



# David Miklas

Law Office of David Miklas, P.A.

Representing Florida Employers Since 1998

[www.MiklasEmploymentLaw.com](http://www.MiklasEmploymentLaw.com)



**The worst advice HR professionals  
are currently following**



Only 0.01% of Florida Bar members hold this distinction.

Email:

[david@miklasemploymentlaw.com](mailto:david@miklasemploymentlaw.com)



David Miklas

Labor & Employment attorney defending discrimination harassment, retaliation...

1d •

Is it any surprise that the workers are on the verge of bringing in a union? NLRB complaints about Amazon have more than tripled in the past year. Unhappy employees unionize. This is another reason why your [#floridabusiness](#) should try to keep your employees happy.



Amazon illegally fired 2 activist employees, labor board finds

[businessinsider.com](#)

122 • 124 comments

**54,856 views** of your post in the feed

# HR Manager Fired After Mocking Applicant's English



**Common sense**  
is not so common



**David Miklas**

Labor & Employment attorney defending discrimination harassment, retaliation...

1d •



In case you were wondering, firing someone right before Christmas may be a bad business decision.

15 • 7 Comments

950 views of your post in the feed



**Robin Wiggins, MBA, SHRM-CP** • 1st

HR Manager | HR Generalist | HR Business Partner | Employee Relations M...

1d ...

Why?

# SERVERS & BARTENDERS WHO AREN'T OR DON'T PLAN TO GET PREGNANT!

Redfish Willie's Waterfront Grill  
Full-time Job - Aransas Pass

[Apply Now](#)

Employees who are paid a salary are not entitled to overtime

# Salary ≠ Exempt



2 part test:

Salary + job duties



## Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

### Executive Exemption

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee must be compensated on a salary basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

## Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

### Administrative Exemptions

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's **primary duty** must be the performance of office or non-manual work directly related to the **management** or general business operations of the employer or the employer's customers; and
- The employee's primary duty includes the **exercise of discretion and independent judgment with respect to matters of significance.**

## Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA)

### Professional Exemption

To qualify for the **learned professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a [field of science or learning](#); and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

To qualify for the **creative professional** employee exemption, all of the following tests must be met:

- The employee must be compensated on a [salary](#) or fee basis (as defined in the regulations) at a rate not less than \$684\* per week;
- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of [artistic or creative](#) endeavor.

## Salary Basis Requirement

To qualify for exemption, employees generally must be paid at not less than \$684\* per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least \$684\* on a salary basis *or* on an hourly basis at a rate not less than \$27.63 an hour.

Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level. Additionally, if after the 52-week period, the employer has not met its financial obligation, the employer can make a final "catch-up" payment within one pay period after the end of the 52-week period to bring an employee's compensation up to the required level. Any such catch-up payment will count only toward the prior year's salary amount and not toward the salary amount in the year in which it is paid.

## Circumstances in Which the Employer May Make Deductions from Pay

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; for penalties imposed in good faith for infractions of safety rules of major significance; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions. Also, an employer is not required to pay the full salary in the initial or terminal week of employment, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.

Q&A

Asked in Rockledge, FL | November 26, 2019

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## Do I have a case?

I have been paid by salay from the same employer for the nearly 8 years. From the very beginning it was obvious that I was on salary so they could avoid paying me the 10-15 hours of overtime every week. It wasn't right, but I have to work. After a couple years I did some research. According to flsa fact sheet #17a I did not meet the requirements to work on salary. I work as a mechanic at a cabinet factory repairing machines. On paper they list me as a "Supervisor" but I have never been anyone's supervisor. Am I able to collect nearly 8 years of overtime?

# Comcast Sued for FLSA Overtime Pay Violations



by CHRISTINA TABACCO SEPTEMBER 14, 2020

Named plaintiff Luis Bertot [filed](#) a proposed Fair Labor Standards Act (FLSA) **class action against Comcast** Cable Communications Management LLC **and one of its human resources executives** on Sept. 10. The complaint accuses the television provider of willfully and intentionally violating the FLSA by **misclassifying human resource division employees as exempt** from overtime pay and failing to pay them for hours worked in excess of 40 per week.

The Southern District of Florida lawsuit states that Comcast is a foreign limited liability company that conducts business in the district. Allegedly, the plaintiff began work for Comcast in 2014 in a salaried role as a **human resources manager**. He earned two pay raises over time and currently makes about **\$109,600 per year**, the filing said.

According to the complaint, the named plaintiff averaged approximately 17 hours of uncompensated overtime each workweek. His direct boss reportedly required him to “primarily, if not exclusively, [perform] non-exempt work under [] close supervision,” including responding to text messages and emails in the evening and early morning hours.

The named plaintiff argues that he is a non-exempt employee because he performed “routine work that did not involve him exercising independent judgment and discretion on matters of significance.” Furthermore, he allegedly did not evaluate other employees’ performance for purposes of promotion, did not prepare company policies, and did not have the authority to adjust subordinate hours or pay, hire or fire anyone, or discipline employees. The complaint also argues that the named plaintiff’s immediate supervisor “was an extreme micromanager who monitored and oversaw virtually everything that he did,” thus, he lacked the autonomy of an overtime-exempt employee under the FLSA.

