA in dispensing with claims after Hurricane Harvey.

The adjusters sued, claiming they were misclassified as independent contractors instead of employees and were due overtime pay in accordance with the FLSA. The district court granted defendants' motion for summary judgment using the *Scantland* factors previously enunciated by the Eleventh Circuit, finding that four factors weighed in favor of independent contractor status and only two factors favored employee status, "although one of the factors in favor of employee status was entitled to little weight."[6] The appeal ensued.

As an initial matter, the Eleventh Circuit recounted the *Scantland* factors:

> (1) the nature and degree of the alleged employer's control over the manner in which the work is performed; (2) the worker's opportunity for profit or loss depending on managerial skill; (3) the worker's investment in materials or hiring additional workers necessary to complete his task; (4) whether the worker's job requires special skill; (5) the permanency and duration of the relationship between the worker and alleged employer; and (6) the extent to which the worker's services are an integral part of the alleged employer's business.

While the *Galarza* court used the *Scantland* factors in reversing the district court, the court explained that the factors are merely guideposts and not exhaustive. Weighing the factors is proper but at no point, said the court, "can the sum of the factors ever outweigh the ultimate inquiry: whether the worker is economically dependent on the alleged employer."[7] Unlike the district court, the Eleventh Circuit ultimately concluded that a jury could reasonably determine that the factors and the overall reality of the economic dependence of the plaintiffs on the defendants favored a finding of employee status.

In reaching its conclusions, the appellate panel reminded lower courts that labels do not carry the day ("We look to economic realities, not labels"),[8] that "a worker can be an employee for FLSA purposes but an independent contractor for other federal law purposes," such as taxes,[9] and that adding up the factors formulaically is not the proper course of action (although

the appellate court found that five of the factors favored a determination of employee status).[10] The court explained: "Even aside from the factors, our bottom line inquiry into employee status is whether a worker is economically dependent on the putative employer under the totality of the circumstances."[11]

In the court's view, the plaintiffs operated "more like employees depending on an employer than independent contractors with their own businesses."[12] In the end, then, it was the economic dependence under the facts of the case that drove the outcome.

In light of the *Galarza* decision, employers and their counsel may wish to review the independent contractor arrangements they have in place to make sure that the workers covered by such agreements are truly independent contractors and not mislabeled employees.

Aaron Tandy *is General Counsel for Boucher Brothers Management Inc. in Miami.*

Endnotes

[1] No. 23-13205 (11th Cir. Oct. 16, 2025).
[2] *Id.* at 8.
[3] 721 F.3d 1308 (11th Cir. 2013).
[4] *Galarza* at 8.
[5] *Id.*
[6] *Id.* at 7.
[7] *Id.* at 10.
[8] *Id.* at 17.
[9] *Id.* at 16.
[10] *Id.* at 24.
[11] *Id.*
[12] *Id.*

Florida's Wage Fairness Act: IN THE REAR VIEW MIRROR BUT ONLY FOR NOW

By Jesica P. Fico, Tampa

Nearly half the states now have some form of pay transparency law, and national companies operating in multiple jurisdictions are already adjusting to comply. Florida has been slow to join the pay transparency movement, but that's starting to change. Earlier this year, lawmakers introduced House Bill (HB) 1619, the Wage Fairness Act, which, among other things, would have limited the use of salary history in hiring and would have required employers, including public employers, to disclose pay ranges for job postings. While the bill didn't pass—it died in subcommittee—it signals that Florida may take action sooner rather than later. Indeed, given Florida's growth and its appeal to businesses, similar measures will likely appear in future legislative sessions.

What the Wage Fairness Act Would Have Required

HB 1619 was designed to discourage reliance on an applicant's prior salary when determining compensation, while promoting transparency about what a job actually pays. Employers would have had to provide a wage or salary range for any job posting, based on internal pay scales, comparable employee wages, or budget considerations. Violations could have triggered civil penalties for the employer and injunctive relief for affected employees.

Why Employers Should Care Now

Even though the bill failed to move forward, the ideas it embraced (salary history bans, pay range disclosure, and wage record-keeping) mirror the direction many other states have taken. And Florida's annual minimum wage increases—based on a constitutional amendment passed in 2020 that sets a target of $15 per hour by 2026—reflect the same broader push for structured, predictable compensation across the workforce. This amendment, combined with proposals like HB 1619, make it clear that Florida is gradually moving toward a more standardized approach to wages. Florida employers who ignore these developments may find themselves scrambling if and when similar legislation is adopted.

Pay transparency and pay equity initiatives aren't just about compliance; they're also about recruitment, retention, and internal trust. Clear, predictable compensation helps job candidates know where they stand, reduces negotiation friction, and signals fairness. Conversely, inconsistent or opaque pay practices can create dissatisfaction and turnover among an existing workforce.

