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Labor and Employment

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I. INTRODUCTION

This Article focuses on recent cases concerning federal labor and employment laws.[1] The following is a discussion of those opinions.[2]

II. SUPREME COURT CASES

On February 22, 2023, the Supreme Court of the United States issued a pivotal decision in *Helix Energy Solutions Group, Inc. v. Hewitt*,[3] offering crucial clarification on the "salary basis" test, especially concerning highly compensated employees (HCEs) paid daily.[4] This ruling carries significant implications for employers with high-earning staff members receiving compensation through non-traditional salary structures. The case revolved around the Fair Labor Standards Act (FLSA),[5] which mandates minimum wage and overtime pay for

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1. For analysis of labor and employment law during the prior survey period, *see* W. Jonathan Martin II & Patricia-Anne Brownback, *Labor and Employment, Eleventh Circuit Survey*, 74 MERCER L. REV. 1479 (2023), https://digitalcommons.law.mercer.edu/jour_mlr/vol74/iss4/12/ [https://perma.cc/6LWE-YDL7].

2. This Article will focus solely on published opinions by the Supreme Court of the United States and the United States Court of Appeals for the Eleventh Circuit because these are binding precedent on the court.

3. 598 U.S. 39 (2023).

4. *Id.* at 43–44.

5. 29 U.S.C. § 213(a)(1) (2018).

employees working over forty hours per week unless exempt.[6] One such exemption involves the salary basis test, where employees are paid a fixed salary not subject to reductions based on work variations.[7] To qualify, employees must meet both the salary basis and duties tests.[8] The salary threshold at the time for exemption was presently $455[9] per week.[10]

The FLSA also outlines exemptions for HCEs who earn at least $100,000[11] annually and fulfill a modified duties test.[12] The key regulation in question was 29 C.F.R. § 541.604,[13] which allows for workers to be compensated on "an hourly, daily, or shift rate without 'violating the salary basis requirement' or 'losing the [bona fide executive] exemption' so long as two conditions are met."[14] The employer must guarantee a set amount of at least $455 a week "regardless of the number of hours, days or shifts worked," and "that promised amount must bear a 'reasonable relationship' to the 'amount actually earned' in a typical week—more specifically, must be 'roughly equivalent to the employee's usual earnings . . . .'"[15]

The Supreme Court clarified that daily-rate workers could qualify as paid on a salary basis only if the compensation scheme adheres to § 604's "special rule," as outlined above.[16] In this case, offshore drilling platform managers classified as HCEs were paid daily without a weekly minimum guarantee.[17] The Court held that the HCE exemption applies to daily-paid employees, but only if they receive the minimum weekly salary amount on a salary or fee basis, which Hewitt did not.[18] In essence, the ruling emphasizes that HCEs paid on a daily basis must now receive at least $455 per week on a salary or fee basis to meet the salary threshold.[19] Failure to comply may result in employers facing liability for unpaid

6. *Helix Energy Solutions Group, Inc.*, 598 U.S. at 44.
7. *Id.* at 44–45.
8. *Id.* at 45.
9. This was the salary threshold when the facts of this case arose in the district court. The salary threshold has since been raised.
10. *Helix Energy Solutions Group, Inc.*, 598 U.S. at 45.
11. The HCE threshold at the time.
12. *Helix Energy Solutions Group, Inc.*, 598 U.S. at 45.
13. 29 C.F.R. § 541.604 (2019).
14. *Helix Energy Solutions Group, Inc.*, 598 U.S. at 47.
15. *Id.*
16. *Id.* at 49.
17. *Id.* at 50.
18. *Id.*
19. *Id.* at 49–50.

overtime and other damages, while affected HCEs may be entitled to overtime pay.

In *Groff v. DeJoy*,[20] the Supreme Court outlined a new standard for proving undue hardship in Title VII[21] religious accommodation cases.[22] The Court ruled that the longstanding "more than a *de minimis* cost" standard was inadequate, now requiring a demonstration of "substantial increased costs" to establish undue hardship.[23] The case centered around Gerald Groff, an evangelical Christian employed by the United States Postal Service (USPS), seeking religious accommodation to avoid working on Sundays. Groff's journey, from initially having no Sunday shifts to facing conflicts due to Sunday deliveries, is detailed. Despite Groff's efforts to secure accommodation, including multiple requests and internal complaints, the USPS provided alternatives but never a full exemption from Sunday shifts.[24] Both the district court and the United States Court of Appeals for the Third Circuit granted summary judgment to USPS based on the "more than a de minimis cost" standard.[25]

The Supreme Court, led by Justice Alito, unanimously vacated and remanded the case.[26] Justice Alito, in the opinion, revisited the pivotal case *Trans World Airlines, Inc. v. Hardison*,[27] rejecting the simplistic interpretation of "more than a de minimis cost" from that case.[28] Instead, the Court emphasized that undue hardship is established when the burden is substantial in the "overall context of an employer's business."[29]

III. TITLE VII OF THE CIVIL RIGHTS ACT

Title VII of the Civil Rights Act (Title VII)[30] prohibits discrimination by employers based upon the protected classes of race, color, religion, sex, or national origin.[31] This includes restricting, separating, or categorizing employees "in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion,

20. 600 U.S. 447 (2023).
21. 42 U.S.C. §§ 2000e–2000e-17 (2019).
22. *Groff*, 600 U.S. at 468.
23. *Id.*
24. *Id.* at 454–55.
25. *Id.* at 456.
26. *Id.* at 473.
27. 432 U.S. 63 (1977).
28. *Groff*, 600 U.S. at 470.
29. *Id.* at 468.
30. Civil Rights Act of 1964 § 7, 42 U.S.C. §§ 2000e–2000e-17 (2019).
31. 42 U.S.C. § 2000e-2(a) (1991).

sex, or national origin."[32] For an employee to prove disparate impact under Title VII, they must demonstrate that the employer used a certain employment practice based on one of the above protected classes, and the employer cannot show that the alleged practice is job-related and related with business necessity.[33] "[T]he plaintiff in an employment discrimination lawsuit always has the burden of demonstrating that, more probably than not, the employer took an adverse employment action against him on the basis of a protected personal characteristic."[34] Generally, employees are unable to utilize the "traditional framework" of direct evidence to prove their case, so the Supreme Court of the United States developed a three-part, burden-shifting analysis to "make matters somewhat easier for plaintiffs in employment discrimination suits" using circumstantial evidence.[35]

Under the *McDonnell Douglas Corp. v. Green* [36] framework, one must first present a prima facie discrimination case.[37] Once a plaintiff meets this initial burden, the burden of production shifts to the employer to "articulate some legitimate, nondiscriminatory reason for the employe[r]'s [action][.]"[38] After this, the plaintiff, who retains the burden of persuasion throughout, must then "show by a preponderance of the evidence that the defendant's legitimate reasons were not the reasons that actually motivated its conduct, that the reasons were merely a 'pretext for discrimination.'"[39]

A. The Prima Facie Case under McDonnell Douglas

In *Anthony v. Georgia*,[40] the court held that a former state trooper could not present a prima facie case of race discrimination under Title VII.[41] This case involves Clyde Anthony, a former black male state trooper employed by the Georgia State Patrol, who claimed racial discrimination by the department in violation of Title VII. The events leading to the lawsuit began when Anthony, facing allegations of potential intoxication, underwent an investigation by the department in

32. *Id.*

33. 42 U.S.C. § 2000e-2(k)(1)(A) (1991).

