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BY BOB GREGG AND THE BOARDMAN CLARK LABOR & EMPLOYMENT LAW GROUP

LITIGATION

Benefits — ERISA

Fax Was Not Enough to Change Beneficiary. An employee got a divorce. In the divorce decree, the spouse agreed to relinquish her rights in his retirement account. The employee sent a fax to the company's benefits center and to Human Resources, clearly requesting that his retirement plan be changed to remove his ex-spouse as beneficiary and move his sister from contingent beneficiary to primary beneficiary. HR updated its file to show the spouse as "ex-spouse," but she remained listed as beneficiary. The fax receipt was confirmed, but no one confirmed whether the beneficiary change had been made. Sometime later, the employee passed away. His former spouse claimed the retirement funds, and his sister contested, claiming she was the beneficiary. The court ruled that the faxed request was not effective. In spite of the spouse waiving her rights in the divorce decree, the retirement plan's requirements controlled the changing of beneficiaries under ERISA. The plan had requirements for contacting a specific office and following specific procedures to change a beneficiary. The faxed request, though clear, had not followed these procedures. So, the ex-spouse got the funds. **Among the lessons** from this case are that (1) Employees have the responsibility to follow up and check to ensure they are in compliance with benefit requirements and that change requests were actually acted upon. (2) Many employees are not sophisticated or knowledgeable, and HR is supposed to be there to **assist** in complex and often confusing issues, such as benefit plans. Once HR was aware of the divorce and the request to change the beneficiary, HR should have informed the employee that the employee's fax was not enough; he still

needed to complete the plan's specific form and submit it. *Packaging Corp. of America Thrift Plan v. Langdon* (7th Cir., 2026)

Retaliation

The Elephant in the Room. When an employee is disciplined or discharged soon after engaging in protected activity, or has a long history of protected complaints, there can be a legal presumption that the adverse action was in retaliation. However, the employer can overcome the presumption if the employee's action was clearly a serious infraction. Then the infraction stands out and warrants discharge, regardless of any prior protected activity. Protected activity does not *immunize* one from the standard consequences of wrongful conduct. In *Shirk v. Trustees of Indiana University* (7th Cir., 2026), the Complainant engaged in multiple protected activities in her two years of employment. She requested and received ADA accommodations. She filed several complaints accusing managers of unfair practices and disability and sex discrimination. She took FMLA leave. The employer investigated her complaints, and the investigators found no basis. Then, shortly after exercising more protected activity, she also engaged in a separate act of improper behavior unrelated to any of the protected activities. She created an embroilment over a project budget, sent harmful, disparaging emails and memos outside her department, and potentially harmed the department's relations with its clients. She was fired for that act. She sued for retaliation, claiming management and HR had been out to get her due to her disabilities, requests for accommodation, FMLA use, and prior complaints, and the discharge was a pretext to retaliate for those. The court disagreed. It found that the behavior stood on its own as a valid reason for discharge, unconnected to any prior protected activity or disability. Her allegations were based on presumptions, inferences, and conclusions that since she had engaged in protected activity, the adverse termination action must be connected. However, the Court ruled *"Shirk completely ignores the elephant in the room, the highly inappropriate nature…"* of the behavior which caused the termination. **Be Aware** that in this situation of discharge soon after an employee's protected activity, the employer will likely have the burden of proof to overcome the presumption of retaliation. This requires proof that the employee's actions were serious infractions, and others were discharged for similar behavior. The record should be free of any negative mention or frustrated email communications about the protected activities. There should be no mention of those activities in the investigation or discussion of the disciplinary action. There should be no evidence of a "rush to judgment," and the employee should be given a fair opportunity to explain their actions, with a fair

process. Thorough documentation should exist of the issues *at the time,* not after the ex-employee files a complaint.

Employment Contracts

Illegible, Complex, and Unconscionable. This case illustrates the continuing trend for federal and state courts to give heightened scrutiny to agreements that employees are required to sign. These include agreements for arbitration, non-compete/non-solicitation, confidentiality/non-disclosure, company ownership of work product, severance, and more. Courts often void these agreements for not meeting fundamental contract principles*. Fuentes v. Empire Nissan* (S. Ct. Cal., 2026) is a case involving an agreement to arbitrate all employment disputes. Mr. Fuentes was discharged and then sued for wrongful discharge. The company tried to dismiss the case and enforce the Arbitration Agreement. However, the agreement seemed to hit most of the red flags that courts scrutinize. It was a multipage document, with extremely small and often blurry print, "nearly unreadable." It had long, complex paragraphs full of legal jargon. New employees were given approximately 5 minutes to review and sign a "packet" of forms, including the Arbitration Agreement. There was no opportunity to ask questions or any other meaningful opportunity to review or negotiate. The court found a high degree of unconscionability and would not grant the company's request to enforce the agreement and refused to dismiss the case.