Practical Considerations for Employers

Employers don't need to overhaul their pay systems overnight, but there are practical steps that make sense now. Entities should start by reviewing existing practices to ensure salary history questions aren't hidden in applications, interview scripts, or onboarding

materials. At the same time, pay ranges should be examined; even informal internal guidelines can help establish consistency and prepare for eventual disclosure requirements. For companies hiring remotely, it's also worth checking postings for compliance in other states, since pay transparency rules may already apply outside of Florida. Finally, employers should communicate clearly with employees about how pay decisions are made; transparency, even at a high level, helps build trust and reduces confusion. The goal is simple: make pay decisions consistent, defensible, and understandable.

Takeaways

Florida's Wage Fairness Act may not have passed this year, but it's part of a larger movement nationwide. Employers are recognizing that pay equity and transparency are not just regulatory issues, they're strategic ones. Clear compensation practices can improve recruitment, reduce turnover, and build trust internally.

For Florida employers, the lesson is straightforward: take note of national trends, consider the state's minimum wage trajectory, and start aligning pay practices now. Being proactive sends a signal to employees and candidates alike that compensation is fair, consistent, and data-driven regardless of whether legislation mandates it.

Jesica Fico *is an associate in the Tampa office of FordHarrison.*

Non-Binding Arbitration: "INFORMALITY" IS A SIREN SONG THAT CAN LULL THE UNWARY

By Leslie W. Langbein, Plantation Lakes

Court-annexed non-binding arbitration (NBA) has been lurking in the shadows of alternative dispute resolution for nearly forty years. First introduced in Chapter 44, Florida Statutes, in 1987 (along with court-ordered mediation), it was conceived as a process by which litigants could obtain an early neutral evaluation of their legal positions that might then lead them to settle. The new legislation gave circuit and county courts broad discretion to refer parties to either mediation or NBA.[1]

But in the years that followed enactment of Fla. Stat. §§ 44.102 and 44.103, mediation became the "favored child" of courts. Mediation likely was viewed as less coercive and therefore more acceptable to parties as a forum of alternative dispute resolution. No settlement? No worries, just keep litigating! But as one observer noted years ago, courts then seemed to realize that ordering the parties to NBA brought added value to the judicial system as a case management tool.[2]

It is easy to imagine that the Florida Legislature may have envisioned this incidental benefit of NBA and tried to promote its use. Else why would the drafters of Fla. Stat. § 44.103 (governing NBAs)[3] have pitched the NBA process as being "informal," similar to mediation?[4] But employment litigators take heed: Mediation and NBA are by no means equivalents, other than that they both provide avenues to end litigation short of trial. Indeed, NBA has been described as so "[f]raught with intricate rules and sometimes harsh ramifications" that "it can be said to resemble a minefield."[5] Just as fabled siren songs lulled mariners onto the rocks, NBA's touted "informality" can steer many a litigator astray. Failure to follow the NBA process to the letter often brings an end to litigation for the unwary. Here's why.

Florida's appellate courts have interpreted Fla. Stat. § 44.103 and Fla. R. Civ. P. 1.820 as establishing "bright line" standards. Very few court decisions have allowed any variance from the express terms of the statute and court rules. One of the most important (and often litigated) aspects of NBA is the requirement that a party reject a non-binding arbitration decision (not an award) and move for a trial de novo[6] within twenty days of the date the decision is served. Rule 1.820(h) provides, in pertinent part:

> No action or inaction by any party, other than the filing of the notice, will be deemed a rejection of the arbitration decision. . . . If a rejection of the arbitration decision and request for trial is not made within 20 days of service on the parties of the decision, the decision must be referred to the presiding judge, who must enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

Courts in Florida have held that a trial court has no discretion to deny a party's request for entry of final judgment on an arbitrator's decision upon the failure by an opposing party to timely reject that decision. It is treated as a ministerial act.[7] Indeed, according to *Gambrel v. Sampson*,[8] if a trial court refuses to enter judgment on a non-rejected arbitration decision, a writ of mandamus is the proper remedy. Absent a timely filed motion under Rule 1.540(b)(1), "[t]he statute says what it says and so does the rule that implements its deadline," in the words of *Gambrel*.