34. Wright v Southland Corp., 187 F.3d 1287, 1292 (11th Cir. 1999).

35. *Id.* at 1290; *see* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

36. 411 U.S. 792.

37. *Id.* at 802.

38. *Id.*

39. McPherson v. University of Montevallo, 922 F.2d 766, 774 (11th Cir. 1991) (citation omitted).

40. 69 F.4th 796 (11th Cir. 2023).

41. *Id.* at 806.

August 2017. Although initial alcohol tests indicated suspicion, a subsequent breath test showed no alcohol presence. Anthony was placed on administrative leave, followed by family medical leave, lasting nearly six months. Throughout this period, he received full pay and benefits.[42]

Anthony asserted that he faced discriminatory treatment, citing a white trooper, Corporal John McMillan, as a comparator.[43] McMillan, investigated for alcohol use in 2015, was placed on administrative leave for approximately three months and later demoted. Anthony argued that McMillan was treated more favorably. Additionally, Anthony claimed racial discrimination in the denial of a promotion to corporal due to an instruction by his supervisor during administrative leave.[44]

In response to the department's motion for summary judgment, Anthony argued that the differential treatment during the investigation stage and the failure to promote were racially motivated.[45] The court, however, ruled in favor of the department, concluding that Anthony failed to establish a prima facie case for race discrimination in both instances. The court emphasized that McMillan was a comparator but was not treated more favorably than Anthony in this situation, so he was not a proper comparator for the law. Further, the court highlighted Anthony's failure to take the promotion exam.[46]

Anthony's appeal challenged the court's decision, asserting that he and McMillan were similarly situated for the purposes of the investigation and that he was unfairly denied the promotion opportunity.[47] However, the appellate court upheld the district court's judgment, affirming the grant of summary judgment.[48] While the United States Court of Appeals for the Eleventh Circuit agreed with the conclusion, it disagreed that McMillian was a comparator at all.[49] It noted that the only similarities between Anthony and McMillian were that they were both troopers and both were investigated for workplace intoxication.[50] The differences were abundant—they held different ranks, McMillian was not subjected to further investigation because he admitted to drinking on the job, different investigators conducted the investigation into the incidents, and McMillian did not have similar reasons for delay while on

42. *Id.* at 799–802.
43. *Id.* at 801–02.
44. *Id.*
45. *Id.* at 802.
46. *Id.* at 803–04.
47. *Id.* at 804, 806.
48. *Id.* at 808.
49. *Id.* at 805.
50. *Id.*

administrative leave.[51] Under *Lewis v. City of Union City*,[52] a proffered comparator is only "similarly situated" where they are similar in "all material respects[.]"[53] Because McMillian was not a proper comparator under the law, Anthony's claim failed and the grant of summary judgment was upheld.[54]

In *Tynes v. Florida Department of Juvenile Justice*,[55] the Eleventh Circuit affirmed a jury verdict on behalf of the former employee, Tynes, while providing a nuanced analysis of the application of the *McDonnell Douglas* framework.[56] This case involved an appeal arising from an employment discrimination lawsuit brought by Lawanna Tynes against the Florida Department of Juvenile Justice. Tynes, the former superintendent, alleged race and sex discrimination, leading to her termination. The jury sided with Tynes, determining that race or sex was a motivating factor in her firing. The department appealed, primarily challenging the adequacy of Tynes's comparators under the *McDonnell Douglas* evidentiary framework and raising issues concerning her 42 U.S.C. § 1981 claim.[57]

The court emphasized that the *McDonnell Douglas* framework is "an evidentiary tool that functions as a '*procedural* device, designed only to establish an order of proof and production.'"[58] It clarified that the ultimate question in discrimination cases is whether there is sufficient evidence indicating that the adverse employment action resulted from illegal discrimination.[59] The court highlighted that *McDonnell Douglas* helps shift the burden of production but does not replace the substantive elements needed to prove discrimination.[60] It pointed out that the method outside of the burden-shifting analysis under *McDonnell Douglas* is the "convincing mosaic" analysis, which is "simply enough evidence for a reasonable [fact finder] to infer intentional discrimination in an employment action—the ultimate inquiry in a discrimination lawsuit."[61]

Here, the department's main contention revolves around Tynes's failure to establish a prima facie case under *McDonnell Douglas*,

51. *Id.* at 805–06.
52. 918 F.3d 1213 (11th Cir. 2019).
53. *Id.* at 1227–28.
54. *Anthony*, 69 F.4th at 806.
55. 88 F.4th 939 (11th Cir. 2023).
56. *Id.* at 949.
57. *Id.* at 942–43; 42 U.S.C. § 1981 (1991).
58. *Id.* at 944.
59. *Id.* at 945.
60. *Id.* at 945–46.
61. *Id.* at 946.

particularly challenging the adequacy of her comparators.[62] While acknowledging the high standard for comparators, the court underscored that the jury's focus was on intentional discrimination.[63] The department's exclusive emphasis on comparators led to the forfeiture of any challenge to the broader evidence supporting the verdict.