## Payroll Summary

Check Date	Name	Hours	Total Paid	Tax Withheld	Deductions	Net Pay
Pay Frequency: Weekly						
04/03/2020		52.00	1,200.16	161.08	0.00	1,039.08
03/20/2020		61.50	1,419.42	204.16	0.00	1,215.26
02/28/2020		17.50	403.90	30.90	0.00	373.00
02/21/2020		54.00	1,246.32	170.16	0.00	1,076.16
02/07/2020		80.25	1,855.06	289.77	0.00	1,565.29
01/24/2020		80.75	1,872.37	293.17	0.00	1,579.20
01/10/2020		56.00	1,292.48	180.14	0.00	1,112.34
<b>Pay Frequency Totals: Weekly</b>		402.00	\$9,289.71	\$1,329.38	\$0.00	\$7,960.33
<b>Total Net Pays for Weekly frequency: 7</b>						
<b>Company Totals:</b>		402.00	\$9,289.71	\$1,329.38	\$0.00	\$7,960.33
<b>Total Net Pays for Company: 7</b>						

**\$684 X 2 = \$1,368**



Control the budget by having a policy prohibiting employees working more than 40 hours



If an ee did not receive authorization to work OT, then Employer does not need to pay OT

**Subject: Memo: Overtime Work**

To: All Staff,

REMINDER: 80 hours, every two weeks, is the TOTAL Number of HOURS will approve to pay, unless you have prior approval from your supervisor. If anyone works over 80 hours, within a two week period, you will not be paid for those hours. Again, OVERTIME HOURS WILL NOT BE PAID. Make sure to CLOCK IN AND CLOCK OUT; including LUNCH TIME 12:00 PM - 1:00 PM daily, or

# US DEPARTMENT OF LABOR FINDS CENTENNIAL HILLS HOSPITAL MEDICAL CENTER REQUIRED EMPLOYEES TO WORK AFTER CLOCKING OUT, MANIPULATED TIMECARDS

**Hospital pays \$145K in back wages to 23 employees, \$19K in penalties**

\*\*\*

The U.S. Department of Labor's [Wage and Hour Division](#) found Centennial Hills Hospital Medical Center – a subsidiary of Universal Health Services Inc. – violated the [Fair Labor Standards Act](#) by failing to pay employees for all hours that they worked. The employer also willfully manipulated workers' timecards in an attempt to avoid paying overtime by reducing the total number of work hours recorded.

Following the investigation, the division recovered \$145,402 in back wages for 23 employees. The division also assessed Centennial with \$19,090 in penalties for its willful violations and cited the employer for their failure to maintain accurate records of employees' hours worked.

Should reclass or hire IC to save \$  
(gig economy)

# *Lange v. Tampa Food & Hospitality*

United States District Court for the Middle District of Florida, Tampa Division

February 22, 2021 Decided; February 22, 2021, Filed

Case No. 8:19-cv-34-CEH-CPT

\* \* \*

The Eleventh Circuit has identified six factors that guide courts in applying the economic reality test:

- (1) the nature and degree of the alleged employer's control as to the manner in which the work is to be performed;
- (2) the alleged employee's opportunity for profit or loss depending upon his managerial skill;
- (3) the alleged employee's investment in equipment or materials required for his task, or his employment of workers;
- (4) whether the service rendered requires a special skill;
- (5) the degree [\*21] of permanency and duration of the working relationship;
- (6) the extent to which the service rendered is an integral part of the alleged employer's business.

*Scantland*, 721 F.3d at 1312. However, the court recognized that "the overarching focus of the inquiry is economic dependence." *Id.* "[T]he final and determinative question must be whether the total of the testing establishes the personnel are so dependent upon the business with which they are connected that they come within the protection of FLSA or are sufficiently independent to lie outside its ambit." *Id.* (quoting *Usery v. Pilgrim Equip. Co.*, 527 F.2d 1308, 1311-12 (5th Cir. 1976)).

The parties apply the six-factor test in their motions, and the Court will apply them here, recognizing that these factors are not exclusive, and no single factor is dominant.



## U.S. DEPARTMENT OF LABOR

# US LABOR DEPARTMENT FINDS GUAM CONSTRUCTION CONTRACTOR ILLEGALLY ATTEMPTED TO AVOID PAYING OVERTIME BY MISCLASSIFYING WORKERS AS INDEPENDENT CONTRACTORS

FEBRUARY 18, 2021

***Konstrak Builders to pay \$51K in overtime back wages to 23 workers***

**DEDEDO, GUAM** – By deliberately misclassifying employees as independent contractors, a Dededo construction company attempted to avoid paying overtime when workers exceeded 40 hours in a workweek until a federal investigation uncovered the scheme.

The U.S. Department of Labor's [Wage and Hour Division](#) determined Konstrak Builders – which provides maintenance and repair services to Mobil gas stations on Guam – intentionally violated the [Fair Labor Standards Act](#) when it continued to pay straight-time wages to 23 workers for overtime hours they worked. As a result, Konstrak will pay \$51,481 in back overtime wages to those workers. The FLSA requires overtime at time and one-half employees' regular rates of pay for hours they work beyond 40 in a workweek. The employer also failed to keep accurate payroll records, as required.

In addition to the overtime back wages, WHD assessed Konstrak \$10,000 in penalties for the willful nature of the violations.

# Boss pleads guilty to worker-misclassification

By Alex Rose [arose@21st-centurymedia.com](mailto:arose@21st-centurymedia.com) @arosedelco on Twitter Feb 11, 2021

**MEDIA COURTHOUSE** — One of four people accused of misclassifying employees as “independent contractors” in order to avoid paying taxes pleaded guilty Wednesday to theft and related charges.

