

RECENT RHODE ISLAND*

CASES OF INTEREST TO

LABOR & EMPLOYMENT ATTORNEYS

AND

HUMAN RESOURCES PROFESSIONALS

URI Charles T. Schmidt, Jr. Labor Research Center
36th Annual Labor Arbitration Conference
Roger Williams University School of Law

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Presented by:

Carly Beauvais Iafrate, Esq.
Law Office of Carly Beauvais Iafrate
408 Broadway, 1st Fl.
Providence, RI 02909
(401) 421-0065
ciafrate@verizon.net

Jessica Schachter Jewell, Esq.
Nixon Peabody, LLP
One Citizens Plaza
Providence, RI 02903
(401) 454-1000
jsjewell@nixonpeabody.com

Rhode Island Supreme Court¹

(1) Enrique Sosa v. City of Woonsocket, 297 A.3d 120 (July 14, 2023) (Goldberg, J.) – Law Enforcement Officers’ Bill of Rights.

Attorneys:

John R. Grasso, Esq. – Plaintiff

Timothy C. Cavazza, Esq. – Defendant

The defendant, the City of Woonsocket (the city), appealed from a judgment in favor of the plaintiff, Enrique Sosa, declaring that the city terminated the plaintiff’s employment from the Woonsocket Police Department in violation of G.L. 1956 § 42-28.6-4 of the Law Enforcement Officers’ Bill of Rights (LEOBOR). On appeal, the city asserted that the Superior Court did not have jurisdiction to issue declaratory relief in the matter because the plaintiff failed to join all interested parties. The city further argued that the plaintiff’s admission to sufficient facts in a Massachusetts District Court equated to a plea of no contest to a felony under § 42 28.6-13(i) of LEOBOR, justifying immediate termination of his employment.

The Supreme Court concluded that Superior Court had the authority to proceed in the matter because the body of the plaintiff’s complaint properly named the City of Woonsocket as the defendant. The Supreme Court held that the Presiding Justice correctly found that, because Rhode Island has no functional equivalent, the plaintiff’s admission to sufficient facts continued without a finding in Massachusetts did not qualify as a plea or no contest pursuant to § 42-28.6-13(i).

Accordingly, the Supreme Court affirmed the judgment of the Superior Court.

(2) William Felkner v. Rhode Island College, 203 A.3d 433 (April 20, 2023) (Lynch Prata, J.) – Employee Constitutional Claims.

Attorneys:

Thomas W. Lyons, Esq. – Plaintiff

Jeffrey S. Michaelson, Esq. – Defendant

¹ The case summaries relative to the Rhode Island Supreme Court are taken directly from the Court’s website at <https://www.courts.ri.gov/Courts/SupremeCourt/Pages/Opinions%20and%20Orders.aspx>.

The plaintiff, William Felkner, appealed from a Superior Court decision granting summary judgment in favor of the defendants, Rhode Island College, John Nazarian, Carol Bennett-Speight, James Ryczek, Roberta Pearlmuter, and S. Scott Mueller. On appeal, the plaintiff argued that the hearing justice erred in granting summary judgment on the grounds of qualified immunity. The plaintiff also contended that the hearing justice disregarded this Court’s mandate when this Court remanded the matter to the Superior Court. The plaintiff additionally argued that the hearing justice improperly resolved questions of material fact in granting summary judgment.

The Supreme Court concluded that the hearing justice properly granted summary judgment in favor of the defendants on the ground of qualified immunity. The Supreme Court determined that Felkner failed to show that the law is clearly established, furthermore, a reasonable person in defendants’ position did not have fair warning that their conduct potentially violated his constitutional rights. Accordingly, the Supreme Court affirmed the decision of the Superior Court.

(3) Petrolex II, LLC v. The Bailey Group, LLC, et al., 290 A.3d 1288 (March 31, 2023) (Goldberg, J.) –Arbitration.

Attorneys:

Guido R. Salvatore, Esq. – Plaintiff

Michael J. Lepizzera, Jr., Esq – Defendant

The plaintiff, Petrolex II LLC, appealed from a decision granting motions to stay the Superior Court proceedings in four cases and refer them to arbitration. On appeal, the plaintiff asserted that the trial justice erred because there was no dispute between the defendants and the subcontractors regarding the construction and language as set forth in the subcontracts. The plaintiff further argued that a dispute over the pay if paid provision contained in the respective contracts was not referable to arbitration as this clause, plaintiff contended, is void and unenforceable as being against public policy.