All of that is not to say that litigants haven't tried to evade the harshness of Rule 1.820. The parties in *Lawnwood Medical Center v. Rouse*[9] tried entering into a stipulation to abate the twenty-day deadline to allow for further negotiations. The Fourth DCA ruled the deadline could not be extended through agreement. Nor can one party piggyback on another party's timely filed notice of rejection and motion for trial.[10] In a multiparty case, each party must file its own notice of rejection and motion for trial de novo. And, there is nothing to be gained by serving a notice of rejection and moving for trial before the arbitrator's decision has actually been served. That, likewise, doesn't preserve a party's rights.[11] Nor can one look to Florida's Revised Arbitration Act for an off-ramp. Chapter 682 does not apply to non-binding arbitrations.[12]

To date, the only means to escape the legal wreck caused by failure to timely reject an adverse arbitration decision is by filing a motion under Fla. R. Civ. P. 1.540(b)(1) based on excusable neglect. In *Housen v. Universal Property & Casualty Insurance Company*,[13] the plaintiffs failed to file their notice of rejection and motion for trial within twenty days of receipt of notice of an adverse non-binding arbitration decision. Nine days later, the plaintiffs filed a motion for trial that contained no explanation of why they had not met the deadline. They then refiled the motion, explaining that their attorneys' staff had mis-calendared the cut off. The circuit court, in accord with existing precedent, denied the plaintiffs' motion and entered a final judgment against them. The *Housen* plaintiffs then moved for relief under Fla. R. Civ. P. 1.540(b)(1) claiming excusable neglect. The circuit court denied the motion, and the plaintiffs appealed. Upon considering the merits, the Fourth DCA reversed, holding that a calendaring error

by staff constituted excusable neglect, and Rule 1.540(b)(1) provided a basis for relief from the adverse final judgment.[14]

On the other hand, a similar Rule 1.540(b)(1) motion based on excusable neglect was considered and rejected in *Hanniford v. United Services Automobile Association*[15] There, the plaintiff policy holders hired a law firm to represent them. The original attorney assigned to the case by the firm complied with the trial court's administrative rules regarding e-service and designated himself lead counsel who should be served. The case then was reassigned to another lawyer who failed to update the law firm's lead counsel designation. The second lawyer attended non-binding arbitration with the clients and remained on the case through service of the arbitration decision. The decision was e-mailed to the original lead counsel designated by the law firm and also to the direct e-mail of the second lawyer.

With eighteen days remaining to file a rejection, the insurer's attorney e-mailed the second lawyer to discuss the arbitration decision. Her e-mail and telephone calls went unanswered. She then tried to contact the first attorney. The first attorney eventually responded and advised that the second attorney soon would be leaving the firm, and he would personally try to contact his departing colleague to respond. The insurer's attorney did not hear back from either lawyer. The second attorney's last day at the firm was three days before the twenty-day period expired. When no notice of rejection and request for trial was filed by the twentieth day, the insurer moved for entry of judgment against the plaintiffs, which the trial court dutifully granted.

Ten days later, a third lawyer with the law firm moved to vacate the arbitration decision based on excusable neglect, claiming that neither the first nor the second lawyer had followed law firm procedure to calendar the deadline for rejection. The motion was denied, and an appeal ensued. The First DCA denied the appeal. Its opinion, fortunately, elucidates the standard to be applied in NBA cases where the twenty-day deadline was missed:

> The existence of excusable neglect is inherently fact-intensive, and there is no single controlling legal definition of it—making it extremely difficult to demonstrate a reversible abuse of discretion. Courts frequently describe it as existing "where inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir." *Quest Diagnostics, Inc. v. Haynie*, 320 So. 3d 171, 175 (Fla. 4th DCA 2021) (quoting *Somero v. Hendry Gen. Hosp.*, 467 So. 2d 1103, 1106 (Fla. 4th DCA 1985)). It merits mention that *Quest* itself—a leading case in excusable-neglect cases—pointedly relied on an earlier case distinguishing between mere clerical or secretarial error on the one hand, and attorney misfeasance or malfeasance on the other hand:
>
> "The pattern which emerges from these and the myriad of cases not cited here is best stated negatively: a default will not be set aside where the defaulted party or his attorney (1) simply forgot or (2) intentionally ignored the necessity to take appropriate action; that is to say, where the conduct could reasonably be characterized as partaking of gross negligence or as constituting a willful and intentional refusal to act."[16]

Significantly, the First DCA characterized the law firm's conduct as close to "gross negligence," not excusable neglect. Thus, it should be clear that the "informality" of the NBA process and "the dog ate my homework" excuses will not suffice to rescue a careless lawyer from missing the twenty-day drop-dead deadline under Fla. Stat. § 44.103 and Fla. R. Civ. P. 1.820(h).

