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Newsletter

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Anti-SLAPP Bill

By Michael Mattioni, Esquire and Kira Rold

The Old City Civic Association ("OCCA") ceased operations in 2013, due to increasing liability insurance premiums. Many members of OCCA felt that numerous lawsuits filed by people unhappy with OCCA's positions on development projects was the cause of the problems. As a consequence, State Senator Larry Farnese, D-PA, introduced a bill to provide protection to groups such as

In this Newsletter

Anti-SLAPP Bill

and ~

Frowning Yourself to Unemployment

~ and ~

National Security and the Constitution According to the Courts

OCCA from strategic lawsuits against public participation ("SLAPP"). SB 1095 would amend Title 27 (Environmental Resources) and Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to broaden anti-SLAPP protections beyond environmental law to participation in law or regulations related to issues in the public interest. The current bill aims to provide broader protections against SLAPP; lawsuits initiated for the purpose of censoring or intimidating individuals who advocate or challenge the enforcement or implementation of government action.

The bill repeals portions of Title 27 relating to protections afforded to persons who participated in environmental law or regulation. The sections to be repealed include: section 7707 of Title 27 which provides for the award of reasonable attorney's fees and costs of litigation to a person who successfully defends against an action relating to participation in environmental law or regulation; section 8302(a) of Title 27 which provides immunity for individuals who file actions or make oral or written communications to the government relating to enforcement or implementation of an environmental law or regulation; section 8302(b) of Title 27 which provides exceptions to immunity, including, *inter alia*, the making of knowingly false or deliberately misleading communications, communications made with the sole

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communications later determined to be a wrongful use or abuse of process; section 8303 of Title 27 which provides a claimant the right to a hearing on the issue of immunity; and section 8304 of Title 27 which provides the government with the right of intervention as an amicus curiae.

The bill's proposed amendments to Title 42 largely replicate and expand the above provisions to be repealed, removing them from the environmental law context and expanding them to participation in law or regulations related to issues in the public interest. Section 8340.3 of the proposed amendment to Title 42 provides immunity to "a person who acts in furtherance of the right of advocacy on issues of public interest in connection with enforcement or implementation of government action related to an issue of public interest or makes a communication genuinely aimed at procuring a favorable governmental action." Senate Bill No. 1095. Section 8340.3 maintains the exceptions to immunity to be repealed from Title 27 but re-designates the exceptions as "communications not genuinely aimed at procuring a favorable governmental action." Section 8340.3 provides detailed process for those claiming immunity from suit, including a stay of the proceedings against the claimant, an expedited hearing on the issue of immunity, the

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- ADMIRALTY AND MARITIME
- BUSINESS, FINANCE, AND CORPORATE
- CIVIL LITIGATION
- EMPLOYMENT AND CIVIL RIGHTS
- ENVIRONMENTAL
- ESTATE PLANNING, TRUSTS, AND ESTATE ADMINISTRATION
- INSURANCE
- LONGSHORE & HARBOR WORKERS' COMPENSATION ACT
- WORKERS' COMPENSATION CLAIMS
- REAL ESTATE
- PERSONAL INJURY

inadmissibility of the court's determination in any later stage of the case, special damages for a claimant who shows that the action brought was frivolous, and the ability of a person whose personal information is sought in discovery to quash the request. The proposed amendments also provide additional protections for other involved parties, including intervention rights of the government and legal protections of defendants. A final new addition to the proposed amendments provide factors weighing in favor of granting immunity.

The bill is pending. This article does not provide legal advice, but general information about SLAPP. Anyone with any questions about the legislation should contact their state Senator.

Michael Mattioni, Esquire is President of the law firm Mattioni, Ltd., where he practices in the tax, business, real estate development, land use and zoning areas of the firm.

Kira Rold is a law clerk with Mattioni, Ltd., having recently ended her second year at Penn State Dickinson School of Law.