Armando Garcia-Ramirez, 55, of the 2100 block of South Queen Street in York, entered a negotiated guilty plea before Common Pleas Court Judge John Capuzzi to theft by unlawful taking and conspiracy to workers compensation fraud, both felonies of the third degree, as well as improper classification of workers, a third-degree misdemeanor.

Capuzzi sentenced Garcia-Ramirez to time served to 23 months with one year of consecutive probation under a negotiated guilty plea worked out by Assistant District Attorney Elizabeth Schneider, chief of the Economic Crimes Unit, Chief Deputy Attorney General Nancy Walker, who assisted on the case, and defense counsel James Bonner.



Pay a salary during OT weeks



U.S. DEPARTMENT OF LABOR

JUNE 22, 2021

## News Release

# MIRAMAR BEACH RESTAURANT PAYS \$108K IN BACK WAGES, PENALTIES FOLLOWING US DEPARTMENT OF LABOR INVESTIGATION

*Ocean Club of Walton County Inc. violated minimum wage, overtime laws*

\*\*\*

- Ignored overtime obligations when it changed a manager's status from hourly to salary – depending on the number of hours worked in the week – and failed to pay for any hours the manager worked beyond 40 in a workweek.

# Barnes & Noble pays \$910K to settle cafe managers' misclassification suit

PUBLISHED

March 4, 2021

- Barnes & Noble has agreed to pay \$910,000 to resolve a lawsuit by cafe managers who alleged they were misclassified as exempt employees and denied overtime pay required by the Fair Labor Standards Act (FLSA). The workers will share in \$210,000 while \$700,000 will cover attorneys' fees (*Brown et al v. Barnes & Noble, Inc.*, No. 16-cv-7333 (S.D.N.Y., Feb. 26, 2021)).
- The plaintiffs said that although they were labeled managers, they were not responsible for management functions such as hiring and firing and spent the "vast majority" of their time performing the same duties as non-exempt, hourly cafe employees. The cafe managers said their primary duties included making coffee and other beverages, preparing food, serving customers, working the cash register, and cleaning the cafe and that they were closely monitored by store managers.

New - Humiliating press releases



U.S. DEPARTMENT OF LABOR

JUNE 29, 2021

## News Release

# COURT ORDERS TWO MINNESOTA RESTAURANTS TO PAY \$435K IN BACK WAGES FOLLOWING US DEPARTMENT OF LABOR INVESTIGATION

*Employer misclassified cooks, dishwashers **cheating workers** out of about half their wages*

**MINNEAPOLIS** – Imagine being on your feet 60 hours a week serving customers but getting paid for just 30, or working more than 10 hours a day as a cook or dishwasher for a flat salary and being denied minimum wage and overtime protections because your employer wrongly classified you as an independent contractor and not as an employee.

Use unpaid interns to save \$

## **Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act**

This fact sheet provides general information to help determine whether interns and students working for “for-profit” employers are entitled to minimum wages and overtime pay under the Fair Labor Standards Act (FLSA).<sup>1</sup>

### **Background**

The FLSA requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation for their work.

### **The Test for Unpaid Interns and Students**

Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.<sup>2</sup> In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts have identified the following seven factors as part of the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.





Pay all hours over 40 as 1099

VERO BEACH, FL

---

- Will pay \$14 an hour fix & No Benefits, Overtime, Medical will not cover
- Will pay 40 payroll & rest will pay as a 1099.
- Will pay for only worked hours
- Will work any shifts
- Will come on time

Allow hourly employees work while on break



Working  
Off the clock

# Comcast Contractor Ordered To Pay \$7.5 Million In Unpaid Overtime

by [Gary Green](#) April 05, 2019

\*\*\*

ordered him to **work through his meals**, which usually meant eating while driving, and he was expected to remain available via his cell phone at all times, so that he could immediately respond to work-related calls.

Another worker shared that he **was not reimbursed for equipment he purchased for his job**, including a wireless drill, drill bits, pliers, a staple gun, as well as boots and pants.

IN		6:50	6:40	6:35	6:45	6:40	6:40
OUT		3:30	3:30	3:30	3:30	3:30	3:30
IN		<del>6:02</del>	<del>5:51</del>	<del>5:51</del>	<del>5:51</del>	<del>6:04</del>	<del>6:00</del>
OUT		<del>3:30</del>	<del>3:30</del>	<del>3:30</del>	<del>3:30</del>	<del>3:30</del>	<del>3:30</del>
IN		9:00	9:00	8:45	8:50	9:00	9:00
OUT		5:20	5:40	5:30	5:30	5:45	5:30

Q&A

February 11, 2021

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## Can my employer threaten dismissal ?

My employer has threatened disciplinary action because I work to many hours and out of span of hours. I do not request to be paid overtime. I do it because I enjoy my job. Where do I stand in this situation.

# New hires – put thru “probationary period.”

- Can lead to confusion because employee believes can't be terminated after probationary period.
- May mistakenly believe on discipline at start of employment – set clear performance goals.



Get info from *trusted resources* and current – seek guidance from experienced counsel. Review policies to make sure consistent with laws.



asked a question

April 7



## How much does one charge to draft an employee handbook?



2

14 Answers



Many free forms online you can find and tweak using your time

Like · Reply · 1d



I've charged anywhere from a couple grand to much more.

Like · Reply · 1d



1



\$3000 depending on complexity.

Like · Reply · 1d



\$350 an hour.



