PRESENTED AT

31st Annual Labor and Employment Law Conference

May 30-31, 2024
AT&T Conference Center, Austin, TX

Texas State Law Update and Beyond

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Whistleblower Claims

Scott & White Mem. Hosp. v. Thompson, 681 S.W.3rd 758 (Tex. 2023).

In this whistleblower case arising under the Texas Family Code, the Texas Supreme Court considered whether the statute imposes "but for" causation, similar to other whistleblower laws in Texas. The Court concluded that it does.

Thompson was an RN at Scott & White. In 2015, she received two reprimands for being unprofessional and disruptive. In May 2016, she contacted a child patient's school nurse out of concern that the parents were not properly managing the child's medications and disclosed protected health information during the call. The parents had previously signed a HIPAA authorization to allow disclosure by the hospital under limited circumstances, but that authorization had expired at the time Thompson contacted the school. She did not advise the parents she was contacting the school. The school nurse advised Thompson that the child's behavior issues had increased. Thompson spoke to a supervisor at Scott & White and was told to report her concerns to CPS, which she did. The child's mother learned of the report and complained to the hospital. The hospital investigated, learned of Thompson's call to the school nurse, and terminated her employment. She sued under the Texas Family Code, which requires a professional (including a nurse) to report a reasonable belief of abuse or neglect of a child to CPS. Section 261.110 of the Family Code prohibits an employer from taking an adverse action against a professional who makes a report in good faith. The trial court granted Scott & White's motion for summary judgment, but the appellate court reversed, resulting in appeal to the Texas Supreme Court.

In its opinion, the Court noted that like other whistleblower statutes in Texas, there is a rebuttable presumption that termination was for a required report under the Family Code if the termination occurs before the 61st day after the report was made. The statute also provides an employer with an affirmative defense that it would have made the same decision solely based on other evidence not related to the report. The Court also noted that similar statutes have been construed to require that "but for" the employee's conduct, the employer would not have taken adverse action when it did. Based on the similarities in language, the Court held that the Family Code's whistleblower protections should likewise be construed as requiring "but for" causation between the protected conduct and the adverse action.

In support of her argument that she had established "but for" causation, Thompson relied on the termination documentation which provided that as a result of her contacting the school nurse without a valid HIPAA authorization, she was being terminated, but which also noted that a "CPS referral was made without all details known to Ms. Thompson." She argued that by referring to both her contact with the school nurse and her contact with CPS, Scott & White terminated her for both reasons. The Court disagreed, noting that the causation standard requires proof that the additional reason – in this case her contact with the school nurse – was insufficient to cause Scott & White to terminate her when it did. The Court concluded that the documentation and evidence established that it was Thompson's conduct in contacting the school nurse which motivated her termination.

***Crystal City Indep. Sch. Dist. v. Flores*, 2023 WL 6168262 (Tex. App.—El Paso September 21, 2023, pet. denied).**

This whistleblower case involved questions of whether the Texas Education Agency is a law enforcement of authority, and whether the plaintiff had a good faith belief that the conduct she was reporting was criminal.

Flores was the Business Manager in CCISD's Finance Department. In October 2020, she filed an anonymous complaint with the Texas Education Agency that two human resources employees, including the Human Resources Director, had falsified time records. Specifically, she had discovered that the Human Resources Director, who was exempt, had failed to clock out for a week. She filed the complaint with the TEA instead of the CCISC board because the Human Resources Director was married to a board member. Flores filed a second complaint with the TEA two months later, claiming she feared retaliation because the spouse of the Human Resources Director had now because the board president and was trying to get information about the first complaint she had filed. She claimed it was a conflict of interest for the Human Resources Director and board president to be married. TEA notified CCISD that it was investigating a number of complaints against it in March 2021 and updated CCISD that its investigation was expanding in November 2021. In the meantime, Flores' identity was revealed to the CCISD board shortly after she had filed the second complaint. A motion to renew her contract, which expired at the end of the school year, was rejected, and her employment terminated at the end of the 2020-2021 school year. Flores sued CCISD for retaliation under the Texas Whistleblower Act. CCISD responded with a plea to the jurisdiction. It was denied and CCISD filed an interlocutory appeal.

As to Flores' first complaint to the TEA, the court of appeals rejected it, holding that the TEA is not an appropriate law enforcement authority for reporting criminal law violations. The TEA does not have jurisdiction to investigate criminal law violations and specifically advises of its lack of investigatory power over criminal violations on its complaint form (which Flores had used). The court thus held that TEA was not an appropriate law enforcement authority, nor could Flores have reasonably believed it was. The court also held that Flores could not establish the good faith prong of her claim – specifically, she could not establish that her belief -- that the employee's conduct was criminal -- was objectively reasonable in light of her training and experience. The court concluded that Flores, an experienced administrator with financial and payroll expertise, could not have reasonably believed that the Human Resource Director's failure to clock out for a week was an effort to falsify time records. As to the second complaint to the TEA, the court concluded that the reported misconduct – the alleged conflict of interest – did not implicate any statute and thus was not a violation of law.

Chapter 21 – Discrimination and Retaliation

***Texas Tech Univ. Health Sci. Ctr v. Niehay*, 671 S.W.3d 929 (Tex. 2023)**

In this case, the Texas Supreme Court held that morbid obesity, without evidence that it is caused by an underlying physiological condition or disorder, does not qualify as a disability under the Texas Commission on Human Rights Act ("TCHRA" or Chapter 21).

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First appeared as part of the conference materials for the
31st Annual Labor and Employment Law Conference session
"State Employment Law Update: Texas and Beyond"