Our Attorneys: Presentations, Seminars and Honors

Michael Mattioni **and** Joseph F. Bouvier

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Michael Mattioni, President of Mattioni, Ltd., is a 1986 graduate of Villanova University with a degree in finance and business, and earned his JD from the University of Pittsburgh School of Law in 1989. Mr. Mattioni also was awarded his Masters in Law in Taxation from

Frowning Yourself to Unemployment

By: Michael Mattioni, Esquire and Reese Mitchell

On November 8, 2013, Marie K. Rogai was fired by the Archdiocese of Philadelphia from her position as principal of Cardinal O'Hara High School for not smiling enough. Yes, you read that right, she was officially fired for frowning! Is an employer generally allowed to fire an employee for not smiling enough at work? Believe it or not, the answer is "yes," because of a concept entitled "at-will employment."

Most employment relationships in the United States can be classified as "at-will employment." This is defined as an unwritten agreement between an employer and employee to work with one another as long as it is mutually beneficial or suitable. Both parties have the ability to terminate the relationship whenever either feels

Temple University Beasley School of Law. Both Michael and Mattioni, Ltd have earned the rating of AV® Preeminent™ Rated by Martindale-Hubbell. Michael was selected as a Super Lawyer in 2013 and 2014.

The firm of Mattioni, Ltd. has been providing litigation support and counseling to businesses and individuals throughout the tri-state region for more than forty years. *You can contact Mr. Mattioni by email at* mmattioni@mattioni.com or *by phone at (215) 629-1600 for the Philadelphia office or (856) 241-9779 for the New Jersey office.*

it is necessary, and normally there does not have to be a reason for them to do so.

However, there are exceptions to this rule. Under both Federal and State laws, an employee cannot be terminated for discriminatory reasons. For example, an employee cannot be fired under Title VII of the Civil Rights Act based on race, color, religion, sex, or national origin. The "Uniformed Services Employment and Reemployment Rights Act" protects military reservists from termination when absent from work because of deployment. If a Pennsylvania National Guardsman is called up for active duty, he or she cannot be fired by his or her employer for serving.

Pennsylvania law also recognizes violating public policy in as an exception to the rule. For instance, it is improper for an employer to terminate an employee for attending jury duty. Courts have ruled that this is a clear violation of public policy because it is a person's civic duty to serve on juries. A public policy exception also has been created to protect whistle-blowers in Pennsylvania. A private employee cannot be terminated if he or she informs officials of possible illegal activities. *See* 43 P.S. §1421.

Ms. Rogai may also have a contractual employment or

Joseph F. Bouvier has been recently voted Best Attorney in Business Workers' Compensation Law by the readers of South Jersey Biz magazine. *Read more about Mr. Bouvier in SJ Biz.*

Although Mr. Bouvier was recognized for his exemplary work in Worker's Compensation Law, Joe also practices in general litigation, personal injury, and employment and labor matters.

collective bargaining agreement. These outline the terms of employment including, the hours the employee must work, possible length of employment, and obligations the employer may have to the employee. These contracts may also contain the steps and provisions that deal with termination, which often contain a 'just cause' clause for termination. This clause may include an explanation of the reasons considered by the employer to be just cause (i.e. criminal activity or violations of corporate policies). Ms. Rogai filed suit against her former employer on February 26, 2014. If Ms. Rogai is able to show she was fired in violation of one of these exceptions, then she will prove she was improperly terminated. However, if Ms. Rogai is unable to prove any of the exceptions then she had an at-will employment relationship, and she was properly fired for not smiling.

So remember, the next time you are having a bad day at work and have a frown on your face, think about what happened to Ms. Rogai. An extra smile might be worth it.

This article is written to provide general information about legal issues. If is not intended to provide legal advice. Anyone with questions regarding the issues presented is requested to contact the appropriate professional.

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Christian T. Johnson was recently a keynote speaker on the topic of Landlord/Tenant issues. Mr. Johnson's informative speech included general information on the following topics:

~ general difference between commercial and residential

Reese Mitchell is a law clerk with Mattioni, Ltd., having recently completed his second year at Tulane University Law School.