The Supreme Court concluded that the trial justice did not err in granting the motions to stay and refer the cases to arbitration. The Court held that the language of the subcontracts explicitly required that any dispute, including legal disputes, must be referred for arbitration. The Supreme

Court also concluded that even if the pay if paid provision was to be declared void, the arbitration section of the subcontract would not be nullified because a challenge to the enforceability of the entirety of a contract does not void an arbitration clause. Accordingly, the Court determined that any dispute of the enforceability of the pay-if-paid provision should be decided by an arbitrator.

Accordingly, the Supreme Court affirmed the orders of the Superior Court.

(4) Griggs & Browne Pest Control, Inc., 305 A.3d 1256 (R.I. 2024) (January 8, 2024) (Long, J.) – Non-Competition Agreement.

Attorneys:

Mitchell R. Edwards, Esq. – Plaintiff

Brian Walls, Pro Se – Defendant

The defendant, Brian Walls (defendant Mr. Walls), challenged an order of the Superior Court granting a motion for a preliminary injunction in favor of his former employer, the plaintiff, Griggs & Browne Pest Control Co., Inc. (plaintiff). Mr. Walls argued that the trial justice erred in enforcing a noncompetition agreement between the parties because, he contended, the plaintiff improperly modified the terms of his employment contract, and also sought review of his trial counsel representation below.

The Supreme Court determined that the trial justice did not abuse her discretion in granting the plaintiff's motion for a preliminary injunction and affirmed the order of the Superior Court.

(5) Jordan Nissensohn, Administrator v. CharterCARE Home Health Services, 270 A.3d 25 (January 16, 2024) (Lynch Prata, J.) – Whistleblowers' Protection Act.

Attorneys:

James A. Ruggieri, Esq. – Plaintiff

Jessica Schachter Jewell, Esq. – Defendant

The plaintiff, Jordan Nissensohn, Administrator of the Estate of Michael Nissensohn, appealed from a final judgement of the Superior Court granting the motion for summary judgement of the defendants, University Medical Group (UMG), Alan Epstein, M.D., and Steven Sepe, M.D. On appeal, the plaintiff argued that the Superior Court erred by finding that: (1) the plaintiff did not engage in protected conduct under the Rhode Island Whistleblowers' Protection Act (RIWPA), G.L. 1956 chapter 50 of title 28; (2) Dr. Epstein and UMG's allegedly defamatory statements

were substantially true or untimely; (3) the plaintiff’s teaching duties were voluntary; (4) the plaintiff’s breach-of-contract claim was preempted by the Payment of Wages Act, G.L. 1956 chapter 14 of title 28; (5) the plaintiff failed to establish his claim for tortious interference with contractual relations; (6) Dr. Epstein’s alleged interference was not causally connected to the plaintiff’s failure to set up a new practice; and (7) the plaintiff did not provide sufficient nonhearsay evidence to support his conversion claim.

The Supreme Court determined that: the plaintiff did not engage in RIWPA-protected conduct because he did not report a violation of the law; the plaintiff’s defamation claims abated upon his death; Dr. Epstein’s promise to pay the plaintiff additional teaching money was not supported by consideration; the plaintiff’s breach-of-contract claim based upon UMG’s failure to pay him for patient care was untimely under the Payment of Wages Act; the plaintiff failed to provide sufficient evidence to support each element of his tortious interference claims; and the plaintiff waived any argument that his conversion claim was supported by nonhearsay evidence. Accordingly, the Supreme Court affirmed the judgement of the Superior Court.

(6) Angelo Riccitelli v. Town of North Providence, 272 A.3d 582 (February 16, 2024) (Suttell, C.J.) – Retiree Benefits, Breach of Contract.

Attorneys:

Sonja L. Deyoe, Esq. – Plaintiff

Vincent F. Ragosta, Jr., Esq. – Defendant

The defendant, the Town of North Providence (the town), by and through its interim Director of Finance, Maria Vallee, appealed from the Superior Court’s entry of summary judgement in favor of the plaintiff, Angelo Riccitelli, a former firefighter employed by the town who retired after sustaining a work-related injury. Summary judgement turned on the meaning of the term “monthly net pay” within a provision of the collective bargaining agreement between the town and Riccitelli’s former union.

Before this Court, the town argued that the hearing justice erred in granting summary judgement because: (1) the hearing justice did not consider the town’s proffered extrinsic evidence; (2) Riccitelli’s motion was improperly framed; (3) Riccitelli failed to show the absence of any issue

of material fact; and (4) the provision of the collective bargaining agreement at issue was ambiguous.