Settlement Agreements

FLSA Claims Cannot be Released Without DOL or Court Approval. Employment cases or an attorney's demand letter often allege more than one type of claim. The parties reach a private "global settlement" of all claims in order to prevent litigation or settle an EEOC or state agency case. **However**, that may not be the end. Wage and hour claims under the FLSA can only be settled with formal approval of the Dept. of Labor or a court. In *O'Neal v. American Shamen Franchise System, Inc*. (11th Cir., 2026), a former employee filed complaints for violation of state laws and wage and hour violations. The parties reached a private settlement of "any and all claims" and informed the court they had reached a resolution and voluntarily dismissed the case. A few months later, the former employee filed a new case over the wage and hour violations. The company filed for dismissal and breach of contract for violating the Settlement Agreement. However, the FLSA provides that any settlement of claims must be "supervised by" the Dept. of Labor or approved by a court "after scrutinizing the settlement for fairness." Neither of these had occurred in this private settlement. So, the court found the settlement

had been valid for all other claims but allowed the FLSA case to continue. **This places employers in a quandary** if they wish to settle a case with confidentiality and also wish to cover any possible FLSA issues, since filing the settlement with DOL or a court in order to get approval can create a public record.

"Oral" Settlement Upheld When Basic Terms are Recorded. A former employee sued for wage and hour violations. In a Federal Court mediation session, the parties agreed to settle the case. They then orally recited the general terms of payment amount, confidentiality, non-defamation, no re-hire, and case dismissal. The Federal Court Mediator approved and then recorded the verbal agreement. However, the plaintiff then refused to sign the written Settlement Agreement, claiming she felt pressured and certain terms were not clear enough. The employer moved for enforcement of the Agreement and dismissal of the case. The court held that the recorded oral statements of the parties showed sufficiently defined terms that the plaintiff agreed to at the time. It enforced the Agreement and dismissed the case. *Maccarone v. Siemens Industries, Inc*. (1st Cir., 2026). This case shows the importance of documenting **now**, since the formal documents can take days or weeks to be drafted. In this case, the mediator recorded the parties' oral agreement to the terms. In other circumstances, not requiring federal court approval, a quick memorandum or email setting forth the basic agreement and confirmed by both parties works to confirm the matter until the formal document can be drafted and signed.

Occupational Safety and Health Administration — OSHA

Violence at Hospital Results in Two Suits. Staff exposure to violent patients at a psychiatric hospital resulted in two separate suits. OSHA issued citations and penalties against the hospital that employed the staff. Then, OSHA also separately issued additional citations and penalties against the management company, which owned the facility but was a separate corporation from the hospital. Both entities challenged the citations, based on different grounds. OSHA found that the hospital had ongoing issues of staff being subjected to incidents of violence by patients. It found the hospital could have implemented safeguards such as reconfiguring nursing stations to limit access by patients, changing staffing patterns to prevent staff from being alone in patient areas, implementing adequate alarms and communication devices, and fully implementing already existing Violence Prevention policies, which were on paper but had not received sufficient emphasis or staff training. In addition, OSHA found that the hospital had failed to keep, or had deleted, security videos of patient-staff violence instances, even after it knew OSHA was inspecting. Thus, the assessment of extra penalties. Cedar Springs

Hospital was the employer of the hospital staff. It challenged the citations and penalties by claiming OSHA did not have the authority to regulate the hospital. Similar to when plaintiffs try to bring several different laws to focus on one issue, employers, too, sometimes try to play one law against another. In this case, the hospital claimed that the federal Center for Medicare and Medicaid Services (CMMS) was the regulatory body for hospital safety, that it pre-empted any other authorities, and thus OSHA had no jurisdiction. The court disagreed. It found that CMMS regulated *patient safety*, but its authority did not cover employee workplace safety. The OSHA citations and penalties were upheld. *Cedar Springs Hospital v. OSHA* (10th Cir., 2026) UHS of Delaware was the management company that owned the facility. It argued that it was not the employer of the hospital staff and was not subject to workplace safety rules. However, the court found that UHS did provide three of its employees under contract with the hospital (leased employees). These three served as the Hospital's CEO, CFO, and COO. It was their regular work site. In addition, UHS sent other management company managers, such as the Divisional Director of Clinical Services and other specialists to the hospital for days at a time to oversee staff and to provide training and oversee the clinical arrangements. So, UHS employees were also exposed to violence. In addition, the UHS employees were in charge of much of the hospital's operations and safety practices that were at issue in the OSHA citations and had a role in the non-retention or deletion of video evidence. Thus, UHS was jointly responsible for any workplace safety violations. *UHS of Delaware v. OSHA* (10th Cir., 2026)

Author

Bob Gregg
(608) 283-1751