National Security and the Constitution According to the Courts

By: Michael Mattioni, Esquire and Anna M. Haslinsky

While national security has always been a government priority, since 9/11 efforts have increased to monitor the technology communications of foreigners and American citizens. With the recent newsworthy leaks by Bradley Manning, and the latest, Edward Snowden, you are perhaps wondering, is this legal? What rights do a citizen and our government have concerning secret surveillance

leases. Why it's important to have legal counsel when executing commercial leases.

~ important issues that must be resolved when negotiating a commercial lease; and

~ the law and procedure for dealing with the breach of a

lease agreement with focus on the landlord's remedies for tenant's breach and tenant's defenses

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of internet use and telecommunications? This article will introduce the legal framework of this hot button issue.

First, the age of social media makes it easier for others, including the government, to track things that we publicly (or what we assume is privately) posted on the internet.

Since 9/11, Congress and Presidents Bush and Obama expanded the rights of security agency surveillance through the USA Patriot Act, amendments to the Foreign Intelligence Surveillance Act (FISA), and the newly exposed, top-secret PRISM program. Obviously, national security and terrorism pose compelling reasons for increasing surveillance and searches, especially in light of domestic tragedies like the Boston Marathon bombing. Nevertheless, we still have rights guaranteed by the Constitution. The First Amendment protects our right to free speech, while the Fourth Amendment protects our rights against unreasonable searches by the government. So, how have courts balanced these equally compelling interests?

Several cases were brought questioning the validity of electronic surveillance. FISA provides the process for obtaining a court order authorizing foreign electronic surveillance. Likewise, the Patriot Act expanded the

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power of federal officials and agencies to conduct surveillance within the U.S. to prevent terrorism. Courts have validated FISA, by noting, first, that it “represents a reasonable balance” between intelligence gathering and the Fourth Amendment, and second, that the standards required for criminal investigations and national intelligence are different. Additionally, a Foreign

Intelligence Surveillance Court exists to review warrants regarding national security and has survived several Constitutional challenges.

Of course, it is not easy to challenge these statutes or warrantless searches due to principles such as standing. Standing limits plaintiffs in any suit to those who can prove either actual or imminent harm. In a 2012 case, human rights, legal, and media organizations challenged the amendments to FISA, which removed the requirement for probable cause when the target is an agent of a foreign power and non-citizen located abroad. The Supreme Court denied standing because the injury was too speculative. Another example concerns a charity, which allegedly supported terrorist activities. In that 2002 lawsuit, the charity sought to bring an injunction, or a court order stopping an activity, against the government regarding a warrantless search. However, because

probable cause was established after the fact, the court denied the injunction. Essentially, many searches are considered valid under the Fourth Amendment so long as the purpose is to obtain foreign intelligence information. In some instances, the warrant does not even have to identify a target or a location.

The statutory language of the acts survived repeated challenges concerning their breadth under the First Amendment and Due Process, which ensures citizens receive fair legal proceedings. Finally, a Ninth Circuit case determined the Attorney General may grant immunity to telecommunications companies that cooperate with warrantless wiretapping. These are just a few examples of how the courts upheld these rather sweeping provisions granting greater government surveillance power.

So, what does this mean? Regardless of what your stance is on the necessity of such programs as outweighing privacy rights, plenty of people are upset about this type of surveillance. Since the most recent reports leaked to The Guardian and The Washington Post, many citizens and politicians feel confused and perhaps betrayed concerning the pattern of leaks, denials, and admissions. Several accused social

networking internet brands, like Facebook and Google, have tried to protect their image and business by now asking for greater reporting transparency so the public can be aware of their relationships with the National Security Agency. Furthermore, the American Civil Liberties Union filed suit challenging the constitutionality of the policies and subsequent searches. Although the courts supported the controversial policies, it certainly triggers complex questions regarding constitutional rights and the rights of government security agencies and major corporations to disclose information in the name of national security.

Anna M. Haslinsky is a law clerk with Mattioni, Ltd., having recently completed her second year at Villanova University Law School.