The Supreme Court concluded that, because Riccitelli never provided the full text of the collective bargaining agreement, which was necessary to any finding that the term “monthly net pay” unambiguously supported his position, he failed to carry his initial burden of showing an absence of issues of material fact. His motion for summary judgment should have been denied on that basis.

Accordingly, the Supreme Court vacated the judgement of the Superior Court.

First Circuit Decisions

Der Sarkisian v. Austin Preparatory School, 85 F.4th 670 (1st. Cir. 2023)

The First Circuit affirmed the District Court’s grant of summary judgment on the plaintiff’s disability discrimination claim, holding that the former teacher’s request for an open-ended extension to her leave of absence was not facially reasonable. Specifically, the plaintiff had initially been out on leave for four weeks, then needed an additional three months of leave, which the school granted. Following this, the plaintiff experienced additional complications and her doctor told the school that she would be unable to work with or without accommodations for an additional three to six months. The plaintiff failed to show that she was a qualified individual who was able to perform the essential functions of her job, with or without a reasonable accommodation. The court declined to address the plaintiff’s claim that the school failed to engage in the interactive process since she did not carry her burden that a reasonable accommodation existed. The court also affirmed the grant of summary judgment on the plaintiff’s age discrimination claim.

Dixon-Tribou v. McDonough, 86 F.4th 453 (1st. Cir. 2023)

The plaintiff was a nurse who worked for the U.S. Department of Veterans Affairs. After the removal from federal service, she filed a lawsuit alleging disability discrimination, failure to accommodate and hostile work environment. The District Court granted the V.A. summary judgment. On appeal, the plaintiff argued that because the U.S. Office of Personnel Management (“OPM”) had awarded her disability retirement, the District Court lacked jurisdiction and that the decision precluded a finding in the V.A.’s favor. The court dismissed both arguments as well as the alleged claims of error by the District Court.

Morales v. Silgan Containers Manufacturing. P.R., LLC, No. 22-1156, 2024, U.S. App. LEXIS 3084 (1st. Cir. Feb. 8, 2024)

In this age discrimination claim, the court affirmed the District Court’s grant of summary judgment in favor of the plaintiff, an applicant, who claimed he was not hired for a position because

of his age. The District Court held that there was no evidence that the defendant actually knew the plaintiff's age when it rejected his application. Specifically, his application materials did not include his birth date or dates related to his education. His resume showed work experience beginning in 1989. Although discovery showed that the defendant was only interested in hiring a candidate younger than 58 years old, there was no evidence that the employer believed the plaintiff was older than 58 years old. Therefore, the decision not to hire him was not "because of" his age.

Boykin v. Genzyme Therapeutic Prods., LP, No. 23-1667, 2024 U.S. App. LEXIS 3766 (1st. Cir. Feb. 16, 2024)

The plaintiff sued his former employer for race discrimination and harassment, as well as retaliation, stemming from a negative performance review that he received prior to his departure from the company. On appeal, the plaintiff argued that it was error for the District Court to defer on the issue of whether a negative performance review constituted an adverse employment action and instead determined that the plaintiff failed to establish pretext. The First Circuit approved of the District Court's decision to base its decision on the plaintiff's failure to establish pretext, which it also affirmed. The First Circuit held that the plaintiff "reads the record through rose-colored glasses" and that the argument was not backed by "definite, competent evidence." Thus, this court affirmed summary judgment in favor of the defendant, determining that the plaintiff failed to establish pretext.

Ing v. Tufts University, 81 F.4th 77 (1st. Cir. 2023)

After the university denied the plaintiff for full professor, and the plaintiff filed litigation claiming discrimination and retaliation for her reporting sexual harassment, the court affirmed judgment in favor of the university because it proffered evidence to show that she was unqualified for the position. Fatal to the plaintiff's claims, the defendant proffered evidence to show that the plaintiff lacked material experience for the role. Additionally, the First Circuit concluded that there was "not even the slightest suggestion" that the university's reason for not promoting the plaintiff was pretextual. Further, the court found that while the plaintiff did report sexual harassment, her report was eighteen months before she applied for this promotion and no one on the hiring committee knew about the complaint. Thus, this court found that there was no evidence to support her retaliation claim.