But what about a judicial error in referral of a case to NBA? *Gallardo v. Scott*[17] involved a trial court's decision to send the parties to non-binding arbitration in a medical malpractice case. The trial court was unaware of Rule 1.820 and simply issued an order appointing a panel of arbitrators to hold an arbitration hearing and issue a report. Upon concluding the hearing, the arbitrators mailed a letter to the trial court explaining that there was insufficient evidence to warrant entry of judgment against six of the seven defendants. The panel never filed the decision with the clerk of court or served it on the parties. When twenty days passed and no party rejected the report, the trial court entered a final judgment in favor of the defendants.

Over a month later, the plaintiffs inadvertently discovered the panel's decision. The six defendants then moved the court to continue the trial set for the seventh defendant and vacate the award. In turn, the plaintiffs moved for confirmation of the arbitration award against the six defendants. The circuit court declined to vacate the final judgment, believing it was bound to enforce the non-binding arbitration award. On appeal, the Fifth DCA invalidated the final judgment, holding: "The rule clearly requires a written notice that includes specification of the hearing procedure. The failure to request a trial *de novo* within twenty days in this case does not require entry of judgment because of the number and the seriousness of the many defects in this proceeding leading up to entry of the judgment." Presumably, a similar outcome would result if an appointed arbitrator committed serious error.

Given that you may open your e-mail one day and find an order directing you to NBA, how should you approach the proceeding? Do you accept the statute on its face, presume that the proceeding is "informal" and would ordinarily consist of your own presentation of evidence and testimony? Or, do you have your client sworn in so that she can explain in her own words why she was discriminated against and her damages, thereby exposing your client to cross-examination or being called as an adverse witness? This strategy may depend on your client's sophistication and presence. If the client gave a great deposition, you might want to show the strength of the client's story to the non-binding arbitrator. The other side already has seen it.

Another strategy is to create an evidentiary record by way of a paper trail. If that is a safer route than allowing your client to speak, you should be prepared to present the following at a non-binding arbitration:

- the pleadings;
- motions for summary judgment or judgment on the pleadings or, if none, case law that explains the burdens of proof;
- discovery responses (if any);
- declarations explaining the facts with supporting documents, if any, including a chronology of events;
- a calculation of damages;
- a calculation of accrued costs; and
- your fee agreement and billing records.

Importantly, do not mention what was said or done at a prior mediation, if you voluntarily agreed to participate in one. At the very least, you should prepare your client to speak in the event that the non-binding arbitrator asks clarifying questions. After all, a party's goal, as in any regular arbitration, is to convince the non-binding arbitrator that the law and the facts are on its side.

Some final observations:

- Make sure your presentation addresses liability, damages, attorneys' fees, and costs. If you are seeking damages in the form of pension contributions or front pay, by all means present an expert witness report.
- No matter what side of the case you are on, be realistic in what you request the arbitrator to award as damages and support your position with evidentiary proof.
- Remember that NBA is not mediation: there is no free-form relief that can be awarded.
- Be sure to explain to your client (and document the file that you did) that Fla. Stat. § 443.103 has the same fee- and cost- shifting effect as an offer of judgment. Rejecting an arbitration decision and demanding trial is not to be lightly considered.

In sum, there is nothing "informal" about NBAs. It is a quasi-adjudicative process with real-life consequences to the client. Counsel and client are best served by preparing well ahead of the proceeding and taking the outcome seriously.

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Endnotes

[1] *See* Fla. Stat. § 44.102(2)(a)(5) ("A court must refer the parties to mediation upon request of one party . . . unless . . . [t]he court determines that the action is proper for referral to nonbinding arbitration under this chapter."). The statute provides no guidance on the factors a court should consider and weigh to determine if NBA is a "proper" alternative dispute resolution process in a given lawsuit.

[2] Florida qualified arbitrators have reported a recent uptick in case referrals, which they attribute to the recent judicial administration directive setting deadlines by which a case must be closed and requiring trial judges to issue case management orders.

[3] In addition to Fla. Stat. § 44.103, NBAs also are governed by Fla. Rs. Civ. P. 1.800, 1.810, and 1.820. Chapter 11, entitled "Florida Rules for Court-Appointed Arbitrators," governs standards of conduct and qualifications for court-appointed arbitrators.

[4] *Compare* Fla. Stat. § 44.1011(2) *with* § 44.103(4). *See also* Fla. R. Civ. P. 1.820(c).

[5] Daniel Morman & Jonathan Whitcomb, *Navigating the Nonbinding Arbitration Minefield in Florida*, 81 Fla. B.J. 18, 19 (2007), *quoted in Alexander v. Quail Point II Condo.*, 170 So. 3d 817 (Fla. 5th DCA 2015).

