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Fourteen Employees at Florida Law Firm Fired For Wearing Orange Shirts

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In a story that has made recent headline news, approximately fourteen employees of the Elizabeth R. Wellborn Law Firm in Deerfield Beach Florida were fired on Friday, March 16 for wearing orange shirts. The employees wore orange shirts on pay days and claimed they did so to remain a group when going out for happy hour after work. A firm executive, however, saw their shirt-wearing differently. According to news reports, the executive called the fourteen employees into a firm conference room and informed them that he understood that they were engaging in some kind of protest. Despite the fact that one of the employees responded by explaining the happy hour connection, all of the employees in orange were subsequently fired.

The ex-employees quickly turned to the media to voice their frustrations, crying out that the firm had no office dress code policy against wearing orange. Moreover, none of the terminated employees had previously been warned or disciplined for dress code violations.

Florida employment law specialists were quick to point out that Florida, like Pennsylvania, is an “at-will” employment state; meaning that in the absence of an employment contract or violation of public policy, an employee can be fired for any or no reason at all. For instance, it would have been perfectly lawful(albeit unreasonable)for the firm to have fired these employees simply because management disapproves of the color orange. However, the executive’s statement to the employees that he understood their common color selection to be a form of protest may have implicated the National Labor Relations Act (“NLRA”).

While the employees of the Wellborn Law Firm are not unionized, even non-unionized employees have a right under the National Labor Relations Act to engage in protected concerted activity. Under Section 7 of the NLRA, employees “have the right to self-organize . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .” 29U.S.C. § 157. Most people frequently associate this right with labor unions, but it applies equally to any group of workers who act together to improve working conditions.

Without knowing all of the pertinent details, it is difficult to determine whether the fired employees of the Wellborn Law Firm engaged in protected concerted activity. If the employees had openly acknowledged that they were participating in a protest about their working conditions, terminating them because of their protest would constitute an unfair labor practice under the NLRA. Yet, even if the wearing of orange shirts was not part of a group protest, but, as the employees have reported, firm management erroneously *believed* that to be the case, the NLRA may still be implicated. Why? Because the National Labor Relations Board (“NLRB”) has repeatedly held that an employer violates the NLRA when it takes an adverse employment action (such as job termination) against an employee based on a mistaken belief that the employee engaged in or intended to engage in protected concerted activity. *See, e.g., NLRB v. United States Serv. Indus.,* 1996 U.S. App. LEXIS5142 (D.C. Cir. 1996); *Monarch Water Systems*, 271 NLRB 558 (1984).

Therefore, should the NLRB determine in this case that the Wellborn Law Firm fired the orange shirt employees on the mistaken belief that they were engaging in a group protest, it will likely order the firm to reinstate each employee and award them full back pay.

The “orange shirt terminations” serve as a reminder to all employers that taking an adverse action against employees, whether unionized or not, for engaging in concerted activity is an unfair labor practice under the NLRA. This is true even when the employer is mistaken in its belief that concerted activity is taking place. The NLRB has the authority and will require union *and* non-union employers who violate the NLRA to reinstate terminated employees with significant back pay awards.

For more information about the “orange shirt terminations” or NLRA requirements, please contact a Knox Labor and Employment attorney at 814-459-2800.

Labor & Employment Department Attorneys

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