3

Like · Reply · 1d



Depending on complexity \$2,500 - \$10,000 flat fee

Like · Reply · 1d



Billable. The last one I drafted took over 10 hours. They carry a high risk for liability because they are designed to protect the employer from a lot of s\*\*\*. So I did legal research to ensure that it was solid 😊. It was 65 pages in the end. They are no joke even with templates as a starting point.

Like · Reply · 1d



2

## Employee Handbook Template | Sample Employee Handbook ...

Create an **Employee Handbook** in minutes using a step-by-step **template**. An **employee handbook** is given to new **employees** from the employer. The **handbook** ...

## Sample Employee Handbook Library

- **Pronto Marketing** uses a clear, concise employee handbook with a modern look. It's easy for employees to find what they need. Employees can even see an example of what to expect on their first day!

# COMPENSATION

## SALARY AND WAGES

The salary we've agreed with you is outlined in your employment agreement and should be regarded as confidential. You should not disclose your salary or wages to anyone within The Company other than your immediate manager. Full details of the breakdown of your salary or wage payment will be shown on your payslip which will be given to you on, or just

## Employee Handbook Template | Sample Employee Handbook ...

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# COMPENSATION

## SALARY AND WAGES

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Incomplete or outdated employee  
handbook

## Rules of Conduct

The following conduct will not be tolerated and may be grounds for IMMEDIATE dismissal without further warning.

- Any act that might endanger the safety or life of any other team member or guest.
- Stealing, abusing, destroying, damaging, or defacing salon property or the property of others on the salon premises.
- Bringing/using narcotics, non-prescription drugs, or alcohol on the salon premises during working hours or coming to the salon under the influence.
- **Disclosure of** confidential salon records/information, including guest list, to unauthorized persons. This includes **hourly and commission compensations with other team members.**
- Willfully falsifying any salon record.



# EEOC Sues Shelley's Septic Tank, Inc. for Same Sex Sexual Harassment and Retaliation

Septic Company's Owner Harassed Driver and Fired Him when He Complained, Federal Agency Charges

TAMPA, Fla. – Shelley's Septic Tank, Inc, a Zellwood, Fla. company, violated federal law when a driver was sexually harassed by the company's owner and discharged in retaliation for complaining to the sheriff's office about the harassment, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to the EEOC's lawsuit, the company's owner, David Shelley, repeatedly made sexually charged comments to a male employee and engaged in unwelcome physical contact with the employee. After repeatedly objecting to the harassment, the employee reported it to the sheriff. The EEOC said that owner found out about it and, four days after the employee's complaint, retaliated against the employee by firing him.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits employers from retaliating against workers who object to such discrimination.

The EEOC filed suit in U.S. District Court for the Middle District of Florida (*EEOC v. Shelley's Septic Tank, Inc.*, Case No. 6:20-cv-01285) after first attempting to reach a pre-litigation settlement through its conciliation process. The agency seeks back pay, front pay, compensatory and punitive damages for the discrimination victim, and injunctive relief.

# Clarify your policies – don't “wing” handbooks





# Freedom *of* Speech

in the **Public Workplace**

**Marcy S. Edwards  
Jill Leka  
James Baird  
Stefanie Lee Black**

- *A* Legal
- and
- Practical
- Guide to
- Issues
- Affecting
- Public
- Employment

Section of State and  
Local Government Law  
American Bar Association



**David Miklas**

Labor & Employment attorney defending discrimination harassment, retaliation...

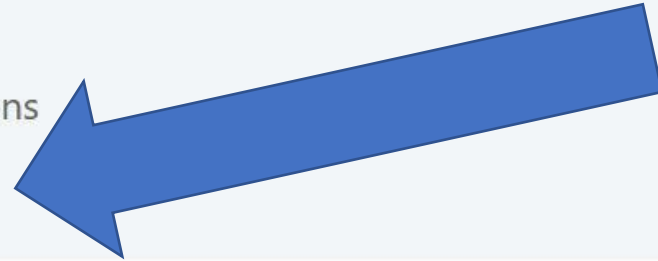
Poll for FL HR professionals: What have you been told at work that discouraged you from calling an employment lawyer on behalf of your organization?



**Michelle L. Orr** • 1st

Director, Employee and Labor Relations

We dont have budget for that.



**Wandy Muzich** • 1st

Human Resources Manager at **Florida Landscaping**

"There has to be something online for free that will answer this."



**Jonathan Fantuzzo** • 1st

Human Resources Business Partner at **FLA. WORKERS OF MERIT**

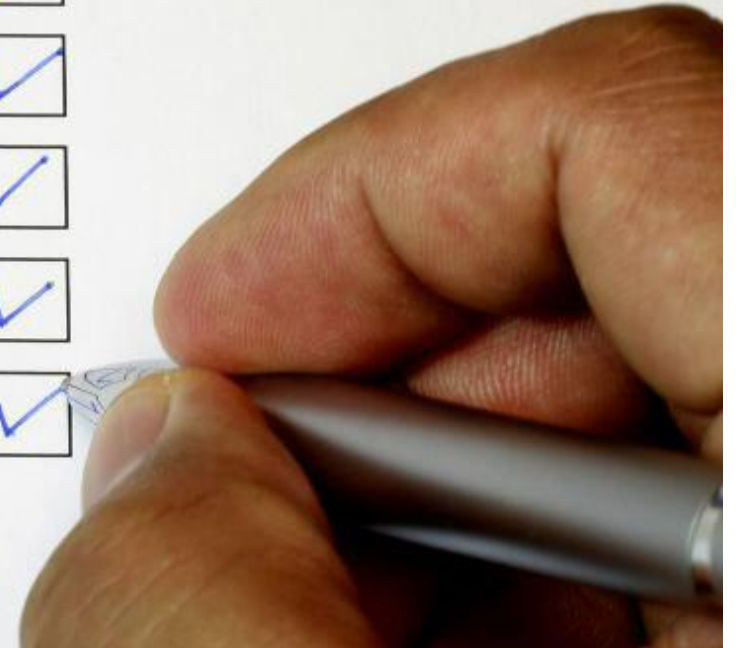
Employer: Why are you consulting with outside counsel. Don't you have (x) amount of experience in the HR field?



