

# NEWSLETTERS

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## THE PASCHOS LAW UPDATE NEWSLETTER

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## September, 2017

### I. EMPLOYMENT LAW

#### Employee Cannot Bypass Title VII, ADA Regulatory Schemes to Hold Public Employers Personally Liable

In *Williams v. Pennsylvania Human Relations Commission, et al*, No. 16-4383 (3d. Cir. (Pa.) Aug. 30, 2017), Cheryl Williams, an African-American woman who suffers from fibromyalgia and chronic musculoskeletal pain, claimed that she was subjected to constant harassment by her supervisors at the Pennsylvania Human Relations Commission, faced a hostile work environment, and was ultimately constructively discharged from her position as a Human Relations Representative. After taking leave under the Family Medical Leave Act, she had not returned to work. She filed suit under Title VII of the Civil Rights Act, seeking damages for the loss of her job and the harm sustained to her physical and emotional health. She included claims against her former supervisors claiming that they violated her rights under Title VII and the Americans with Disabilities Act (ADA). Because no individual liability exists under Title VII or the ADA, Williams relied on 42 U.S.C. 1983 to bring claims against her supervisors in their individual capacities as “state actors.”

The district court granted summary judgment in favor of all defendants finding Title VII and the ADA do not create individually enforceable rights under Section 1983. The Third Circuit affirmed, finding that violations of Title VII and the ADA may not be brought through section 1983, given the comprehensive administrative scheme established by Title VII and the ADA. Those statutes require plaintiffs to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit. The Court provided that allowing workers to bypass Title VII and the ADA by suing under Section 1983 would be equivalent to “throwing open a back door to the federal courthouse when the front door is purposefully fortified” and would “open individuals. . . to employment discrimination suits” that neither statute authorizes.

#### Compromise & Release Agreement Does Not Waive Subsequent Statutory Claims

In *Zuber v. Boscov's*, No. 16-3217 (3d. Cir (N.J.) September 11, 2017), Craig Zuber, who was employed by Boscov's, suffered an injury at work in August 2014. Mr. Zuber immediately filed a workers' compensation claim and received work leave. He returned to work two days after the injury but requested an additional week of medical leave three days later. That request was granted. Mr. Zuber returned to work as scheduled and was fired in September 2014. In August 2015, Boscov's and Zuber signed a Compromise and Release Agreement before the Pennsylvania Department of Labor and Industry Workers' Compensation Office, releasing the company from future claims related to the injury.

In July 2015, Mr. Zuber sued Boscov's saying the employer interfered with his FMLA rights by failing to notify him of his rights and not designating his leave as FMLA protected; retaliated against him for exercising his FMLA rights; and retaliated against him for filing a workers compensation claim.

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Boscov's moved to dismiss Mr. Zuber's complaint, saying he waived his FMLA and common law rights when he signed the compromise and release agreement. The District Court dismissed Mr. Zuber's complaint. Mr. Zuber filed a motion for reconsideration, which was denied. He then appealed to the Third Circuit Court of Appeals.

The Third Circuit reversed, and basing its decision on the precise language in the Compromise and Release Agreement, held that the release only covered the workplace injury suffered by the employee and did not cover statutory claims that were distinct from the injuries. The Court provided,

Because of the C&R's ordinary meaning and structure, we hold that the C&R is unambiguously a specific and limited release rather than a general release. When Zuber signed the C&R, he merely released his right to bring a future workers compensation claim against Boscov's. Consequently, it does not prohibit Zuber from bringing FMLA or Pennsylvania common law claims against Boscov's.

## **II. INSURANCE LAW** **Pollution Exclusion Does Not Apply to Unintentional Contamination**

In Benjamin v. State Farm Ins. Co., No. 15-4123 (D. N.J. Aug. 17, 2017), Plaintiffs Nimrod and Marnie Benjamin filed an action against two insurance companies, Defendant State Farm Insurance Company ("State Farm") and Defendant Clarendon National Insurance ("Clarendon"), as the holders of policies of insurance issued by the Defendants for premises located in Voorhees, New Jersey. Plaintiffs allege that the Defendants breached their contractual obligations to pay benefits to Plaintiffs for a physical loss to the insured premises, concerning leakage of heating oil from a previously unknown underground storage tank, under their respective policies of insurance. Plaintiffs were unaware when they purchased this residential property and obtained these insurance policies, that the underground leakage had occurred many years prior.

Clarendon argued that the pollution exclusion endorsement within the Policy under the heading "Amendatory Endorsement—New Jersey" excluded Plaintiffs' claim from coverage. In considering the scope of the exclusion, the court relied on New Jersey state and federal case law construing the pollution exclusion noting that that both the qualified and absolute exclusion have an intentionality requirement into the exclusion. The court found that not only is the exclusion limited to traditional environmental harm, but application of the exclusion has also been limited to intentional industrial pollution even for exclusions not containing the "sudden and accidental" exception. As such, the court denied the carriers' motions for summary judgment on the basis of the exclusion, stating:

Given the applicability of the pollution exclusion only in a context involving "traditional environmental pollution" . . . and the failure of Clarendon to allege (let alone demonstrate the existence of evidence from which a reasonable fact-finder could find) that Plaintiffs intended to pollute the Property, the Court declines to grant summary judgment at this time....

***Copies of the full text of any of the cases discussed in this Newsletter may be obtained by calling our office. The articles contained in this Newsletter are for informational purposes only and do not constitute legal advice.***

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