B. Pretext under Title VII

In *Phillips v. Legacy Cabinets*,[64] Theresa Phillips, a white woman, filed a discrimination lawsuit against her former employer, Legacy Cabinets, LLC, alleging race-based termination in violation of Title VII and 42 U.S.C. § 1981.[65] Phillips worked on a hanging line inspecting cabinets and was terminated after expressing dissatisfaction with extended working hours. The incident leading to her termination involved a disagreement during a work huddle, where Phillips claimed she was unfairly scheduled to work on a Sunday. Phillips contended that she was fired for expressing concerns about excessive working hours and was escorted off the premises after a heated exchange with her supervisor. Legacy argued that Phillips was terminated for insubordination and disrespect during the huddle and subsequent interactions. Phillips attempted to establish a prima facie case using comparators who allegedly engaged in similar behavior but were not terminated.[66] Despite making out a prima facie case, the court granted summary judgment in favor of Legacy, stating that Phillips failed to prove that the proffered reasons for her termination were pretextual or that race played a role in the decision.[67] The court also rejected Phillips's mixed-motive theory.[68]

Under the single-motive theory, Phillips needed to establish a prima facie case of discrimination, which included demonstrating membership in a protected class, experiencing an adverse employment action, being qualified for the job, and showing that similarly situated employees outside her class were treated more favorably.[69] The court held that Phillips met this burden, identifying non-white comparators who allegedly engaged in similar conduct but were not terminated.[70] However, Legacy asserted a legitimate, nondiscriminatory reason for

62. *Id.* at 947.
63. *Id.*
64. 87 F.4th 1313 (11th Cir. 2023).
65. *Id.* at 1316.
66. *Id.* at 1318–19.
67. *Id.* at 1319–20.
68. *Id.* at 1320.
69. *Id.* at 1321.
70. *Id.* at 1322.

Phillips's termination, arguing insubordination and disruptive behavior during a workplace huddle. Phillips contested this, claiming the conduct did not occur as described.[71] The court held that the factual discrepancy between Legacy's account of the interaction and Phillips would ultimately be a question for the jury to answer if in fact there was "sufficient evidence . . . to find that the real reason was unlawful discrimination[.]"[72]

The court considered Phillips's evidence of racial discrimination, emphasizing the treatment of non-white comparators who allegedly engaged in similar conduct but were not terminated, and held that Phillips presented enough evidence for a reasonable jury to conclude that Legacy's proffered reason was pretextual and that racial discrimination was the true reason for her termination.[73] The court rejected Legacy's argument that Phillips needed additional evidence beyond the prima facie case, emphasizing that the evidence presented, including comparator evidence, was sufficient.[74]

For the same reasons that it overturned the grant of summary judgment on the single-motive theory, the court also overturned summary judgment on the mixed-motive theory.[75] The court held that Phillips could proceed to trial on her claims of discrimination, as the evidence presented raised genuine issues of material fact regarding the true reasons for her termination.[76]

C. Retaliation

In *Berry v. Crestwood Healthcare LP*,[77] Berry claimed that her former employer, Crestwood Medical Center, retaliated against her after she complained of racial discrimination.[78] Daphne Berry, a black female nurse, worked at Crestwood Hospital's emergency department from 2007 to 2018. In February 2018, an incident involving inappropriate behavior during patient care triggered investigations and subsequent anonymous complaints from Berry to Crestwood's corporate compliance line regarding "unfair treatment" and "racial targeting." In May of 2018, Crestwood sent its regional human resources (HR) director to investigate employee complaints and significant turnover under Berry. The HR

71. *Id.* at 1323–24.
72. *Id.* at 1324–25.
73. *Id.* at 1325.
74. *Id.* at 1326–27.
75. *Id.* at 1327.
76. *Id.* at 1328.
77. 84 F.4th 1300 (11th Cir. 2023).
78. *Id.* at 1304.

director interviewed twenty-four staff members and of those, sixteen raised specific concerns about Berry, including complaints of bullying and overall unprofessional behavior. Following the interviews, the HR director recommended the termination of Berry.[79]

Berry sued Crestwood for racial discrimination, retaliation, and state law claims.[80] Crestwood moved for summary judgment, asserting Berry failed to establish a prima facie case of retaliation and lacked evidence of pretext. The district court granted summary judgment, and Berry appealed.[81] The Eleventh Circuit assumed Berry's prima facie case but held she failed to create a genuine issue of pretext, emphasizing the importance of challenging the employer's justification.[82]

The court addressed Berry's claim that her positive employment evaluations, the timing of her termination, and alleged differential treatment compared to other employees supported her retaliation claim.[83] The court rejected these arguments, stating that Berry's evidence did not cast doubt on Crestwood's justification for her termination—that Crestwood terminated Berry due to multiple employee reports describing her as a "bully" and for causing interpersonal conflicts.[84] The court specifically stated that to prove pretext, "an employee must identify 'weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions' in the employer's justification."[85] Here, Berry did not create an issue of fact regarding the reports that she was a bully or whether Crestwood sincerely believed that the reports were true.[86]

Additionally, the court discussed Berry's alternative argument, known as the "convincing mosaic" framework, allowing employees to prove retaliation with circumstantial evidence.[87] However, the court held that Berry's circumstantial evidence failed to create a genuine issue of material fact regarding Crestwood's retaliatory intent.[88]

In *Yelling v. St. Vincent's Health System*,[89] Cynthia Yelling, a nurse at St. Vincent's Health System, filed a lawsuit alleging race discrimination,

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79. *Id.* at 1304–06.

80. *Id.* at 1306.

81. *Id.* at 1306–07.

82. *Id.* at 1308–09.

83. *Id.* at 1309.

84. *Id.* at 1310.

85. *Id.* at 1308 (quoting Patterson v. Ga. Pac., LLC, 38 F.4th 1336, 1352 (11th Cir. 2022)).

86. *Id.*

87. *Id.* at 1311.

88. *Id.* at 1311–12.

89. 82 F.4th 1329 (11th Cir. 2023).

including a hostile work environment, and retaliation under Title VII and 42 U.S.C. § 1981 after being terminated from her position.[90] The district court granted summary judgment in favor of St. Vincent's and Yelling appealed.[91] Yelling argued that she presented sufficient evidence to survive summary judgment on all claims, asserting that the application of the *McDonnell Douglas* framework to a "'mixed-motive' retaliation claim" was inappropriate after the *Bostock v. Clayton County*[92] decision.[93]

Yelling began working at St. Vincent's in 2010 and later secured a permanent registered nurse assignment in the Clinical Decision Unit (CDU).[94] Initially, her work went smoothly, but in 2015, racial tensions escalated in the CDU after racially disparaging comments were made by coworkers. Yelling reported the offensive comments, but St. Vincent's did not investigate or take disciplinary action. Subsequently, Yelling faced a suspension and entered St. Vincent's disciplinary process based on allegations of unprofessional conduct. The friction between Yelling and her coworkers persisted, leading to further workplace incidents. Ultimately, Yelling was terminated in February 2016 after it was determined that she falsified patient records, and St. Vincent's replaced her with a white nurse.[95] The court, after reviewing the evidence, affirmed the district court's decision, concluding that Yelling's claims lacked the necessary evidentiary support, and the application of the *McDonnell Douglas* framework was still appropriate for retaliation claims.[96]