Montoya v. CRST Expedited, Inc., 88 F.4th 309 (1st. Cir. 2023)

In a matter of first impression, the First Circuit affirmed summary judgment in favor of the plaintiffs in this collective action, holding that the time truck drivers spend in a sleeper berth that exceeds eight hours per day is compensable work under the FLSA. The defendant is a motor carrier providing trucking services across North America that runs a driver training program for aspiring long-haul truck drivers. Its team-driving approach typically results in one person driving while the other driver is off duty (for purposes of the DOT regulations) in the sleeper berth of the truck. The sleeper berth of the truck is a driver's "living quarters" during these long stretches of time on the road. The space typically contains bunk beds, a sitting area, and perhaps a microwave or small refrigerator, but does not have a bathroom even though drivers are frequently there for ten or more hours at a time while the truck is in motion. The plaintiffs filed suit claiming, in

relevant part, that the defendant's compensation policies violated the FLSA because CRST does not pay its drivers for hours spent in the sleeper berth that exceed the DOL's excludable eight-hour sleeping period, and thus does not meet the hourly minimum wage required by the FLSA. The First Circuit applied the Predominant Benefit Test, and held that under the circumstances, the time spent was compensable because the drivers are confined to a restricted environment; they can only leave the workplace during truck stops; they spend 10-17 hours in this small space; and the space is so restrictive it is ill-equipped for many leisure activities.

Marcus v. American Contract Bridge League, 80 F.4th 33 (1st. Cir. 2023)

The court held that the District Court properly granted summary judgment in favor of the defendant on the plaintiff's retaliation claim pursuant to the Fair Labor Standards Act because he failed to proffer any evidence to show a causal connection between his protected activity and the defendant's failure to promote him. The plaintiff filed a complaint with the Department of Labor alleging that he had been misclassified as an exempt employee and was entitled to overtime. Nine months later, he was denied a promotion, even though he was the only applicant. However, the record showed that after the plaintiff filed the DOL complaint, the defendant promoted him to another position, raised his pay, and gave him a positive performance evaluation. The plaintiff also failed to produce any evidence that the defendant's stated reasons for denying him the position he applied to was pretextual.

D.R.I. Decisions

Wongbay v. Balise Toyota of Warwick (Balise T, LLC), No. 22-cv-00458-MSM-LDA, 2023 U.S. Dist. LEXIS 134903 (D.R.I. Aug. 3, 2023)

In this employment discrimination suit, the court dismissed some of the plaintiff's claims because she failed to exhaust her administrative remedies. On or about October 12, 2021, the plaintiff co-filed a Charge of Discrimination with the Rhode Island Commission for Human Rights ("RICHR") and the Equal Employment Opportunity Commission ("EEOC") against the defendant alleging discrimination on the basis of race, color, retaliation, and a hostile workplace. Yet, Counts I and II of her Complaint also alleged discrimination on the basis of ethnicity and age, in violation of Title VII of the Civil Rights Act of 1964 and the Rhode Island Fair Employment Practices Act. The court dismissed these claims because it found that she failed to file a charge with the RICHR or the EEOC with respect to either ethnicity or age and failed to allege that these claims either reasonably grew from the EEOC investigation or that the claims were reasonably within the scope of the RICHR investigation.

Gailey v. Electric Boat Corporation, No. 21-201 WES, 2023 U.S. Dist. LEXIS 167174 (D.R.I. Sept. 20, 2023)

The court's grant of Electric Boat's motion for summary judgment in the plaintiff's disability discrimination claim turned on an analysis of whether the plaintiff could perform the essential functions of the position with or without a reasonable accommodation. Electric Boat designs and builds nuclear submarines. The plaintiff's job primarily entailed him to inspect welds on submarine pressure hulls. The plaintiff began suffering from seizures which began impacting his work. In February 2018, after being out of work, his doctor cleared him to return to work with

a “no critical inspections” restriction. The defendant’s Accommodation Review Committee investigated the matter and determined that no accommodations would change that, and no alternative work was available for the plaintiff because “critical inspections” were an essential function of the plaintiff’s job as an inspector. Thus, the defendant terminated the plaintiff’s employment. The court concluded that critical inspections are an essential function of the position and that the plaintiff could not conduct critical inspections, with or without an accommodation.