# Inflated evaluations

# Performance Factors

	Poor	Good	Excellent
Quality of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Quantity of Work	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Adaptability / Versatility	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cooperation/Relations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dependability	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Communication Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Supervision / Leadership Skills	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



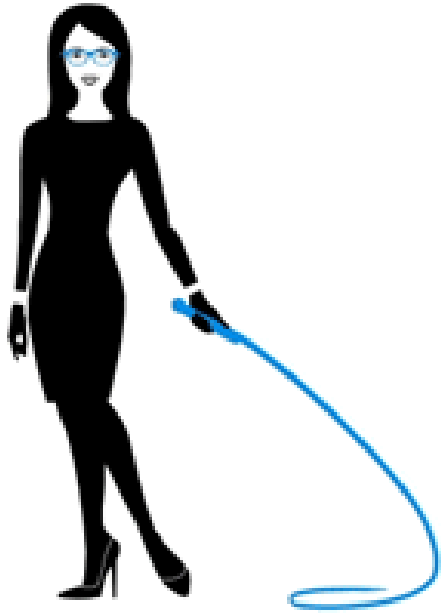
**Inflated  
Employee  
Appraisals**

Performance Factors	Poor	Unsatisfactory	Satisfactory	Good	Excellent
Job Knowledge	X				
Productivity		X			
Work Quality				X	
Consistency				X	
Communication Skill					X
Independent Work		X			
Creativity			X		
Punctuality					
Honesty					X
Integrity		X			
Group Work					X
Initiative				X	
Client Relations			X		
Coworker Relations				X	
Honesty					X
Takes Initiative	X				
Attendance		X			

**And yet, bad  
managers don't  
set off the alarm  
bells like a  
missing laptop...**



# HR needs to monitor



# Inaccurate job descriptions

- Key issue for this year is whether regular, in-office attendance is an “essential” function



What is the riskiest employment action an employer can take?



**YOU'RE FIRED**



**I'd like to sue  
someone please.**

**FX**

Refuse to give an employee a reason for termination

# Florida Golf Pro Reacts to Being Fired By Going on Hunger Strike

✍ CONNOR LINDEMAN / 📅 MAY 7, 2021

After being fired from his job as an assistant golf pro at Legends, 46-year-old Brad Stecklein decided to set up camp in front of the club's entrance in protest of what he says is an "unjust and unwarranted firing."

Stecklein, feeling burned by his former employer, decided to do a mini-strike of sorts. In addition to sitting outside the club's entrance, Stecklein is also abstaining from both food and sleep in the hopes that he can get at least a little something from the club.

\* \* \*

"Until I wither away," he said.

While Stecklein hasn't felt much support from the club itself, some residents and members of the club do have his back.

"I've had over 200 members of the club, which is over a quarter of the club, come out here and support and pray with me," Stecklein said.



# Workers participate in hunger strike outside Casa Latina

BY KIRO RADIO NEWSDESK

JUNE 11, 2021

At least five people outside Casa Latina have not eaten for six days as of Thursday to protest the sexual harassment, verbal abuse, and discrimination they say went on for years and was not properly dealt with by managers. They say they won't break their fast until their demands are met.

\* \* \*

One hunger strike participant was hospitalized.

Telling employee terminated because wanted  
a change in culture

# Former BrewDog employees claim they were fired based on gender and sexual orientation

by: Demie Johnson

Posted Mar 10, 2021

INDIANAPOLIS (WISH) — A group of former employees from a Fountain Square brewery claim they were fired because of their gender and sexual orientation. Four employees from BrewDog said they were fired by a new general manager they had never met before.

“This new general manager who we have never met, don’t even know what he looks like, called us one by one and told us that we were all being fired because they wanted a change in culture,” said former employee Erica O’Neill.

“It’s very strange that we seem to be singled out as a certain type of community that was fired,” said former employee Kyrria Myers.

O’Neill said in January, the brewery’s executive chef and general manager, who were both women, were fired. She said the positions were filled by men.



Not contacting a lawyer

# 9 Signs Your HR Manager is Terrible



BY SUZANNE LUCAS

## He Never Says, "We need to ask the lawyers"

He Never Says, "We need to ask the lawyers"

Employment law is complex. It's always changing and always open to new interpretations. Heck, just when companies all figured out that the Family Medical Leave Act (FMLA) was for employers with 50 or more employees, the EEOC said that the Americans With Disabilities Act (ADA) now can be construed as requiring medical leaves as well. That means smaller business could end up being required to give medical leave too. If you don't comply? Fines and legal bills.

**Red flag:** If your HR manager is confident that he knows everything he needs to know and never needs to run anything by an attorney, you need a new HR manager. Now.



vs.