Concerning Yelling's retaliation claim, the court rejected her argument that the *Bostock* decision altered the application of the *McDonnell Douglas* framework because she was claiming that this was a "mixed-motive" retaliation claim.[97] The court stated that the mixed-motive framework does not apply to retaliation claims like it does to discrimination claims.[98] The court held that Yelling needed to show but-for causation for her retaliation claim, and the evidence presented, including the drug test, progressive discipline, and firing, did not meet this standard.[99] The court also dismissed Yelling's attempt to rely on a

90. *Id.* at 1332.
91. *Id.*
92. 590 U.S. 644 (2020).
93. *Yelling*, 82 F.4th at 1332.
94. *Id.*
95. *Id.* at 1332–34.
96. *Id.* at 1338–42.
97. *Id.* at 1339.
98. *Id.* at 1338.
99. *Id.* at 1339.

"convincing mosaic" of evidence, stating that her evidence failed to support an inference of but-for causation.[100]

Yelling's discrimination claims failed as well. The court held that she could not make out a hostile work environment claim because the complained of actions were not objectively severe or pervasive.[101] It considered comments about the former President and First Lady, as well as other remarks, but concluded they were not sufficiently severe or pervasive to constitute extreme harassment.[102] The court highlighted the distinction between isolated offensive comments and extreme harassment.[103] It also rejected her disparate treatment claims applying the mixed-motive standard, but concluded that even under this standard, Yelling's evidence did not support the claim.[104] The court determined no evidence indicating that race played a role in her firing, and Yelling failed to establish a mixed-motive discrimination case.[105]

In *Harris v. Public Health Trust of Miami-Dade County*,[106] Mary E. Harris, a black nurse, appealed a district court's summary judgment against her Title VII and state-law claims of employment discrimination, hostile work environment, and retaliation.[107] Harris worked at Public Health Trust for ten years, initially at Jackson North Medical Center and later at Jackson Reeves Senior Health Center. Following disciplinary actions, Public Health Trust terminated her, prompting Harris to allege racial discrimination and retaliation.[108]

On appeal, Harris claimed that her supervisor, Gianella Carreno, made racially charged comments, which constituted direct evidence.[109] Harris failed to raise the issue of circumstantial evidence on appeal.[110] Harris admitted that Carreno was not the ultimate decision maker, but rather pursued her theory of discrimination based on a "cat's paw" argument, suggesting Carreno influenced her termination.[111] "A [cat's paw] argument requires evidence that the ultimate (and manipulated) decisionmaker—the puppet—'followed the biased recommendation' of another—the puppeteer—'without independently investigating the

100. *Id.* at 1342.
101. *Id.* at 1335.
102. *Id.* at 1336.
103. *Id.*
104. *Id.* at 1343.
105. *Id.*
106. 82 F.4th 1296 (11th Cir. 2023).
107. *Id.* at 1300.
108. *Id.*
109. *Id.* at 1301.
110. *Id.*
111. *Id.*

complaint against the employee.'"[112] Here, Harris admitted that the individual who terminated her and those who gave her previous disciplinary actions all conducted their own independent investigations regarding the underlying facts.[113] In analyzing a cat's paw theory, the important factor is whether or not the underlying facts related to the employee were investigated, not the alleged bias of the person recommending adverse action.[114] Consequently, the court affirmed the district court's summary judgment on the employment discrimination claim.[115]

Likewise, the court disposed of Harris's hostile work environment and retaliation claims.[116] Her hostile work environment claim failed because the alleged offensive comments were isolated and not targeted at Harris.[117] The remaining incidents, when collectively assessed, were deemed insufficiently severe or pervasive to create a hostile work environment.[118] As for the retaliation claim, the court held that she failed to prove pretext in Public Health Trust's reasons for discipline and termination.[119] Harris could not demonstrate that the hospital treated her differently from other employees with similar records, undermining her claim of retaliation.[120] The court affirmed the summary judgment on the retaliation claim.[121]

IV. AMERICANS WITH DISABILITIES ACT

In *Beasley v. O'Reilly Auto Parts*,[122] the United States Court of Appeals for the Eleventh Circuit reversed a grant of summary judgment for O'Reilly and remanded for further proceedings after determining that O'Reilly should have provided Beasley with certain accommodations for his disability.[123] Teddy Beasley, a deaf employee, worked as a part-time, inbound materials handler at O'Reilly Distribution Center in Saraland, Alabama. Beasley faced challenges during the hiring process due to the unavailability of an interpreter for some interviews. Despite initial

112. *Id.* (quoting Stimpson v. City of Tuscaloosa, 186 F.3d 1328, 1332 (11th Cir. 1999)).
113. *Id.* at 1301–02.
114. *Id.* at 1302.
115. *Id.*
116. *Id.* at 1305.
117. *Id.*
118. *Id.*
119. *Id.* at 1305–06.
120. *Id.* at 1306.
121. *Id.*
122. 69 F.4th 744 (11th Cir. 2023).
123. *Id.* at 761.

accommodations and agreements regarding the use of interpreters, Beasley encountered difficulties during pre-shift meetings, which were deemed crucial for safety and task-related information. Beasley's request for text summaries went unfulfilled, and the lack of effective communication led to misunderstandings, including disciplinary warnings. O'Reilly's failure to provide interpreters for various situations, such as forklift training, disciplinary meetings, and a company picnic, formed the basis of Beasley's Americans with Disabilities (ADA)[124] failure-to-accommodate claim.[125] The district court granted summary judgment in favor of O'Reilly, asserting that Beasley hadn't demonstrated an adverse employment action due to his disability or shown that the requested accommodations were essential job functions.[126] Beasley contested this decision, disputing the court's interpretation of adverse employment action and essential job functions.[127]

The court's analysis focused on the plaintiff's claims under Title I of the ADA.[128] To establish a prima facie case of discrimination under the ADA, the plaintiff, Beasley, needed to demonstrate that he is disabled, a qualified individual, and was discriminated against due to his disability.[129] The court emphasized that "discrimination in the form of a failure to reasonably accommodate is actionable under the ADA only if that failure negatively impacts the employee's hiring, advancement, discharge, compensation, training, and other terms, conditions, and privileges of his employment."[130] Here, Beasley was hired and he was not fired, so the court focused on the promotion, compensation, training, or other terms and conditions of employment for possible adverse action.[131]

The court examined Beasley's request for accommodations, including O'Reilly's alleged failure to provide written summaries of the safety meetings and denial of an interpreter during discussions about the disciplinary action.[132] It determined that a jury could reasonably conclude that the inability to understand or participate in the safety meetings affected Beasley's job evaluations and, subsequently, his pay

124. Americans with Disabilities Act (ADA), Pub. L. 101-336, 104 Stat. 328 (1990) (codified as amended at 42 U.S.C. §§ 12101–12213 (2008)).