[6] It is odd to refer to the motion for trial as a request for a trial de novo given that neither party ever has had a formal trial. Rule 1.820(h) now refers to a "notice of the rejection of the arbitration decision and request for trial." These two requests must be made in the same document. *Peoples Trust Ins. Co v. Hernandez*, 2025 Fla. App. LEXIS 2340 (Fla. 4th DCA 2025).

[7] *See United Auto Ins. Co. v. Ortiz*, 931 So. 2d 1025 (Fla. 4th DCA 2006).

[8] 330 So. 3d 114 (Fla. 2d DCA 2021).

[9] 394 So. 3d 51 (Fla. 4th DCA 2024).

[10] *State of Florida Dep't. of Trans. v. Bellsouth Telecomms. Inc.*, 859 So. 2d 1278 (Fla. 4th DCA 2025).

[11] *Stowe v. Universal Prop. & Cas. Ins. Co.*, 937 So. 2d 156, 158 (Fla. 4th DCA 2006).

[12] *Johnson v. Levine*, 736 So. 2d 1235 (Fla. 4th DCA 1999).

[13] 2025 Fla. App. LEXIS 458 (Fla. 4th DCA 2025).

[14] *See also Alexander*, *supra* note 5.

AN EMPLOYER'S LAMENT

(With Apologies to Dr. Seuss)

By Leslie W. Langbein

Stan the Man,
Stan the Man,
I do not like that
Stan the Man.

He fell at work and hurt his hand.
He cannot drive the company van.
He cannot lift like worker Dan.

I do not like that Stan the Man.
I do not like that Stan the Man.

He always leaves at four o'clock.
Three times a week he sees a doc.
He cannot work the late, late shift.
The other guys are really miffed.

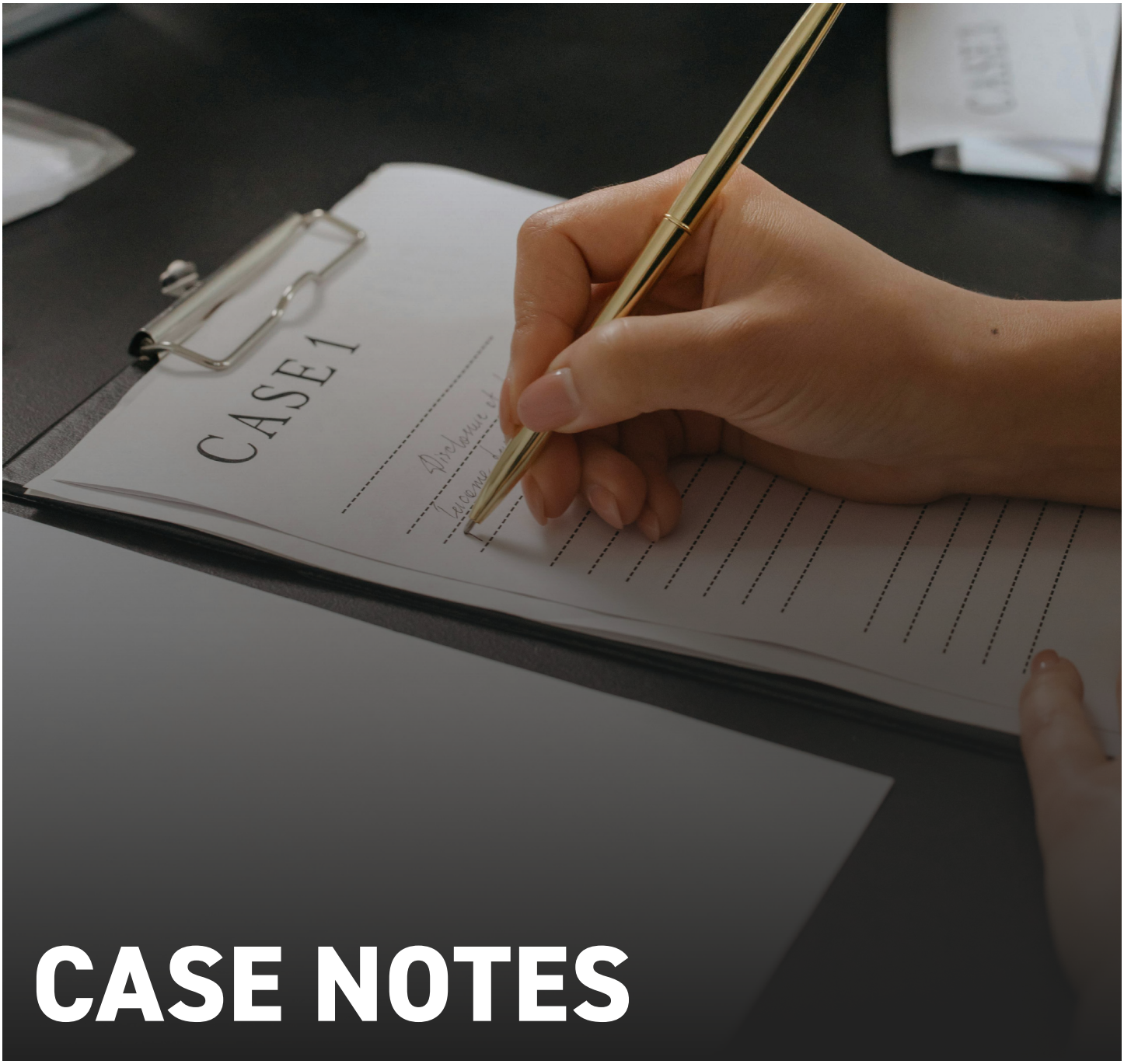
That Stan the Man.
That Stan the Man.
They do not like that
Stan the Man.