Pepper v. Brown University, No. 21-248-JJM-PAS, 2023 U.S. Dist. LEXIS 198182 (D.R.I. Nov. 2, 2023)

The court granted Brown University’s motion for summary judgment in the plaintiff’s suit claiming violations of American with Disabilities Act (“ADA”) for hostile work environment, failure to make reasonable accommodations, and retaliation, after the university terminated his employment for violently assaulting a coworker. The plaintiff claimed he had ADHD and that his co-worker was following him around and purposefully agitating him. The plaintiff applied for a workplace accommodation (the ability to wear headphones) but failed to provide the necessary forms or information. The university met with the co-worker (a 17-year old), who admitted to engaging in some of the alleged behavior but indicated he did so as a joke and did not realize the effect his pranks were having. He was told the behavior needed to stop. Further, Brown attempted to limit interactions between the plaintiff and this co-worker. However, without provocation, the plaintiff grabbed the co-worker from behind, placed in him a chokehold and struck him in the face and end. He was placed on administrative leave and then fired for violating Brown’s Workplace Violence Policy. The Court held the plaintiff failed to establish causation between the alleged hostile work environment and his ADHD. Next, the court found that the plaintiff failed to show how his diagnosis of ADHD substantially limited a major life activity to classify him disabled under the ADA and that merely not getting along with one co-worker was insufficient to establish that he was disabled. The court also determined he had not requested a reasonable accommodation (a transfer that would violate the collective bargaining agreement) and even if he met these first two prongs, Brown was not able to ultimately provide him with an accommodation because of the plaintiff’s violent behavior. Finally, the plaintiff alleged that the defendant retaliated against him because he raised discrimination concerns due to his ADHD. Again, however, the court found that the plaintiff failed to establish a causal connection between his termination and his raised concerns, with the evidence showing that Brown was supportive and took action on his behalf prior to his violent outburst. Lastly, the court determined that Brown’s rationale for firing the plaintiff was clearly not a pretext for discrimination, but necessitated by his own violative conduct.

United States ex rel. Deborah Souza v. Embrace Home Loans, Inc., No. 1:22-cv-00453-JJM-PAS, 2023 U.S. Dist. LEXIS 113544 (D.R.I. Jun. 28, 2023)

The court denied the defendant’s motion to dismiss the plaintiff’s retaliation claim under the False Claims Act (“FCA”) because if found that the temporal proximity between the plaintiff’s termination and the protected conduct could support an inference of causation. The plaintiff explicitly raised concerns to the defendant that many of its loans did not comply with HUD’s underwriting requirements, and thus were not eligible for FHA mortgage insurance. Within that meeting wherein the plaintiff raised her concerns, an executive allegedly suggested that the plaintiff was not right for this position. The defendant fired the plaintiff a little over three months

after the plaintiff voiced her concerns. In denying the defendant's motion to dismiss, the court held these circumstances supported an inference of causation.

Derrick v. City of East Providence, No. 1:20-cv-00491-MSM-PAS, 2023 U.S. Dist. LEXIS 156226 (D.R.I. Sept. 5, 2023)

The court granted the plaintiff's motion for summary judgment on her retaliation claim under the Family and Medical Leave Act ("FMLA") because the decision was causally related to her exercise of her rights under the FMLA. The plaintiff worked as Secretary to the Director of the East Providence Career Technical Center. After some concerns arose regarding her performance, the defendant decided to place the plaintiff on a Performance Improvement Plan ("PIP"). Before the defendant could formally issue the PIP, the plaintiff requested FMLA leave. After extending her leave for several weeks, the plaintiff opted to retire rather than return to work. Once retired, the plaintiff completed training to become a teaching assistant ("T.A.") and the City hired her as a substitute T.A. The School Department's Director of Human Resources then terminated the plaintiff's T.A. assignment and told the plaintiff her name would be removed from the eligible list of T.A.s to receive future assignments. The reason for these decisions was because the plaintiff had not completed the PIP when she resigned the previous year. The City did not file an opposition and the Court granted summary judgment in favor of the plaintiff on the FMLA claim because the City had not articulated a legitimate reason for terminating the T.A. position.

DiOrio v. National Education Association, No. 23-246 WES, 2023 U.S. Dist. LEXIS 198656 (D.R.I. Nov. 6, 2023)

There Barrington public school teachers sued their union, the National Education Association ("NEA") and the union's state and local affiliates following their terminations by the Barrington School Department after their religious exemption requests regarding the COVID-19 vaccination policy were denied. The court dismissed NEA from the lawsuit, holding that the plaintiffs had failed to present evidence demonstrating either general or specific personal jurisdiction. The court highlighted the longstanding precedent that the mere fact that a subsidiary company does business within a state does not confer jurisdiction over its nonresident parent, even if the parent is the sole owner of the subsidiary. Thus, the court dismissed the defendant NEA with prejudice for lack of personal jurisdiction. The Court then dismissed the plaintiffs' claims against the remaining defendants because their unvaccinated status did not render them disabled or regarded as disabled under the applicable statutes.