125. *Beasley*, 69 F.4th at 747–52.

126. *Id.* at 752–53.

127. *Id.* at 753.

128. *Id.* at 754.

129. *Id.* (citing Lucas v. W.W. Grainger, Inc. 257 F.3d 1249, 1255 (11th Cir. 2001)).

130. *Id.*

131. *Id.* at 754–55.

132. *Id.* at 755.

raises.[133] Additionally, the denial of an interpreter during disciplinary meetings could have adversely influenced the disciplinary decisions and, consequently, Beasley's pay and evaluations.[134]

The court also addressed O'Reilly's argument that Beasley's requested accommodations were not necessary for essential job functions; specifically, he did not need these accommodations to successfully do his job.[135] The court analyzed the three cases relied upon by O'Reilly in this argument—*Lucas v. W.W. Grainger, Inc.*,[136] *LaChance v. Duffy's Draft House, Inc.*,[137] and *D'Onofrio v. Costco Wholesale Corp.*[138] In *Lucas*, the court determined that an employer was not obligated to eliminate essential functions of the job to accommodate the employee.[139] In *LaChance*, the court determined that an employee's seizures caused a direct threat and that there was no reasonable accommodation that could allow the employee to perform the essential functions.[140] And lastly, in *D'Onofrio*, the court held that the employer provided all necessary accommodations for the employee to perform the essential functions of the job.[141] The court rejected that the case at hand was comparable to any of those cases, and specifically determined that Beasley was a qualified individual who could perform essential job functions with reasonable accommodations, but was provided none.[142] The court concluded that the denial of requested accommodations for the safety meetings and disciplinary proceedings may have constituted discrimination under the ADA, and therefore, reversed the district court's grant of summary judgment in favor of O'Reilly.[143] The case was remanded for further proceedings on Beasley's ADA claims.[144]

133. *Id.*
134. *Id.*
135. *Id.* at 756.
136. 257 F.3d 1249 (11th Cir. 2001).
137. 146 F.3d 832 (11th Cir. 1998).
138. 964 F.3d 1014 (11th Cir. 2020).
139. *Beasley*, 69 F.4th at 758; *see Lucas*, 257 F.3d 1249.
140. *Beasley*, 69 F.4th at 759; *see LaChance*, 146 F.3d 832.
141. *Beasley*, 69 F.4th at 760; *see D'Onofrio*, 964 F.3d 1014.
142. *Beasley*, 69 F.4th at 759–60.
143. *Id.* at 761.
144. *Id.*

V. SECTION 1981

Section 1981[145] is among the many statutes that seek to combat racial discrimination.[146] It seeks to serve a specific purpose, protects the equal right of "'all persons within the jurisdiction of the United States' to 'make and enforce contracts' without respect to race."[147] To "make and enforce contracts" is defined by the statute as, "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."[148] To state a claim of race discrimination under § 1981, a plaintiff "must allege facts establishing: (1) that [he] is a member of a racial minority; (2) that the defendant intended to discriminate on the basis of race; and (3) that the discrimination concerned one or more of the activities enumerated in the statute."[149]

The standards for evaluating a § 1981 claim are the same as Title VII of the Civil Rights Act race claims.[150] While the elements and evaluation standards are the same, the exhaustion burdens and remedies are different. Under § 1981, a plaintiff is not required to exhaust any administrative remedies before filing suit in federal court and a plaintiff has up to four years after the alleged violation to do so.[151] Unlike Title VII, there is no damage cap under § 1981.[152]

In *Ossmann v. Meredith Corp.*,[153] Paul Ossmann, the Chief Meteorologist at CBS46 (owned by Meredith Corporation), alleged that his termination was racially motivated in violation of 42 U.S.C. § 1981, asserting that the provided justification of sexual harassment was a pretext.[154] The court's summary revealed that during Ossmann's tenure, multiple female colleagues complained of inappropriate conduct and sexual harassment, leading to warning letters and disciplinary actions. Ossmann argued that the existence of race data on the termination request form submitted to the corporate office was indicative of racial

145. 42 U.S.C. § 1981 (1991).

146. Moore v. Grady Mem'l Hosp. Corp., 834 F.3d 1168, 1171 (11th Cir. 2016).

147. Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 474 (2006) (quoting 42 U.S.C. § 1981(a) (1991)).

148. 42 U.S.C. § 1981(b) (1991).

149. Jackson v. BellSouth Telecomms., 372 F.3d 1250, 1270 (11th Cir. 2004).

150. *Ash v. Tyson Foods, Inc., 664 F.3d 883 (11th Cir. 2011).*

151. Barnes v. Dalton, 158 F.3d 1212, 1214 (11th Cir. 1998).

152. 42 U.S.C. § 1981(a).

153. 82 F.4th 1007 (11th Cir. 2023).

154. *Id.* at 1010–11.

bias in his firing. The district court granted summary judgment to Meredith Corporation on the claim.[155]

Like under Title VII, the *McDonnell Douglas* burden-shifting framework applies when evaluating circumstantial evidence.[156] While the analysis for evaluating the evidence is similar to Title VII, the required standard of proof is a higher "motivating factor" under Title VII and "but-for" causation under § 1981.[157] That is, he "need[ed] to show that a reasonable jury could conclude that had he not been white, he would have not been terminated."[158] Ossmann contended that the Equal Employment Opportunity (EEO) Analysis form constituted direct evidence of illegal discrimination.[159] However, the court disagreed, characterizing it as circumstantial evidence rather than direct proof.[160] Ossmann further argued that Meredith failed to rebut the presumption of intentional discrimination, but the court found that the evidence provided by Meredith, including details of Ossmann's repeated harassment incidents, met the requirement of a valid, nondiscriminatory reason.[161]