His tardiness has got my goat.
His co-workers are at my throat.
I ask to see his doctor's note.
I tell him not to rock the boat.

Now he claims I broke the law,
All because of one sore paw.
His case is at the EEOC.
His lawyers want a part of me.

He filed a lawsuit yesterday,
Workers' Comp and FMLA.
Another claim—the ADA!
And if that wasn't quite enough,
Retaliation's there among the stuff.

Now I know what kind of harm
Can be spawned from one sore arm.
So, employers do take heed.
Accommodate when there's a need.
Spare entry at a courthouse door.
Prevention's worth a pound of cure.



CASE NOTES

By Flora Patel, Tampa

Eleventh Circuit holds that employer's offer of reassignment meets ADA obligations despite employee's preference for extended FMLA leave.

Mundt v. Sheriff of Okaloosa County, No. 24-14130, 2025 WL 2985425 (11th Cir. Oct. 23, 2025).

Brandon Mundt worked for the Okaloosa County Sheriff's Department (the Department) for nearly a decade, most recently as an investigator in the Special Victims Unit. In 2015, Mundt suffered back injuries from an on-duty car accident. Although he initially recovered, his back condition worsened in 2022, requiring two surgeries in December of that year.

In January 2023, while Mundt was still on FMLA leave, the physician's assistant (PA) employed by Mundt's doctor projected that Mundt could return to unrestricted duty by March 14, 2023. Mundt relayed that to his supervisors. Major Shannon Tait, one of the supervisors, offered Mundt a non-sworn dispatcher position as a temporary accommodation, an offer which Mundt neither accepted nor rejected.

On February 8, 2023, the Department requested a status update from Mundt and informed him that his FMLA leave was now exhausted. Mundt forwarded an updated report from the PA reiterating an expected return date of March 14, and he requested that his FMLA leave be extended

until then. Eight days later, Tait instructed Mundt to choose, by February 20, between applying for the non-sworn position or resigning. Mundt did not respond, and the Department terminated his employment. Mundt sued Sheriff Eric Aden alleging violations of the ADA, FMLA, the Florida Civil Rights Act, and Florida's Workers' Compensation Law. The district court granted summary judgment to the Sheriff on all claims, holding that Mundt failed to demonstrate he was a "qualified individual" under the ADA or that the Sheriff engaged in unlawful discrimination. Mundt appealed only the ADA discrimination claim.

The Eleventh Circuit reviewed the district court's decision de novo. The court found a genuine factual dispute over whether Mundt could perform his essential job functions by March 14, 2023, but held that this issue did not preclude summary judgment because the Sheriff had provided a reasonable accommodation. The court emphasized that the ADA requires employers to make reasonable accommodations unless doing so imposes an undue hardship. Reassignment to a vacant position expressly qualifies as a reasonable accommodation under 42 U.S.C. § 12111(9)(B). The Sheriff met this standard by offering Mundt a non-sworn dispatcher position, encouraging him to apply, and pledging institutional support. Further, the court rejected Mundt's argument that the Sheriff should have granted him additional leave, reiterating that the ADA does not compel an employer to provide the specific accommodation the employee prefers. Because Mundt declined the accommodation offered, he could not establish a claim of disability discrimination.

By affirming the district court's decision, the Eleventh Circuit reinforced that an employer fulfills its ADA obligations when it offers a reasonable, even if less desirable, alternative position to an employee unable to perform essential job duties.

Parties, in a § 1981 case, may contract for a shorter limitations period than that provided by statute; a six-month limitation on the filing of legal claims was valid and reasonable.

Marcelin v. Fed. Express Corp., No. 24-61285-CIV-SMITH, 2025 BL 330166, 2025 US Dist. LEXIS 181279 (S.D. Fla. Sept. 16, 2025).

