

Florida Supreme Court Clarifies the Standard for Private-Sector Whistleblower Claims:

What you need to know about investigating employee complaints and assessing retaliation risk

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When an employee reports a potential legal violation, employers need to take the complaint seriously. But does the employee have to be right about the law to bring a whistleblower claim? The Florida Supreme Court recently answered that question for claims under Florida's Private Sector Whistle-blower Act (FPWA), holding that a reasonable belief that an employer violated the law is not enough.

In *Gessner v. Southern Company* (Fla. May 28, 2026), the Court resolved a (very) longstanding conflict among Florida's lower courts over the proof required under section 448.102(3), Florida Statutes. The decision gives employers a clearer standard for evaluating these claims, but it does not eliminate the need to investigate complaints or carefully assess employment decisions that follow them.

The Court's Decision

In this case, Gessner sued his former employer, claiming he was terminated after objecting to workplace safety issues he believed violated the law. The issue the courts had to resolve was whether an employee must prove an actual violation of law or whether a good-faith, objectively reasonable belief that the employer's conduct was unlawful is sufficient to pursue a claim under the FPWA.

The lower courts were split on this issue. The Fourth District Court of Appeal had adopted the reasonable-belief standard commonly applied to retaliation claims under Title VII. The First and Second Districts rejected that approach, requiring proof that the challenged conduct actually violated the law. The Fifth District subsequently joined them, prompting the Florida Supreme Court to resolve the conflict.

The Florida Supreme Court sided with the First, Second, and Fifth Districts. Unlike Title VII, the FPWA does not expressly protect employees who object to conduct based solely on a reasonable belief that it is unlawful. An employee pursuing a claim under section 448.102(3) must prove, by a preponderance of the evidence, that the activity, policy, or practice at issue was "in violation of" a law, rule, or regulation.

The employer need not complete the unlawful act, nor must a court or agency have already found the conduct illegal. The statute may protect employees who object to ongoing unlawful practices that can still be corrected before the violation is complete.

Solidifying the Defense

Now that we have a clear road map, employers are better able to defend against these claims. First, when an employee raises a compliance concern, start by identifying the law, rule, or regulation involved. Then look at whether the conduct actually violated that requirement. An employee's honest belief that a practice is unlawful is not enough on its own to support an

FPWA claim. At the same time, the employer cannot settle the issue simply by disagreeing with the employee's interpretation.

Next, during the investigation, make sure to understand the complained-of conduct itself. An employee does not need to know or properly identify the law, rule or regulation that was allegedly violated. *Gessner* focused on what the employer actually *did*, not just what the employee stated or what words the employee used to identify the violation.

Document what happened, what policies and practices were in place, and whether they met the applicable requirements. If the investigation uncovers a problem, address it promptly. And because the Court made clear that the statute can apply before a violation is complete, do not dismiss a concern just because the conduct is ongoing or can still be corrected.

Limits

Gessner addresses the proof required for a claim under section 448.102(3); it does not establish a universal standard for every retaliation claim. Other federal and state laws may protect employees who raise concerns under different standards. Before taking adverse action against an employee who has complained about legal compliance, employers should document the legitimate basis for the decision and evaluate the potential protections implicated by the complaint.

The Takeaway

Gessner gives Florida employers a more demanding standard to apply when defending private-sector whistleblower claims. For employers, however, the practical response is not to scrutinize complaints less carefully. First determine what legal requirement is at issue, then investigate whether the challenged conduct complies with that requirement and ensure that subsequent employment decisions can be supported by a documented, legitimate rationale.

The decision may narrow the path to recovery under the FPWA, but sound compliance practices remain the best way to address problems before they become litigation.

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