Despite Ossmann's attempts to prove pretext and establish a convincing mosaic of circumstantial evidence, the court concluded that his evidence, including the EEO Analysis form and the fact that he was replaced by a non-white employee, did not create a triable question of intentional discrimination.[162] Additionally, Ossmann's "cat's paw" theory, suggesting that decision makers merely followed biased recommendations, was rejected by the court, as it found no evidence that the alleged racial animus was a but-for cause of the termination.[163] Consequently, the United States Court of Appeals for the Eleventh Circuit, affirmed the grant of summary judgment, emphasizing that the presence of race data is insufficient for a reasonable jury to conclude that Ossmann's termination was based on race rather than the documented instances of sexual harassment.[164] The court held that Ossmann failed to

155. *Id.* at 1010–13.
156. *Id.* at 1015.
157. *Id.* at 1014.
158. *Id.*
159. *Id.*
160. *Id.* at 1015.
161. *Id.* at 1015–16.
162. *Id.* at 1020.
163. *Id.* at 1020–21.
164. *Id.* at 1011.

establish that, if he were not white, the station would not have terminated him, supporting the district court's decision.[165]

VI. FAMILY MEDICAL LEAVE ACT

The Family Medical Leave Act (FMLA)[166] prohibits employers from interfering with, restraining, or denying the exercise of or the attempt to exercise any of the rights under the FMLA.[167] The United States Court of Appeals for the Eleventh Circuit recognizes two claims from aggrieved employees—retaliation and interference claims.[168] Under the FMLA, an employee is entitled to take twelve weeks of leave over a twelve-month period for their own serious health condition or the serious health conditions of family members and be reinstated upon their return from leave.[169] For interference claims, employees must prove that they were denied their benefits under the FMLA.[170] However, the denial of a benefit is not the only way employers can interfere with the rights of an employee; an employer may also be responsible for interference where it discourages its employees from using the leave to which they are entitled.[171]

As for retaliation, an employee must prove that the employer "intentionally discriminated against [them] in the form of an adverse employment action for having exercised an FMLA right"[172] This can be shown either through direct or circumstantial evidence.[173] Where there is only circumstantial evidence, the courts will apply the *McDonnell Douglas* burden-shifting analysis.[174]

In *Lapham v. Walgreen Co.*,[175] Rebecca Lapham, a single-mother whose son suffers from severe epilepsy conditions was employed by Walgreens.[176] She started as a service clerk and later advanced to drug store management roles. To better care for her son, she voluntarily stepped down to a shift lead position in 2012, allowing her to work

165. *Id.* at 1016–17.

166. 29 U.S.C. §§ 2601–2654 (1993).

167. 29 U.S.C. § 2615 (a)(1) (1993).

168. Jones v. Gulf Coast Health Care of Del., LLC, 854 F.3d 1261, 1267 (11th Cir. 2017).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 1270 (citing Strickland v. Water Works & Sewer Bd. of City of Birmingham, 239 F.3d 1199, 1207 (11th Cir. 2001)).

173. *Id.*

174. *Id.* at 1271; *McDonnell Douglas Corp.*, 411 U.S. at 802.

175. 88 F.4th 879 (11th Cir. 2023).

176. *Id.* at 883.

overnight shifts. Between 2011 and 2016, Lapham used intermittent FMLA leave annually for her son's care. During this time Lapham faced performance challenges, but her scores improved over time. In 2015, she received disciplinary action and then in 2016, she was put on a Performance Improvement Plan (PIP) due to her performance review. Lapham complained about work conditions and issues arose with her FMLA leave request, leading to delays and misunderstandings with management. In April 2017, Lapham was terminated, and Walgreens denied her FMLA leave, claiming insubordination and dishonesty as reasons for termination. Lapham filed a lawsuit against Walgreens, asserting FMLA retaliation, FMLA interference, and retaliation under Florida state laws.[177] The district court initially allowed the FMLA retaliation and interference claims to proceed but later reconsidered, applying a but-for causation standard and ruling in favor of Walgreens.[178] Lapham appealed the decision.[179]

On appeal, Lapham argued that the district court wrongly entered judgment in favor of Walgreens on her claims.[180] The court focused its initial analysis on the retaliation claims, employing the *McDonnell Douglas* framework since Lapham provided only circumstantial evidence.[181] Lapham contended that she presented direct evidence of retaliation through call records and testimony about conversations between her supervisor, Shelton, and HR, but the court dismissed this argument, asserting that the evidence merely suggests a connection between Lapham's termination and her FMLA leave requests but did not establish Shelton's retaliatory intent.[182]

In applying the *McDonnell Douglas* analysis, the court determined that the proper causation standard for FMLA and Florida's Private Sector Whistleblower Act (FWA)[183] retaliation claims is the but-for standard.[184] The Supreme Court of the United States's decision in *University of Texas Southwestern Medical Center v. Nassar*,[185] determined Title VII's language regarding retaliation—"because of"—called for a but-for standard of causation.[186] Likewise, the retaliation

177. *Id.* at 883–86.
178. *Id.* at 888.
179. *Id.*
180. *Id.* at 889.
181. *Id.* at 889–90.
182. *Id.*
183. Florida Private Sector Whistleblower Act, FLA. STAT. §§ 448.101-448.105 (1986).
184. *Lapham*, 88 F.4th at 893.
185. 570 U.S. 338 (2013).
186. *Lapham*, 88 F.4th at 892.

provision of the FMLA states, "[i]t shall be unlawful for any employer to discharge or in any other manner discriminate against any individual *for* opposing any practice made unlawful by this subchapter."[187] The court applied the plain meaning of "for" to being synonymous with "because of" to determine that this "kind of language carries with it a but-for standard" under *Nassar*.[188] Lapham argued that the FMLA may have a different causation standard due to Department of Labor regulations, but this was rejected by the court.[189] As outlined by the court, an agency's interpretation is given deference only if Congress has not spoken directly on the issue.[190] Here, Congress specifically laid out the causation standard within the statute, so the court was required to follow that standard.[191] The court concluded that Lapham could not show that the but-for reason for her termination was her use of FMLA, as she failed to rebut Walgreen's legitimate non-discriminatory reasons for her termination.[192]

Moving on to the interference claim, the court noted that Lapham must prove she was denied a benefit under FMLA and suffered remediable prejudice.[193] Lapham's claim regarding the denial of certain days off was dismissed because she failed to show remediable harm.[194] Concerning her termination, Walgreens successfully established that Lapham was terminated for insubordination, and Lapham failed to rebut this evidence adequately.[195] Consequently, the court affirmed the district court's grant of summary judgment in favor of Walgreens on all claims.[196]

In *Graves v. Brandstar, Inc.*,[197] Jessica Graves was employed by Brandstar Studios from January 11, 2017, to May 30, 2018, where she worked as a branded content producer and writer.[198] During her tenure, her father, residing in Pennsylvania, fell terminally ill, and Graves served as his primary caregiver while managing her job responsibilities in Florida. When her father underwent emergency brain surgery on May 2, 2018, Graves promptly informed her supervisors at Brandstar and flew to Pennsylvania to attend to her father. Although she returned on May

187. *Id.* at 890 (quoting 29 U.S.C. § 2615(a)(2) (emphasis in original)).
188. *Id.* at 891.
189. *Id.* at 893.
190. *Id.*
191. *Id.*
192. *Id.* at 894–95.
193. *Id.* at 895–96.
194. *Id.* at 896.
195. *Id.* at 896–97.
196. *Id.* at 897.
197. 67 F.4th 1117 (11th Cir. 2023).
198. *Id.* at 1119.