Maestas v. Kent County Memorial Hospital, No. 23-127-JJM-LDA, 2023 U.S. Dist. LEXIS 202265 (D.R.I. Nov. 8, 2023)

The plaintiffs alleged that they were not properly paid in accordance with the terms of two collective bargaining agreements. Specifically, they alleged that the defendants automatically deducted time from their timecards for meal breaks even when they could not take those breaks because the hospital was busy and understaffed. They also alleged that the defendants allowed managers to manually reduce the total hours worked and/or altered punch times on their timecards. The plaintiffs alleged they were also promised bridge pay, an hourly incentive pay and to work additional hours. The plaintiffs brought a number of claims, under state and federal law. The court dismissed the plaintiffs' state law claims made pursuant to the Rhode Island Payment of Wages Act and the Rhode Island Minimum Wages Act because they were preempted under

Section 301 of the Labor Management Relations Act since they hinged on interpretation of the Collective Bargaining Agreements binding the parties. Conversely, the court held that their federal claims brought under the FLSA were not subject to preemption because FLSA rights take precedence over conflicting provisions in a collectively bargained compensation arrangement. The Court also dismissed the plaintiffs' Rhode Island Whistleblowers' Protection Act claim based on the statute's language stating that "[t]his chapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement."

Ripoli v. State, No. 1:17-cv-225-JJM-LDA, 2023 U.S. Dist. LEXIS 205305 (D.R.I. Nov. 16, 2023)

The plaintiff worked for the State of Rhode Island, Department of Human Services, Office of Veterans Affairs and alleges that she was discriminated against based on her sexual orientation, gender and disability after she was laid off as part of an internal reorganization. She also alleged harassment and retaliation. Fatal to her retaliation allegations, the defendant presented evidence that it took formal steps to eliminate the plaintiff's position at least fifteen days before she ever complained of any harassment. Thus, she could not establish that her protected activity was causally connected, let alone but-for cause of the alleged adverse action. The court also determined that she had not identified any intimidating, insulting or derogatory conduct that was severe or pervasive in nature and no evidence of any derogatory or disrespectful comments about any of her protected classes. Regarding her disparate treatment claim, she failed to adduce evidence of pretext or of discriminatory intent and therefore any evidence that she was fired because she is disabled, a women, or a lesbian.

Gomes v. Brown University, No. 1:23-cv-219-JJM-PAS, 2023 U.S. Dist. LEXIS 210155 (D.R.I. Nov. 27, 2023)

The court denied Brown University's Motion to Dismiss the plaintiff's claims for violations of Rhode Island's Fair Employment Practice Act ("FEPA") and Rhode Island Civil Rights Act ("RICRA") because, at this stage, the plaintiff plead plausible facts to support a cause of action. The plaintiff alleged that the defendant terminated his employment while he was on an approved extended leave of absence. Starting on March 29, 2021, the plaintiff requested a leave of absence to seek treatment for his disabilities. After he used his accrued paid time off, the plaintiff received a doctor's note stating he would need to remain out of work for a couple more days. Thereafter, the plaintiff informed the defendant and in response, the defendant provided him with an FMLA form for the doctor to complete and for the plaintiff to return to the defendant once completed. The plaintiff alleged that he mailed both a completed Leave of Absence Form and FMLA form to the defendant's Human Resources Department on April 26, 2021. The plaintiff alleged that about two weeks later, the defendant contacted him stating they had not received his "completed medical certification request." That same day, the plaintiff responded that he had mailed it and that he would need to be out of work for at least another two-three weeks. Thereafter, the plaintiff alleges that the defendant emailed him three separate times within the same hour – wishing him well; suggesting uploading his completed form to the defendant's software; and reminding him to extend his leave in the software used by the defendant's employees. On May 13, 2021, the plaintiff allegedly forwarded a note advising the plaintiff to remain out of work until June 1, 2021. On May 24, 2021, the defendant contacted the plaintiff that the university had not received his completed forms and that failure to provide these forms would render his absence as

unprotected under the FMLA and it may be considered unapproved. The defendant further allowed the plaintiff seven days to submit the completed form. On June 1, 2021, the defendant terminated the plaintiff for job abandonment. Based on these facts as alleged in the complaint, the Court found sufficient plausible facts to deny the defendant's Motion to Dismiss.