Consultation to  
prevent lawsuits



Litigation expenses

Behavior and work ethics

Rude

Discourtesy

Cursing

Use of Alcohol/Drugs

Attitude

Unreasonable Demands

Improper Attire

Explanation

behaviour towards managers was very rude, being argumentative and making harsh demands,

said hire a lawyer and is going to sue if not paid in full. Had enough of arguing and terminated him.

Client complained Client's Name \_\_\_\_\_ Phone \_\_\_\_\_ Order # \_\_\_\_\_

Non-client complained. \_\_\_\_\_

Additional training  To be provided later  Provided Right Away

Warning  First Time  Repeat  Verbal  Written

Probation for \_\_\_\_\_ days  Suspension  Termination

I acknowledge receipt of a copy of this warning and I  agree  disagree with it and state:

Brought this for him to sign / very red and said he will not sign / "see you in court" →

8. Do you believe the claimant acted intentionally in violating the rule or policy?  Yes  No

8a. If yes, please explain.

Claimant wants to file a lawsuit, was trying to get other employees to file class action lawsuit, texted on employees' chat room and posted on Facebook invite to join his lawsuit

9. Did the claimant offer an explanation for the action, or inaction, you indicate was in violation of the rule or policy?  Yes  No

9a. If yes, what was the explanation?

Claimant demanded he would be paid more than the regular compensation the company gives other employees

Conducting an investigation yourself, when not experienced

3-12-20

## Olympia Senior Care Providers to Pay \$450,000 to Settle EEOC Sexual Harassment Lawsuit

### ***Female Supervisor Harassed Same-Sex Employee With Unwanted Touching and Sexual Language, Federal Agency Charges***

SEATTLE - Olympia, Wash.-based Koelsch Senior Communities, as well as The Hampton at Salmon Creek, one of the memory care facilities operated by Koelsch, will pay \$450,000 and adopt anti-discrimination policies and training to settle a sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to the EEOC's lawsuit, a female employee faced unwelcome conduct of a sexual nature from her female supervisor at The Hampton at Salmon Creek facility. This included sexually charged comments, unwanted touching, repeated requests for foot rubs and discussions about intimate details about the supervisor's marriage, dating and sexual practices. When the employee reported the unwelcome behavior to upper management, Koelsch failed to investigate properly and quickly sided with the supervisor, which emboldened the woman to continue harassing her subordinate.

Workplace sexual harassment violates Title VII of the Civil Rights Act of 1964. After first attempting to reach a pre-litigation settlement through its voluntary conciliation process, the EEOC filed its lawsuit against both Koelsch and The Hampton facility (EEOC v. Koelsch Senior Communities, LLC and The Hampton at Salmon Creek, Case No. 3:18-cv-05792-BHS) in U.S. District Court for the Western District of Washington at Tacoma. The employee, also represented

In its post-hearing brief, the Union wrote:

Regardless of the weight the arbitrator attaches to Article V.1.B, it is clear from the record that **a more thorough investigation** would have likely produced an entirely different result in this case. **While the employer need not interview every possible witness and ask every conceivable question to satisfy its requirement to conduct a thorough investigation,** Koven & Smith note that:

*The requirement that an investigation be reasonably complete also means that **the employer needs to take necessary follow-up measures, especially if its initial investigation leaves unsettled questions or produces contradictory versions of what took place.***



A close-up photograph of a hand holding a red pen, writing in a notebook. The notebook has several pages, some of which are yellowed. The word 'Documentation' is overlaid in large white text across the middle of the image.

Documentation

gone **WILD**

2-3-20

## Orlando Float to Pay \$27,000 to Settle Pregnancy Discrimination Suit

### ***Massage Therapy Company Fired Employee Because She Was Pregnant, Federal Agency Charged***

ORLANDO, Fla. - Azul Wellness, LLC, doing business as Orlando Float, and Orlando massage therapy company, will pay \$27,000 and provide equitable relief to settle a pregnancy discrimination lawsuit by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today. The EEOC charged that Orlando Float fired an employee because of her pregnancy.

The EEOC charged that Orlando Float required all pregnant employees to obtain a doctor's note, regardless of whether the employee was requesting any accommodation in her job duties, responsibilities or schedule. It was the employer's position that providing massages might be a safety risk for pregnant women and their unborn children. When the employee expressed concern over having to submit a doctor's note, she was terminated on her next scheduled shift.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act. The EEOC filed its suit lawsuit (Civil Action No. 19-cv-01689) in U.S. District Court for the Middle District of Florida after first attempting to reach a pre-litigation settlement through its conciliation process.

Not my problem



10 Nov

# Angry workers force Northdale Hospital's acting CEO and HR manager out

**The Witness** Witness Reporter

SHARE   



The acting CEO's office was vandalised and the message 'CEO must go' was spray painted on the walls.

# Subpar management training

A close-up photograph of a person's hands holding a white, textured paper napkin. The person is wearing a black long-sleeved top and black pants. Their fingernails are painted a light, pastel blue color. They are wearing several gold rings on their fingers. The napkin has the text "STRAIGHT OUTTA QUARANTINE" printed in a bold, white, sans-serif font, with each word on a separate dark red rectangular background. The background of the image shows a black and white geometric pattern, possibly a chair or a wall.

**STRAIGHT  
OUTTA  
QUARANTINE**

Q&A

January 18, 2021

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## **Can my employer require everyone in my house to be tested for COVID?**

My son has/had COVID. I was told to self isolate by my boss for 14 days and sent to work from home. In order for me to return to working onsite **my boss is demanding my ENTIRE family be tested and negative.**

Can she demand people she does not employ to be tested? **She also wants the results** which means I am giving her my husband and children's medical records.

