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April 2010

Ohio Supreme Court Upholds Workplace Intentional Tort Law

In two cases decided on March 23, 2010, the Ohio Supreme Court upheld the constitutionality of the law that limits the ability of workers who are injured on the job to sue their employers for a workplace intentional tort. The challenged law at issue in both of these cases was Ohio Revised Code 2745.01. This statute requires that employees who bring an intentional tort claim against their employer must prove that the employer acted "with a deliberate intent to cause injury" in committing the act or omission that caused the injury. In *Kaminski v. Metal & Wire Products*, the Court determined that the workplace intentional tort law does not violate the Ohio Constitution because Article II of the Constitution specifically authorizes the General Assembly to enact statutes providing for the comfort, health, and safety of workers, and to adopt laws to facilitate the operation of the workers' compensation system. In *Stetter v. R.J. Corman Derailment Services*, the Court further determined that statute is constitutional on its face, and that while it limits the ability of workers to assert common law employer intentional tort claims which were previously recognized in Ohio, the statute does not eliminate these claims completely.

In *Kaminski*, the Court examined the history of workers' compensation legislation in Ohio which began in 1912 with the addition of Article II, Section 35 to the state constitution. In 1924, this section was amended to provide that a worker who was injured in the course of his employment could not recover for those injuries by bringing a civil lawsuit. Instead, the law required employers to make regular payments to an insurance fund. Workers who were injured in the course of employment could then recover medical expenses and lost wages from this fund, regardless of who was at fault for the injury.

The Ohio courts then began developing case law in the 1980s and 90s which held that certain injured workers could still pursue intentional tort claims against their employer in addition to receiving workers compensation awards. Under these decisions, a worker could sue its employer if he or she could prove either of the two following situations: (1) the employer intentionally caused the injury; or (2) the employer knew of a workplace condition that was so dangerous that it created a "substantial certainty" of injury, and that despite this knowledge, the employer required the worker to be exposed to this danger.

The Court then noted that since the 1980s, the legislature has passed laws attempting to limit the scope of these intentional tort claims. Prior to 2005, these efforts had been declared unconstitutional by the Court. In 2005, the legislature adopted the current standard in R.C. 2745.01. The statute now provides that an employer will not be liable for a workplace intentional tort unless, "the plaintiff proves that the employer committed the tortious act with the intent to injure another *or* with the belief that the injury was substantially certain to occur." The statute further defines "substantially certain" to mean "that an employer acts with deliberate intent to cause an employee to suffer an injury, a disease, a condition, or death." Obviously this language places a high burden on a worker attempting to bring an intentional tort suit in addition to recovering from the workers' compensation fund.

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The Court then considered whether R.C. 2745.01 violated the Ohio constitution like many of preceding statutes in this area. The Court found that Article II, Section 34 of the Constitution does not limit the General Assembly's authority to legislate in this area, but rather affirmatively grants the legislature wide authority to enact laws affecting wages, hours and workplace conditions and to adopt laws in order to balance the rights of employers and employees in the workers' compensation system. Because the Court viewed Section 35 in this light, rather than as a limitation on the legislature, it concluded that statute did not violate the state constitution.

In *Stetter*, the Court further highlighted that while R.C. 2745.01 restricts the common law cause of action for employer intentional torts which were recognized in prior Ohio decisions, it does not eliminate that cause of action completely. As such, the statute does not violate injured workers' rights to due process of law. Employees bringing an intentional tort claim must simply prove that their employer acted with a deliberate intent to cause injury.

The Court then determined that the statute is constitutional if it is rationally related to a legitimate government purpose. The Court noted that there were two legitimate purposes behind the statute. The first purpose is to maintain the balance of sacrifices between employers and workers in the no-fault liability workers' compensation system. The second purpose is to minimize litigation. The Court determined that the statute is clearly related to these purposes, and that as a result, it is constitutional.

How this impacts your district:

In short, the workers' compensation system provides a no-fault recovery system for workers who are injured in the course of their employment. These injured workers are often able to recover medical expenses and lost wages through the Bureau of Workers' Compensation. Due in large part to the existence of this no-fault recovery system, the legislature has sought to restrict the type of lawsuits that workers can assert against their employer in an effort to recover additional damages. The state law upheld in these cases provides that an employee will not be able to recover these excess damages unless he or she can prove that the employer acted with the intent to cause injury.