MacCarone v. Siemens Industry, No. 20-259-JJM-LDA, 2023 U.S. Dist. LEXIS 224028 (D.R.I. Dec. 15, 2023)

The plaintiff was a former union employee working for Siemens Industry. She alleged that her former employer failed to pay her the correct pay rate, failed to pay for all the hours she worked performing nonelectrical work and failed to pay her overtime hours worked more than eight hours in a day. The plaintiff brought claims under the Rhode Island Prevailing Wages Law, Rhode Island Minimum Wage Act and the Rhode Island Payment of Wages Act. The court granted the defendant's motion for summary judgement on the plaintiff's state law wage claims because the Collective Bargaining Agreement (the "CBA") specifically addressed her wage claims. Therefore, the court held that these claims were preempted under Section 301 of the Labor Management Relations Act ("LMRA") because "the asserted state law claim[s] plausibly can be said to depend upon the meaning of one or more provisions within the collective bargaining agreement." Because the court would need to interpret the terms of the CBA to resolve her claims, her state law claims were preempted under § 301.

The court also granted the defendant's motion with respect to her hostile work environment claim and her retaliation claim because she voluntarily resigned from her employment.

Seeger v. Marshalls of Massachusetts, Inc., No. 23-cv-00314-MSM-LDA, 2024 U.S. Dist. LEXIS 6623 (D.R.I. Jan. 12, 2024)

The court dismissed the plaintiff's employment discrimination claims as untimely after she failed to file her claims within ninety days of receiving the respective notices of right to sue from the administrative agencies. The plaintiff dually filed a charge with both the Rhode Island Commission for Human Rights ("RICHR") and with the Equal Employment Opportunity Commission ("EEOC"). The RICHR and the EEOC each issued notices of right to sue and the plaintiff failed to file a lawsuit within ninety days. Rather than filing litigation, the plaintiff filed a second charge with both the RICHR and EEOC regarding the same alleged discriminatory actions. Again, the RICHR issued a notice of right to sue and the plaintiff failed to timely file a lawsuit within ninety days. The court did find that the plaintiff filed within the ninety-day window following the EEOC's notice of right to sue; however, the court nevertheless held that the plaintiff's Complaint was untimely because the allegations contained in the second charge were repetitions of the allegations included in the first charge. Thus, the court dismissed the plaintiff's claims.

Waleyko v. Del Toro, No. 23-215-JJM-LDA, 2024 U.S. Dist. LEXIS 36374 (D.R.I. Feb. 28, 2024)

The male plaintiff worked for the Naval Undersea Warfare Center Division in Newport and claimed that he was forced to resign due to sex-based discrimination. Specifically, he alleged that he was not fairly investigated after a co-worker raised concerns about him, that he was

“stalkerish” and that his behaviors were “akin to those of an active shooter.” He also alleged that he was unfairly investigated for a potential insider threat because he had cried in his supervisor’s office (which behavior would not have drawn attention if he were a female) and that another female accused him of deleting code, which was investigated and he was cleared. Eventually the Navy gave the plaintiff the option to resign or be terminated, and he chose to resign.

The court granted the Navy’s motion to dismiss holding that the plaintiff could not plausibly allege comparative evidence *i.e.* that he was treated less favorably than similarly situated peers. The court found that the plaintiff identified non-similarly situated comparators, compared unnamed female employees which were too nonspecific, speculative, and too broad and raised hypothetical comparisons. The plaintiff further failed to show a causal connection between the defendant’s alleged stereotype concerning men and any statement or conduct towards him to support his claim that the defendant forced him to resign.

Sogbuvi-Whitney v. Caremark PhC LLC, No. 23-cv-00055-MSM-LDA, 2024 U.S. Dist. LEXIS 16916 (D.R.I. Jan. 29, 2024)

Two former employees filed this lawsuit, alleging that they and other similarly situated individuals were terminated or otherwise discriminated against on account of their race, color, national origin or gender. The defendant filed a motion to dismiss based on three grounds: the complaint was a shotgun pleading that impermissibly lumped together all defendants without differentiation; the plaintiffs failed to exhaust several of their now-pled claims; and the class allegations failed to permit a plausible, non-speculative inference that Rule 23’s numerosity requirement may be satisfied. Regarding the failure to exhaust argument, the Court held that although a failure to timely file a Title VII claim with the EEOC effectively bars the courthouse doors, to the extent any of the allegations predated the requisite date, the plaintiffs could still bring a claim based on the continuing violations doctrine. The Court also denied the defendants’ other arguments raised in the motion.