Is there a law against this?



**U.S. Equal Employment  
Opportunity Commission**

# **What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws**



These materials were prepared prior to the [CDC's updated guidance for fully vaccinated individuals](#) issued on May 13, 2021, and any supplements. The EEOC is considering any impact of these developments on COVID-19 technical assistance provided to date.

*Technical Assistance Questions and Answers - Updated on May 28, 2021.*





**K.2. What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy? (5/28/21)**

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

**K.4. Is information about an employee's COVID-19 vaccination confidential medical information under the ADA? (5/28/21)**

**Yes.** The ADA requires an employer to maintain the confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination. This ADA confidentiality requirement applies regardless of where the employee gets the vaccination. Although the EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, this information, like all medical information, **must be kept confidential and stored separately from the employee's personnel files** under the ADA.

**K.11. What should an employer do if an employee who is fully vaccinated for COVID-19 requests accommodation for an underlying disability because of a continuing concern that he or she faces a heightened risk of severe illness from a COVID-19 infection, despite being vaccinated? (5/28/21)**

Employers who receive a reasonable accommodation request from an employee should process the request in accordance with applicable ADA standards.

When an employee asks for a reasonable accommodation, whether the employee is fully vaccinated or not, the employer should engage in an interactive process to determine if there is a disability-related need for reasonable accommodation. This process typically includes seeking information from the employee's health care provider with the employee's consent explaining why an accommodation is needed.

For example, some individuals who are immunocompromised might still need reasonable accommodations because their conditions may mean that the vaccines may not offer them the same measure of protection as other vaccinated individuals. If there is a disability-related need for accommodation, an employer must explore potential reasonable accommodations that may be provided absent undue hardship.

## **Notice to Employees** **Minimum Wage in Florida**

**The 2021 minimum wage in Florida is \$8.65 per hour, effective January 1, 2021, with a minimum wage of at least \$5.63 per hour for tipped employees, in addition to tips.**

The minimum wage rate is recalculated yearly on September 30, based on the Consumer Price Index.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum wage requirements.
2. Inform any person about an employer's alleged noncompliance with lawful minimum wage requirements.
3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and giving the employer 15 days to resolve any claims for unpaid wages may bring a civil action in a court of law against an employer to recover back wages plus damages and attorney's fees.

Thinking consequence for unpaid wages  
is only backpay

**U.S. Department of Labor  
Wage and Hour Division  
Receipt for Payment of Back Wages, Liquidated Damages,  
Employment Benefits, or Other Compensation**



I, \_\_\_\_\_, have received payment of wages, liquidated damages, employment  
(typed or printed name of employee)  
benefits, or other compensation due to me from \_\_\_\_\_  
(name and location of the establishment)

\_\_\_\_\_ **FL** \_\_\_\_\_

for the period beginning with the workweek ending \_\_\_\_\_ **01/05/2019** through the  
workweek ending \_\_\_\_\_ **01/02/2021**. The amount of the payment I received is shown below.

This payment of wages and other compensation was calculated or approved by the U.S. Department of Labor Wage and Hour Division (WHD) and is based on the findings of a WHD investigation. This payment is required by the Act(s) indicated below in the marked box(es):

**Fair Labor Standards Act ( FLSA )**

Gross Amount **Back Wages** \_\_\_\_\_ **\$38.07** Gross Amount **Liquidated Damages** \_\_\_\_\_ **\$0.00**

Legal Deductions from Back Wages \_\_\_\_\_ Other Amount Paid \_\_\_\_\_

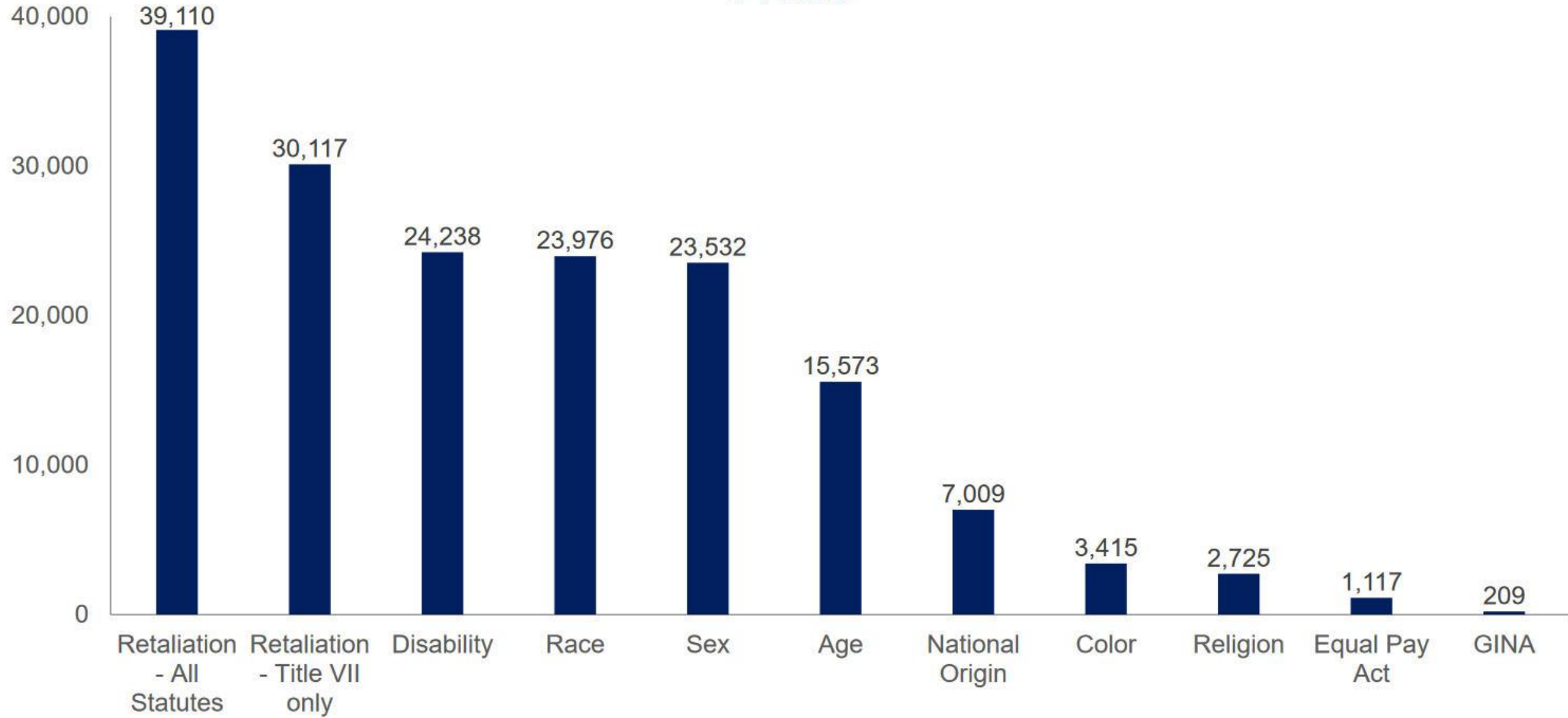
Net Amount Received \_\_\_\_\_ (please specify type)