6, 2018, and later sent an email to the CEO explaining her father's condition and her need for help in setting up a studio apartment, Graves was terminated on May 30, 2018. Graves filed a lawsuit against Brandstar, alleging interference with her FMLA rights and associational discrimination under the ADA.[199]

In response to Graves's legal claims, Brandstar argued that her termination was based on performance issues, citing her history of inconsistent attendance, missed editing sessions, and subpar work.[200] The company contended that the decision was unrelated to Graves's caregiving responsibilities for her father.[201] The district court granted summary judgment in favor of Brandstar, prompting Graves to appeal, asserting that her FMLA rights were violated, and she faced associational discrimination based on her father's disabilities.[202]

The court analyzed Graves's FMLA arguments on appeal regarding her claims against Brandstar Studios.[203] First, Graves argued that Brandstar failed to provide adequate notice of her FMLA rights.[204] The court acknowledged that Graves was an eligible employee and her father's condition qualified as a serious health condition.[205] However, the court held that Brandstar did not provide the required notice following Graves's May 2nd email requesting leave for her father's emergency surgery, but despite this, Graves couldn't show harm since she received the requested time off and full pay.[206] Therefore, the court rejected her interference claim for the May 2nd request.[207] Secondly, Graves contended that her May 6th email, discussing ongoing work and requesting flexibility for her father's move to Florida, triggered Brandstar's obligation to provide FMLA notice.[208] The court disagreed, emphasizing that Graves did not explicitly request leave and her communication focused on continuing work.[209] As a result, the court upheld the district court's decision to grant summary judgment to Brandstar on Graves's FMLA claim.[210]

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199. *Id.* at 1120–21.
200. *Id.* at 1123.
201. *Id.* at 1123–24.
202. *Id.* at 1119–20.
203. *Id.* 1120–21.
204. *Id.* at 1121.
205. *Id.*
206. *Id.* at 1122.
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.* at 1123.

VII. FAIR LABOR STANDARDS ACT

The Fair Labor and Standards Act (FLSA)[211] requires employers to pay covered employees engaged in commerce a minimum of $7.25 for all hours worked.[212] Additionally, unless an employee falls within one of the statutory exemptions, if an employee works over forty hours in any workweek, an employer is required to pay that employee overtime at a rate of one and one-half times the employee's regular rate.[213] Employees can be "covered" by the FLSA in one of two ways: enterprise coverage or individual coverage.[214] For enterprise coverage, an employee must work for an employer that has at least two employees and has an annual dollar of sales or business done of at least $500,000.[215] An employee may be covered individually if their work regularly involves them in commerce between the states and they are "engaged in commerce or in the production of goods for commerce."[216]

A. Tolling of the Statute of Limitations

In *Wright v. Waste Pro USA, Inc.*,[217] Anthony Wright brought a claim against his former employer, alleging that the company willfully violated the FLSA's overtime provisions during his employment as a driver in Florida from September 2014 to November 2015.[218] The FLSA requires claims to be filed within two years of accrual, or three years for willful violations, with accrual on each payday following underpayment.[219] Wright, along with two other drivers, initiated a collective action in the United States District Court for the District of South Carolina in October 2017. Waste Pro USA and Waste Pro of Florida moved to dismiss for lack of personal jurisdiction, leading to the dismissal of claims in July 2019. Wright did not appeal but filed a similar complaint in the United States District Court for the Southern District of Florida in August 2019. The district court granted summary judgment, deeming the complaint untimely.[220]

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211. 29 U.S.C. §§ 201–219 (1938).
212. 29 U.S.C. § 206(a) (2016).
213. 29 U.S.C. § 207(a)(1) (2022).
214. 29 U.S.C. § 203(s) (2018).
215. *Id.*
216. *Id.*
217. 69 F.4th 1332 (11th Cir. 2023).
218. *Id.* at 1335.
219. 29 U.S.C. § 255(a) (1974).
220. *Wright*, 69 F.4th at 1335–36.

On appeal, Wright argued that the limitations period was tolled during the South Carolina action's pendency.[221] The court disagreed, holding that an action dismissed without prejudice is generally treated as though it was never filed for limitations purposes.[222] It underscored that the commencement of a dismissed action does not inherently toll the statute of limitations, particularly in the context of FLSA cases.[223] Wright attempted to draw a distinction where the allegations involved a collective action under FLSA § 256.[224] That section states:

> an action 'shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective . . . action[,] . . . it shall be considered to be commenced in the case of any individual claimant' when he files his written consent to become a party in the court in which the action was brought.[225]

This distinction was dismissed by the court, emphasizing that the Act does not exempt actions from the general rule that dismissed actions do not toll limitations.[226]

As far as his equitable tolling argument, the court acknowledged that equitable tolling is available in FLSA cases where there are extraordinary circumstances beyond the plaintiff's control.[227] Here, according to the court, those circumstance did not exist.[228] The court held that Wright did not act with reasonable diligence, as he could have pursued available legal remedies during the South Carolina proceedings, such as filing a protective action, seeking reconsideration, or appealing the dismissal.[229]

Therefore, the court upheld the district court's decision, stating that Wright's claims were untimely and did not warrant equitable tolling due to his failure to pursue available legal remedies during the South Carolina proceedings.[230]

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221. *Id.* at 1336.
222. *Id.*
223. *Id.*
224. *Id.* at 1338.
225. *Id.* at 1337 (quoting 29 U.S.C. § 256 (1947)).
226. *Id.*
227. *Id.* at 1340.
228. *Id.*
229. *Id.* at 1340–41.
230. *Id.* at 1341.