Connor v. University of Rhode Island, No. 21-cv-00343-MSM-PAS, 2024 U.S. Dist. LEXIS 15931 (D.R.I. Jan. 30, 2024)

The court granted the defendant’s motion for summary judgment on the plaintiff’s retaliation claim under Rhode Island Fair Employment Practices Act (“FEPA”) because the plaintiff failed to show that the Defendant took any adverse action against the plaintiff. The plaintiff alleged discriminatory failure to train, a retaliatory transfer and a deprivation of resources necessary to his job success. URI pointed to evidence in the record which confirmed that the university offered months of training opportunities, corrective action plans, performance improvement plans and weekly meetings to assist with his performance. And the evidence surrounding URI’s transfer of the plaintiff to the Providence Campus revealed that the plaintiff lived in Providence, was happy with the transfer, and offered to stay there permanently. Ultimately, the plaintiff’s employment was terminated due to performance issues and after he declined the opportunity to transfer to a new position. Because there was evidence that the university had identified and communicated issues with the plaintiff’s performance well before he engaged in protected activity, the Court found there was not retaliation.

McDaniel v. Preserve Property Management Company, LLC, No. 23-292 WES, 2024 U.S. Dist. LEXIS 42004 (D.R.I. Mar. 11, 2024)

The plaintiff sued her former employer alleging that Preserve’s owner, Paul Mihaildes, sexually harassed her until she was constructively discharged from employment and also that she was misclassified as an independent contractor. The defendants filed counterclaims against the plaintiff, including seeking recovery for her alleged defamation and certain privacy claims, as well as alleged criminal conduct, including alleged conversion of property, extortion, wire fraud, computer theft, check forgery, online impersonation and cyberstalking. The defendants also filed criminal charges against the plaintiff. The plaintiff then sought to amend her complaint to include a retaliation claim based on the counterclaims and because the defendants filed criminal charges against her. The defendants opposed the motion, arguing adding these claims would be futile. The Court agreed that the retaliation claim based on the defendants’ counterclaims would be futile because they were compulsory and not baseless and therefore could not be retaliatory. The court granted the plaintiff’s motion with respect to her retaliation claim based on the criminal charges, holding that the plaintiff could amend her complaint to litigate whether the defendants’ actions in filing a criminal incident report constitute actionable retaliation.

U.S. Supreme Court Decisions

Students for Fair Admissions, Inc. v. President & Fellows of Harvard College; Students for Fair Admissions, Inc. v. University of North Carolina et al. – In June 2023, the U.S. Supreme Court struck down race-based affirmative action in college admissions in landmark ruling that overturned 45 years of legal precedent. In addition to changes to admissions practices at universities, the decision has caused debate over employers’ affirmative action policies and diversity, equity and inclusion programs.

303 Creative LLC v. Elenis – In June 2023, the U.S. Supreme Court ruled that Colorado’s public accommodations law violated the business’ First Amendment rights and that the website designer could not be compelled to design a website where she disagreed with the message.

Glacier Northwest, Inc. v. International Brotherhood of Teamsters – In June 2023, the Court held that the National Labor Relations Board did not preempt the plaintiff’s state tort claims related to destruction of property during a labor dispute where the union failed to take reasonable precautions to avoid foreseeable and imminent danger to the property.

Gross v. DeJoy – In June 2023, the Court unanimously upended nearly 50 years of legal precedent, clarifying the undue hardship standard in religious accommodations claims under Title VII of the Civil Rights Act of 1964. Instead of using the “de minimis” framework, the Court created a heightened standards that now requires employers to assess religious accommodations requests and deny them only if there is evidence providing that the accommodation would result in substantial increased costs in relation to the conduct of an employer’s particular business.

Murray v. UBS Securities, LLC – In February 2024, the Court unanimously held that a whistleblower seeking to invoke the protections of the Sarbanes-Oxley Act must prove that their protected activity was a contributing factor in the employee’s unfavorable personal action, but need not prove that the employer acted with “retaliatory intent.”

Muldrow v. St. Louis – argued December 2023.

Issue: Whether Title VII of the Civil Rights Act of 1964 prohibits discrimination in transfer decisions absent a separate court determination that the transfer decision caused a significant disadvantage.

Loper Bright Enterprises v. Raimondo – argued January 2024

Issue: Whether the Court should overrule *Chevron v. Natural Resources Defense Council*, or at least clarify that statutory silence concerning controversial powers expressly but narrowly granted elsewhere in the statute does not constitute an ambiguity requiring deference to the agency.