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ATTORNEYS AT LAW

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EMPLOYMENT LAW UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

We publish various newsletters regarding other areas of law. Please contact us for more information or email us at gwsh@gwsh-law.com if you prefer to receive our newsletters electronically.

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At Gardner, Willis, Sweat & Handelman, we offer a wide range of services including Banking; Bankruptcy; Business Law; Construction Law; Employment Law; Estate and Tax Planning; General Litigation and Appeals; Governmental Law; Real Estate; Trucking Litigation, Workers' Compensation, and Social Security. Sherman Willis, our Managing Partner, is available to speak with you about your unique needs in these and other areas. For a consultation with Sherman, please call at 229-883-2441, or e-mail him at sherman.willis@gwsh-law.com

All inquiries are confidential.

CASE v. BUTLER et al. COURT OF APPEALS OF GEORGIA • Decided November 21, 2013

Unemployment Benefits

Case worked for a nursing home for seven years and was an LPN supervisor. On March 22, 2012, she was called to evaluate a patient with reports of mental confusion. To determine whether she believed the patient was confused, Case notified the patient that she intended to administer a pain patch although Case was aware that there was not a pain patch on the patient's list of prescribed medications. The patient replied that the pain patch was not a prescribed medication. Based on that conversation, Case decided not to notify the patient's doctor, as was required by the nursing home if an altered mental state was suspected. Case was terminated for displaying behavior that the employer considered detrimental to the patient's care.

Case applied for unemployment benefits, was denied, and appealed to a hearing officer who granted the benefits. Case's employer appealed that decision and the Review Board of the Georgia Department of Labor denied the benefits and found that Case had overstepped her authority and was grossly negligent in performing her duties. Case appealed to the Superior Court but her benefits were denied on the basis that Case's employer had good cause to terminate her as she displayed poor judgment that was detrimental to her employer's reputation.

Case appealed again to the Court of Appeals arguing that the Board and Superior Court decisions were not supported by the evidence, with which the Court of Appeals agreed. The Court noted that although Georgia employers are entitled to terminate employees with nearly free rein, the proper standard for determining entitlement to unemployment benefits is found at OCGA § 34-8-194(2). This statute ultimately states that an employee will not be entitled to benefits if he refused to comply with a known, reasonable rule resulting in "deliberate, conscious fault" on the part of the employee. Because the evidence of this case does not show that Case showed deliberate, conscious intent to disobey policy, she is entitled to unemployment benefits.

LAPOLLA INDUSTRIES, INC., et al. v. HESS, et al.
COURT OF APPEALS OF GEORGIA • Decided November 15, 2013

Standing

Lapolla Industries, Inc. claimed that another company, Maclean Hess (on behalf of Premium Spray Products, Inc.) hired or were attempting to hire five of its former employees; and, Lapolla claimed that the hiring would violate the non-compete covenants in the former employees' employment agreement. Lapolla sent a demand letter requesting that Premium and Hess stop its activity with regards to Lapolla's former employees or possibly face legal action for supposed tortious interference with the employment agreements. In response to this demand, Premium and Hess filed a declaratory judgment action against Lapolla asking the court to determine whether or not they were tortiously interfering with Lapolla's relations with the former employees.

The trial court found that the non-compete covenants in Lapolla's employment agreement with the former employees were void and unenforceable as a matter of law. The trial court also held that Premium and Hess did not violate the non-compete covenants and did not tortiously interfere with Lapolla's relations with the former employees.

Lapolla appealed and contended that since Premium and Hess were not parties to the employment agreements they had no standing to seek declaratory judgment with respect to the non-compete covenants. However, the declaratory judgment statute applies where a party seeks legal judgment that would direct or control a future action. In accordance with O.C.G.A. § 9-4-2 (2013), the courts have the right to declare rights and other legal relations of "any interested party petitioning for such declaration." Therefore, the Court of Appeals found that Premium and Hess had standing to bring this declaratory judgment action because "they were uncertain whether or not they had the legal right to continue their attempts to hire (or continue to employ) Lapolla's former employees."

DRUG FREE WORKPLACE

The high cost of substance abuse in the work place has become common knowledge among employers. The U.S. Department of Health and Human Services has estimated the cost of drug and alcohol abuse in the U.S. at \$276 million per year in lost work productivity. Alcohol and drug abuse causes more turn over in the work place and increases injuries and accidents on the job. Human Resources Managers can enforce drug free work place policies and reiterate that use of alcohol or drugs is never permitted in the work place. If your company is not yet a designated Drug Free Workplace, our firm encourages your company to contact your local Chamber of Commerce for information on becoming a Drug Free Workplace.



Amanda Goff

This newsletter was prepared by Amanda Goff and Jennifer Smith. Amanda Goff primarily represents employers in defending workers' compensation claims. Her practice also covers the area of Social Security benefits. Contact Amanda at (229) 883-2441 or e-mail her at amanda.goff@gwsh-law.com.

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