B. Calculation of the Regular Rate

In *Thompson v. Regions Sec. Servs., Inc.*,[231] a security guard, David Thompson claimed that his employer, Regional Security Services, artificially set two different "regular rates" to evade compliance with the FLSA's overtime requirements.[232] Thompson initially earned $13.00 per hour and typically worked a forty-hour week. However, seven months into his employment, Regional Security reduced his rate to $11.15 per hour when scheduling him for significant overtime hours. After nearly a year of overtime, Regional Security abruptly reversed his work week to forty hours and reinstated the $13.00 rate. The district court dismissed the case after a motion for a judgment on the pleadings from Regional Security.[233]

The central question before the court was to determine Thompson's "regular rate" during the period of overtime work.[234] The FLSA mandates that an employee's overtime rate must be at least one-and-one-half times the regular rate.[235] Thompson argued that his regular rate was $13.00, while Regional Security asserted it was the reduced $11.15 rate.[236] The court conducted a *de novo* review and considered the Department of Labor's interpretations, particularly 29 C.F.R. § 778.327,[237] which prohibited the adoption of different rates for the same work on a temporary or sporadic basis.[238] This regulation points out that employers could use "'simple arithmetic" to ensure that an employee earns no more than his non-overtime hourly rate—"no matter how many hours he work[s]."[239]

In analyzing the definition of the regular rate, the court acknowledged that the term is ambiguous, and the definitions found in the FLSA and its ordinary public meaning provided no assistance in resolving the ambiguity.[240] However, it found the Department of Labor's interpretation to prevent employers from manipulating rates to evade FLSA obligations instructive in concluding that Thompson's allegations were plausible.[241]

231. 67 F.4th 1301 (11th Cir. 2023).
232. *Id.* at 1303–04.
233. *Id.* at 1304–05.
234. *Id.* at 1304.
235. *Id.* at 1305.
236. *Id.* at 1306.
237. 29 C.F.R. § 778.327 (1981).
238. *Thompson*, 67 F.4th at 1309–10.
239. *Id.* at 1309 (quoting 29 C.F.R. § 778.327(a) (1981)).
240. *Id.* at 1306.
241. *Id.* at 1309.

Therefore, the court vacated the judgment on the pleadings and remanded the case for further proceedings.[242]

IX. NATIONAL LABOR RELATIONS ACT

The National Labor Relations Act (NLRA)[243] was enacted in 1935 to give employees the right to form and join unions while also requiring employers to engage in the collective bargaining process with the bargaining representative chosen by its employees.[244] The NLRA achieves this by protecting employees' "full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."[245] The NLRA is enforced by the National Labor Relations Board (the Board or NLRB).[246] The Board is comprised of five members nominated by the President and confirmed by the Senate, with its primary responsibilities being to protect employee rights under the NLRA, to prevent unfair labor practices, and to interpret the NLRA.[247] The NLRA and the Board protect not only unionized workforces but also non-unionized employees' rights to self-organize and to bargain collectively through representatives of their choosing, "and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."[248]

In *International Brotherhood of Teamsters Loc. 947 v. NLRB*,[249] the United States Court of Appeals for the Eleventh Circuit overturned a 2019 NLRB decision that allowed Anheuser-Busch to try to force arbitration for a former black employee and union member.[250] After his termination, Michael Brown filed suit in federal court claiming race discrimination and retaliation under Title VII. Because Brown signed a dispute resolution agreement during his employment that required him to arbitrate any claims, Anheuser-Busch asked the district court to compel arbitration. In response, Brown filed an unfair labor practice (ULP) charge with the NLRB claiming that the employer's "efforts to enforce its arbitration agreement contravened the collective bargaining

242. *Id.* at 1311–12.

243. 29 U.S.C. §§ 151–69 (1935).

244. *See* 29 U.S.C. § 151 (1947).

245. *Id.*

246. 29 U.S.C. § 153 (2019).

247. Mercedes-Benz U.S. Int'l, Inc. v. Int'l Union, UAW, 838 F.3d 1128, 1131 (11th Cir. 2016).

248. 29 U.S.C. § 157 (1947).

249. 66 F.4th 1294 (11th Cir. 2023).

250. *Id.* at 1316–17.

agreement and constituted a unilateral change to the terms of Brown's employment, in violation of the National Labor Relations Act."[251] The district court stayed the action as a result of the ULP.[252]

Brown's ULP charge argued that application of the Dispute Resolution Policy in the Motion to Compel was a violation since Anheuser-Busch did not negotiate with the union on that issue.[253] The NLRB issued a complaint, and an Administrative Law Judge (ALJ) found Anheuser-Busch in violation of §§ 8(a)(5) and 8(a)(1) by unilaterally applying the policy without union negotiation.[254] Anheuser-Busch argued that it had no duty to bargain as Brown, an applicant during the arbitration agreement, wasn't a union member, and the ALJ erred in considering him an "employee" under the NLRA.[255] The Board ultimately reversed the ALJ's decision, asserting that Anheuser-Busch's motion to compel arbitration was protected by the First Amendment's Petition Clause,[256] as it didn't involve an illegal objective.[257]

On appeal, the Eleventh Circuit rejected the NLRB's decision, ruling that the NLRB departed from established standards, as it did not assess whether compelling arbitration would violate the NLRA.[258] Instead, the NLRB introduced a new requirement, stating that the motion must involve an additional unlawful underlying act beyond the litigation itself to constitute an illegal objective under the *Bill Johnson's Restaurants, Inc. v. National Labor Relations Board*[259] principle.[260] The court disagreed with this new standard, emphasizing that the focus should be on whether the outcome sought by the motion would violate the NLRA.[261] The court concluded by granting the union's petition for review, vacating the NLRB's decision, and remanding the case for a proper determination of whether Anheuser-Busch's motion had an objective that was illegal under federal law.[262]

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251. *Id.* at 1296–97.
252. *Id.* at 1297.
253. *Id.* at 1300.
254. *Id.* at 1301.
255. *Id.*
256. U.S. CONST. amend. I.
257. *Int'l Bhd. of Teamsters*, 66 F.4th at 1302–03.
258. *Id.* at 1316–17.
259. 461 U.S. 731 (1983).
260. *Int'l Bhd. of Teamsters*, 66 F.4th at 1310.
261. *Id.* at 1315.
262. *Id.* at 1317.

X. CONCLUSION

As this Article demonstrates, the issues arising under labor and employment law are becoming progressively more challenging each year. Regardless of whether a practitioner specializes in state, federal, administrative, or other matters pertaining to labor and employment, it is important to recognize and stay abreast of the ever-evolving trends, policies, cases, and federal guidelines. While the way in which the law will evolve and change remains to be seen, the cases above give practitioners some guidance for the time being.