Jessy Marcelin, an African American employee, was terminated by FedEx on May 25, 2023. Prior to employment, she had completed an online application and acknowledged FedEx's "Terms and Conditions," which required any legal claim against the company be filed "within the time provided by law or no later than six (6) months" from the event giving rise to the claim. Upon accepting FedEx's job offer, Marcelin again reviewed and electronically acknowledged an "Employment Agreement" containing the same six-month limitations clause. On July 19, 2024, over thirteen months after her termination, Marcelin filed a lawsuit alleging that she faced discrimination due to her race in violation of 42 U.S.C. § 1981.

The U.S. District Court for the Southern District of Florida granted summary judgement for FedEx, holding that Marcelin's § 1981 race discrimination claim was contractually time-barred. The court held that, in the absence of a controlling statute prohibiting contractual modification of the limitations period, the six-month deadline in FedEx's agreement was enforceable. In so doing, the court emphasized longstanding federal precedent that permits parties to contract for a shorter limitations period than provided by statute, so long as the agreed-upon period is reasonable. The court pointed out that no federal law currently prohibits contractual shortening of the § 1981 limitations period and, therefore, the default four-year limitations period provided by the statute may be modified by agreement.

First DCA upholds denial of benefits to terminated employee under Chapter 440, Fla. Stat., explaining that the definitions of "misconduct" in Florida's Workers' Compensation Law and Florida's Reemployment Assistance Law differ and that workers' compensation judge is not bound by finding made in unemployment compensation proceeding.

Cobb v. TECO Energy Inc., 50 Fla. L. Weekly 2237 (Fla. 1st DCA 2025).

Leroy Cobb Jr. worked in a safety-sensitive position for TECO Energy (TECO) and was terminated after TECO concluded he violated workplace safety rules during an equipment-handling incident. TECO deemed the violation as "misconduct" and opposed Cobb's claim for temporary partial disability indemnity benefits under Florida's Workers' Compensation Law (Chapter 440, Florida Statutes), arguing his deviation from procedure was sufficiently serious and willful to meet the statutory standard.

The Judge of Compensation Claims (JCC) sided with TECO and found that Cobb was not entitled to benefits under Fla. Stat. § 440.15(4)(e) because he was terminated for "misconduct." Cobb appealed, essentially arguing that a decision by Florida's reemployment agency finding no misconduct and awarding unemployment compensation to Cobb under Florida's Reemployment Assistance Law (Chapter 443) was binding on the JCC (though the agency had not made its decision on the merits but had ruled in the claimant's favor because the employer had failed to provide information).

The First DCA affirmed the JCC's determination, finding it was based on competent, substantial evidence, but discussed the distinction between the definition of "misconduct" in Florida's Workers' Compensation Law, Fla. Stat. § 440.02(18), and the definition of "misconduct" in Florida's Reemployment Assistance Law, Fla. Stat. § 443.036(29). The court noted that, although unemployment compensation decisions interpreting "misconduct" under Fla. Stat. § 443.036(29) may be persuasive, workers' compensation judges must apply the definition of "misconduct" contained in Fla. Stat. § 440.02(18). While the two statutes historically used parallel language, explained the court, the Florida Legislature substantively amended Fla. Stat. § 443.036(29) in 2011–2012, breaking the prior symmetry between the two definitions. As a result, the unemployment statute's expanded, multi-pronged definition of misconduct cannot be imported into workers' compensation proceedings, and JCCs must rely exclusively on Fla. Stat. § 440.02(18) when determining whether a claimant was terminated for misconduct.

Certifying conflict with the Second and the Fourth DCAs, the

First DCA holds that FCHR notice, not the passage of time, triggers FCRA filing deadline.

Davis v. Big Bend Hospice, Inc., No. 1D2023-2932, 2025 WL 2404935 (Fla. 1st DCA Aug. 20, 2025).

Shazet Davis, an employee of Big Bend Hospice (the Hospice), took medical leave for open-heart surgery in late 2019. The Hospice approved her leave through January 2, 2020, but terminated her employment after she failed to return by February 3. Davis dual filed a charge of disability discrimination with the Equal Employment Opportunity Commission (EEOC) and the Florida Commission on Human Relations (FCHR) on December 9, 2020. The EEOC issued a right-to-sue notice in August 2021, but the FCHR neither issued a determination nor sent the statutory notice within the 180-day window or at any point thereafter.

On December 8, 2022, Davis filed suit under the Florida Civil Rights Act (FCRA), alleging disability discrimination. The trial court entered summary judgment for the employer, finding the action was time-barred as filed more than one year after the EEOC issued its right-to-sue notice. Davis appealed.