Ohio Judge Blocks Production of Educators' Contact Information

Judge Daniel T. Hogan of the Franklin County Common Pleas Court recently determined that the residential addresses, home telephone numbers, and email addresses of individuals licensed by the Ohio Department of Education (ODE) are not public records. This decision stems from a formal public records request issued by the Ohio Republican Party, which requested that ODE provide the Party with the home addresses of individuals who had been licensed by ODE. The Ohio Education Association (OEA) subsequently filed a lawsuit seeking a permanent injunction to block the release of the records on the basis that the information did not constitute public records as specified in the Ohio Public Records Act.

Pursuant to the open records law, government entities are required to provide public records on request. Section 149.43(A)(1) of the Ohio Revised Code provides simply that a "public record" is a record which is "kept" by a public office. The statute, however, then sets forth a litany of items which do not qualify as public records. Furthermore, R.C. 149.011(G) provides that the term "records" includes "any document, device, or item, regardless of physical form or characteristic, including an electronic record… created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

In determining whether the information requested in this case constituted "records" subject to disclosure, Judge Hogan relied on *Dispatch Printing Co. v. Johnson*, decided by the Ohio Supreme Court in 2005. This case determined that the home addresses of state employees were not "records" under R.C. 149.011(G), and as a result, were not subject to disclosure under R.C. 149.43.

Judge Hogan analogized ODE licensees to the state employees at issue in *Dispatch Printing* to determine that information requested by the Republican Party in this case was not subject to disclosure. Judge Hogan explained that the addresses were only used by ODE for administrative convenience as opposed to items which document some sort of policy, procedure, or operation of the office. Judge Hogan added that the release of the records would result in irreparable harm because the information could never be returned to its current level of privacy once released. Therefore, he decided to grant OEA's request for a permanent injunction and to block the release of the records.

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Ohio Judge Blocks Production of Educators' Contact Information

How this impacts your district:

This decision, while not entirely unexpected, should be welcomed by public school districts throughout Ohio. According to the decision above, public schools cannot be compelled to produce this sort of private information which is kept by the district purely for administrative convenience. This should help protect the privacy of school employees while also allowing the district to avoid expending resources in response to a public records request for this sort of information. Unlike the decision in *Dispatch Printing*, however, this case was not decided by the Ohio Supreme Court. As such, it is possible that the decision may be appealed to the Supreme Court, or that other appellate courts would come to a different decision if presented with this issue. Ennis, Roberts, & Fischer will keep you apprised of any additional litigation in this area.

Local District Not Liable for Tutor's Sexual Misconduct

Troutman v. Jonathan Alder Local Sch. Dist. Bd. of Edn.,

The Twelfth Appellate District in Ohio recently determined that a school district was immune from liability for the actions of a tutor who engaged in sexual conduct with a student in the tutor's private residence. The controversy in this case involved a special needs student who participated in a tutoring program offered by the school. The school assigned the student a specific tutor who met with the student at a local library. When the local library became unavailable, the tutor informed the school that she would conduct the tutoring sessions in the student's home. Unbeknownst to the school, the tutor later refused to meet at the student's home. Instead, the tutor began meeting with the student at the tutor's private residence. On two such occasions, the tutor engaged in sexual activity with the student. The tutor was subsequently sentenced to six months in prison after she pled guilty to sexual battery in a separate criminal action.

The student then filed a complaint against the school district, alleging negligent supervision, negligent retention, wrongful disclosure of confidential information, invasion of privacy, and intentional infliction of emotional distress, all resulting from the tutor's conduct. The trial court granted summary judgment in favor of the school district on the basis that the district was immune from liability as a political subdivision under Ohio Revised Code section 2744.02(A). The student subsequently appealed the trial court's decision to the Court of Appeals for the Twelfth District.

The Court started its discussion of the case by explaining that there is a three-tier analysis to determine whether a school district is immune from liability. First, the court looks at R.C. 2744.02(A)(1) to determine if the action or omission of the school district involved a governmental or proprietary function. Generally, school districts are granted immunity for its acts or omissions, or those of an employee, if they are connected to a governmental or proprietary function.

The second tier of the analysis considers whether any of the exceptions to immunity in R.C. 2744.02(B) apply to the situation. The student in this case specifically claimed that R.C. 2744.02(B)(4) applied, which provides that "political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function." The Court, however, noted that the sexual misconduct took place off school premises. It further determined that the tutor's private residence was not a building used in connection with a government function. It then found that the district did not authorize the tutor to conduct study sessions at her private residence. Additionally, the injury was not the result of any "physical defect" of school grounds. Therefore, the exception to immunity in R.C. 2744.02(B)(4) did not apply in this case. As a result, the Court determined that the school district was entitled to immunity under R.C. 2744.02(A)(1).