**NOTICE TO EMPLOYEE:** Your acceptance of this payment of wages and/or other compensation due under the Fair Labor Standards Act (FLSA) or Family Medical Leave Act (FMLA), based on the findings of the WHD means that you have given up the right you have to bring suit on your own behalf for the payment of such unpaid minimum wages or unpaid overtime

Don't  
retaliate if  
you receive  
a complaint.



# Charge Receipts by Basis FY 2019





# Company ordered to pay damages after firing whistleblowers

by: K. Querry-Thompson

Posted: Mar 2, 2021

\* \* \*

Two truck drivers for Gulfeagle Supply reported to a manager that the tires on a company truck were unsafe. The drivers, who were concerned about their own safety, refused to operate vehicles with unsafe tires. However, they were fired

\* \* \*

The U.S. Department of Labor's Occupational Safety and Health Administration investigated and found that Gulfeagle Supply violated the Surface Transportation Assistance Act.

OSHA ordered the company to reinstate both drivers, pay more than \$23,000 in back wages to each employee and \$70,000 in punitive damages.

# Duty of reasonable accommodation

Some laws require more than mere non-discrimination; they also impose an affirmative duty on the employer to accommodate certain conduct that it otherwise would not accept. The two most common examples of these are: (1) the duty to “reasonably accommodate” a **disability** under the Americans with Disabilities Act, and (2) the duty to accommodate certain conduct based on **religious beliefs** under Title VII of the Civil Rights Act of 1964.

# Interactive Process





## U.S. Equal Employment Opportunity Commission

Press Release

10-02-2020

# Oceanic Time Warner Cable, Charter Communications, Inc. to Settle EEOC Disability Lawsuit

Cable Companies Denied Employees with Disabilities Reasonable Accommodations Federal Agency Charged

HONOLULU, Hawaii – Oceanic Time Warner Cable LLC and Charter Communications, Inc. (Oceanic) agree to pay \$800,000 and provide other injunctive relief to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

According to the EEOC's lawsuit, Oceanic denied employees with disabilities reasonable accommodation as required under the Americans with Disabilities Act (ADA), failed to engage in the interactive process, and instead fired them.



## U.S. Equal Employment Opportunity Commission

Press Release

01-26-2021

# Kindred at Home to Pay \$160,000 to Settle EEOC Disability Discrimination Lawsuit

ATLANTA – Gentiva Health Services, doing business as Kindred at Home, a provider of home health services including nursing and rehabilitation assistance, will pay \$160,000 to settle a disability discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

The EEOC's suit charged that Kindred learned that one of its employees suffered from Morton's neuroma and capsulitis of the metatarsophalangeal joints of both feet. The employee initially asked to telecommute for three weeks as an accommodation for her disability and in accordance with her doctor's recommendation to stay off her feet. Kindred originally allowed her to telework for a week but then reversed its decision and unilaterally placed her on unpaid leave without benefits for four months, despite the fact she could perform the essential functions of her job, the EEOC said.

Such alleged conduct violates the Americans with Disabilities Act (ADA), which prohibits discrimination based on a disability. The EEOC filed suit (EEOC v. Gentiva Health Services, Inc. d/b/a Kindred at Home,

Reasonable accommodations for religion may include:

- exceptions to appearance guidelines,
- changes in schedules,
- providing places to pray, and
- leave time for religious observances.

# Questions? Newsletter?

David Miklas  
Law Office of David Miklas, P.A.  
Representing Florida Employers Since 1998  
[www.MiklasEmploymentLaw.com](http://www.MiklasEmploymentLaw.com)  
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Email: [david@miklasemploymentlaw.com](mailto:david@miklasemploymentlaw.com)