The First DCA reversed summary judgment for the Hospice and held that the required certified notice by FCHR, not the mere passage of 180 days, triggers the one-year limitations period for filing a civil action under the FCRA. In so doing, the court conducted a close textual reading of Florida Statute § 760.11(8), as amended in 2020. The statute explicitly requires FCHR to "promptly notify the aggrieved person" and to "certify that the notice has been mailed" when it fails to determine reasonable cause within 180 days. Only upon that certification does the one-year filing deadline commence. Because the FCHR failed to issue or certify the required notice in Davis' case, the cause of action had not accrued, and the one-year statute of limitations had not begun to run. The court emphasized that the FCHR's duty is "ministerial, not discretionary," and that complainants cannot be penalized for the agency's inaction.

The court expressly distinguished the Florida Supreme Court's 2000 decision *in Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000). *Joshua* interpreted an earlier version of the statute, which lacked the current notice and certification language. The First DCA reasoned that the 2020 legislative amendments superseded *Joshua's* accrual rule, creating a new, unambiguous procedural trigger tied to agency notice.

Distinguishing the Florida Supreme Court's recent decision in *Steak N Shake, Inc. v. Ramos*, 50 Fla. L. Weekly S167a (Fla. July 10, 2025), the court also rejected the employer's contention that the EEOC's right-to-sue notice satisfied the statutory notice requirement. The court found that the FCRA refers specifically to "the commission," meaning the FCHR, and does not delegate its statutory notice function to the EEOC. The EEOC's notice therefore could not substitute for the FCHR's notice. As this finding is at odds with the Second DCA's decision in *Ramos v. Steak N Shake, Inc.*, 376 So. 3d 100 (Fla. 2d DCA 2023) and the Fourth DCA's decision in *Aleu v. Nova Southeastern Univ., Inc.*, 357 So. 3d 134 (Fla. 4th DCA 2023), the First DCA certified conflict.

Third DCA affirms the trial court's refusal to consider a response to the motion for summary judgment that was filed three days before the summary judgment hearing.

Wellons v. Broward Water Consultants, Inc., 417 So. 3d 537 (Fla. 3d DCA 2025).

Broward Water Consultants, Inc. (BWC) installed water treatment equipment for Tamarah and Jarett Wellons. When the Wellons failed to pay for the services, BWC sued for payment and moved for summary judgment. The Wellons did not file a response to the motion. Instead, they obtained a continuance of the summary judgment hearing and filed their response three days before the rescheduled hearing date. The trial court refused to consider the untimely response and granted summary judgment to BWC.

On appeal, the Wellons argued that the trial court abused its discretion by disregarding their late response and by granting summary judgment. Citing Fla. R. Civ. P. 1.510(e)(2)–(3), the Third District Court of Appeal rejected their arguments and affirmed the judgment, finding that a trial court has discretion to treat facts in the movant's motion as undisputed when the nonmovant fails to file a timely response. In part, the court relied on *Hernandez v. Heritage Property & Casualty Insurance Co.*, 400 So. 3d 725 (Fla. 3d DCA 2024) ("If the nonmovant fails to timely serve the response required by the rule, the trial court has the discretion to consider the facts undisputed and to grant summary judgment in favor of the movant if the summary judgment motion and supporting materials show that the movant is entitled to it.") and *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131 (Fla. 4th DCA 2022) ("Because the defendants failed to file a response with their supporting factual position, as required under the amended rule, the trial court was permitted to consider the facts set forth in the plaintiff's motion for summary judgment as 'undisputed for purposes of the motion.'").

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The Checkoff

The Checkoff **is prepared and published by The Florida Bar Labor and Employment Law Section.**

This year's PELRF, held at the Marriott Orlando World Center in October, was sold out.

Alison Smith of Weiss Serota Helfman Cole & Bierman, P.L. provided an update on EEOC and FCHR developments.

Tallahassee attorney Joey Rix and The Honorable J. Bruce Culpepper of DOAH presented strategies for successfully resolving employment disputes.

Moderator Leslie Langbein of Langbein ADR and panelists Denise Heekin of Bryant Miller & Olive, P. A. and Mark Floyd of Mierzwa & Floyd, P. A. led a discussion of recent changes in the collective bargaining landscape.

Speakers Stephanie Marchman of GrayRobinson, P. A. and Sacha Dyson of Bush Graziano Rice & Hearing, P. A.

Milton Collins of Weiss Serota Helfman Cole & Bierman, P. L. spoke on accommodating public employee disabilities.

L&E Section Program Co-Chair Janeia Ingram of PERC, former Florida Governor Bob Martinez, and L&E Section Chair Rob Eschenfelder honored Donna Maggert Poole for her contributions to the field of public sector labor and employment law in Florida.