How this impacts your district:

This case should serve as a reminder about Ohio's Sovereign Immunity law which protects school districts from many suits alleging that a school is responsible for personal injury or property damages. As mentioned in this opinion, courts apply a three-tier analysis to determine whether a district is immune from liability. The first tier examines whether the action at issue falls within the broad grant of immunity in R.C. 2744.02(A)(1). The second tier asks whether the alleged wrongdoing falls within one of the five exceptions to immunity provided in R.C. 2744.02(B). If an exception applies, the court will move on to the third tier to determine whether under R.C. 2744.03 the district is nonetheless immune from liability. The Court in this case did not reach the third tier because none of the exceptions in R.C. 2744.02(B) applied as the misconduct took place off school grounds.

School Bullying Makes National Headlines

Bullying has become an area of focus for schools over the past decade and two recent cases evidence the importance of school district policy and intervention in this area. The first example is a case that was recently settled in New York. In this case, a ninth grade student in the New York state school system alleged that district officials were deliberately indifferent to the harassment that the student suffered from his classmates. The student's lawsuit was backed by the New York Civil Liberties Union, and the U.S. Department of Justice even sought to intervene on behalf of the student because the case presented important issues pertaining to the enforcement of federal civil rights laws.

The district denied any wrongdoing associated with the bullying, but it decided to settle the case instead of proceeding with litigation. In the settlement agreement the district agreed to pay the student $50,000 plus $25,000 in attorney's fees, and the costs of counseling services. It also agreed to review its harassment policies and to offer training to staff members in order to help them identify and curtail harassment.

The second bullying case which recently received national attention stems from the tragic death of a fifteen-year-old student in Massachusetts. The student reportedly committed suicide after suffering months of harassment from her classmates. The Massachusetts prosecutor has charged nine teenagers as a result of this harassment. The charges include statutory rape, criminal harassment, violation of civil rights, stalking, and disturbance of a school assembly. The prosecutor also publically criticized school officials for failing to intervene in the harassment, as she determined that the bullying had been "common knowledge" amongst the administrators. The prosecutor added that she was troubled by the school's failure to respond to the bullying because most of the harassment took place on school property where the student was subjected to repeated incidents of verbal assaults and threats of physical violence.

How this impacts your school district:

Ohio Revised Code section 3313.666(B) requires school districts to establish a policy prohibiting harassment, intimidation, and bullying. These cases should remind your district of the importance of maintaining and implementing this anti-bullying policy. Careful oversight and implementation of the program will help to ensure student welfare and to avoid the tragic situations outlined in the cases above. Furthermore, your district may be subject to liability if it fails to reasonably prevent or redress harassment in its schools. Finally, your district should be aware that the anti-bullying law was recently amended to require school districts to include "violence within a dating relationship" as a form of harassment to be targeted in the anti-bullying policy.

Health Care Reform Act Requires Breaks for Nursing Mothers

The Health Care Reform Act signed by President Obama on March 23, 2010, includes a provision which requires employers to provide nursing mothers a time and place to express breast milk. According to the new law, employers must provide a reasonable break time for an employee to express milk for her nursing child each time such employee has the need to express milk. This break time must be provided for a period of one year after the child's birth, however, the employer is not required to compensate the nursing mother for any work time devoted to expressing milk.

Employers are also required to provide a specific location, which must not be a bathroom, for the nursing mother to express milk. The designated location must be shielded from the view of others and free from any possible intrusions.

This provision applies to employers of any size, however, an employer that employs less than fifty employees is not subject to this provision if adhering to these requirements would impose an undue hardship by causing an employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. The Act additionally provides that this provision does not preempt a state law that provides greater protections to nursing mothers in the workplace. Ohio does not currently have a similar law in place, therefore, Ohio employers are required to adhere to the requirements set forth in the Health Care Reform Act.

How this impacts your district:

This provision of the Health Care Reform Act does not state a specific effective date. Therefore, the provision became effective on March 23, 2010, when the Act was signed into law. As such, your district must take immediate action to implement the requirements of this provision. Ennis, Roberts, & Fischer will continue to review the Health Care Reform Act and provide your district with the effective dates of any additional requirements in order to ensure that your district maintains compliance with the new laws.

Education Law Speeches/Seminars

Ennis, Roberts & Fischer regularly conducts seminars concerning education law topics of interest to school administrators and staff.
Popular topics covered include:

Cyber law
School sports law
IDEA and Special Education Issues
HB 190 and Professional Misconduct

To schedule a speech or seminar for your district, contact us today!

Upcoming Speeches

Jeremy Neff at the Brown County Educational Service Center on April 19, 2010:
CyberLaw III

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