I. AT-WILL EMPLOYMENT

A. Statute

There is no statutory provision concerning at-will employment.

B. Case Law

Florida does not recognize a common law cause of action for wrongful discharge. *Arrow Air, Inc. v. Walsh*, 645 So. 2d 422, 424 (Fla. 1994). In Florida, if the term of employment is for an indefinite period of time, either party may terminate the employment at any time and no action may be maintained for breach of an employment contract. *Kelly v. Gill*, 544 So. 2d 1162, 1164 (Fla. 5th Dist. Ct. App. 1989); *DeMarco v. Publix Super Mkts, Inc.*, 360 So. 2d 134, 136 (Fla. 3d Dist. Ct. App. 1978), aff’d, 384 So. 2d 1253 (Fla. 1980).

Generally speaking, an employer has the right to discharge an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. *Toussaint v. Pub. Health Trust*, 277 F. Supp. 2d 1290, 1296-97 (S.D. Fla. 2003), aff’d, 116 Fed. Appx. 250 (11th Cir. 2004).

However, even an at-will employee can sue her employer for the recovery of compensation or other benefits. E.g., *Patwary v. Evana Petroleum Corp.*, 18 So. 3d 1237, 1238-1239 (Fla. 2d Dist. Ct. App. 2009).

II. EXCEPTIONS TO AT-WILL EMPLOYMENT

A. Implied Contracts

1. Employee Handbooks/Personnel Materials

2. Provisions Regarding Fair Treatment

There are no cases on this topic other than those cited elsewhere in the outline.

3. Disclaimers

There are no cases on this topic other than those cited elsewhere in the outline.

4. Implied Covenants of Good Faith and Fair Dealing

Florida law is clear that “the implied obligation of good faith cannot be used to vary the express terms of a contract.” City of Riviera Beach v. John’s Towing, 691 So. 2d 519, 521 (Fla. 4th Dist. Ct. App. 1997). Thus, the implied covenant of good faith could not be used to vary the terms of a listing agreement that provided that either party could terminate the agreement for good cause, bad cause, or no cause. Terranova Corp. v. 1550 Biscayne Associates, 847 So. 2d 529, 532-33 (Fla. 3d Dist. Ct. App. 2003).

“To allege a breach of the implied covenant, the party must demonstrate a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence; but, rather by a conscious and deliberate act, which unfairly frustrates the agreed common purpose and disappoints the reasonable expectations of the other party. . . “

Shibata v. Lim, 133 F. Supp. 2d 1311, 1319 (M.D. Fla. 2000). Therefore, in order to state a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must identify the specific contract term(s) giving rise to the implied duty of good faith, and also allege how a

B. Public Policy Exceptions

1. General

Florida courts have declined to recognize public policy exceptions to the at-will doctrine, absent legislative action. See Bell v. Novartis Pharms. Corp., 2008 U.S. Dist. LEXIS 107195, *7 (M.D. Fla. July 3, 2008)(refusing to recognize a “negligent investigation” exception to the at will rules); Weld v. Southeastern Co. Inc., 10 F. Supp. 2d 1318 (M.D. Fla. 1998) (declining to recognize wrongful discharge claim based upon national origin discrimination); Smith v. Piezo Tech. Prof’l Administrators, 427 So. 2d 182, 184 (Fla. 1983) (noting that claims for common law wrongful discharge are not cognizable in Florida). However, a terminated at-will employee may be able to sue his former employer under various tort theories, such as fraudulent or negligent misrepresentation or intentional infliction of emotional harm. Golden v. Complete Holdings, Inc., 818 F. Supp. 1495, 1497 (M.D. Fla. 1993); Hamlen v. Fairchild Indus., Inc., 413 So. 2d 800, 802 (Fla. 1st App. 1982).

2. Exercising a Legal Right

See “Exposing Illegal Activity” below.

3. Refusing to Violate the Law

See “Exposing Illegal Activity” below.

4. Exposing Illegal Activity (Whistleblowers)

a. Public Employers

Under the Public Employee Whistleblower’s Act of 1986, state and local government employees may not be retaliated against for reporting suspected violations that endanger public health, safety, and welfare. See Fla. Stat. §§ 112.3187, et seq.

b. Private Employers

Under the Private Employee Whistleblower’s Act an employer may not take any retaliatory personnel action against an employee because the employee has disclosed employer violations of a law, rule, or regulation to an appropriate government agency, or because an employee objected to or refused to participate in a practice of the employer that is in violation of a law, rule, or regulation. See Fla. Stat. §§ 448.101-105. The Act applies to employers who employ ten or more persons. Fla. Stat. § 448.101(3).

There are three distinct causes of action under the Act:
Section 448.102(1) provides a cause of action for an employee who is retaliated against by the employer for disclosing, or threatening to disclose, to a government agency, under oath and in writing, “an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation.” Id.

Section 448.102(2) provides a cause of action for an employee that is retaliated against by the employer for providing information to, or testifying before, a “governmental agency, person, or entity that is conducting an investigation, hearing, or inquiry into an alleged violation of law, rule, or regulation.”

Section 448.102(3) provides a cause of action for an employee that is retaliated against by the employer for objecting to, or refusing “to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.” See Golf Channel v. Jenkins, 752 So. 2d 561, 564 (Fla. 2000).

Under Florida’s private sector statute, a written complaint is required but only for employees who have disclosed or threatened to disclose a policy or practice that is in violation of a law, rule, or regulation to any appropriate governmental agency. Written notice is not required when the employee’s complaint is based on assistance or objection to whistleblowing under §§ 448.102(2) and (3). See Golf Channel v. Jenkins, 752 So. 2d 561, 564 (Fla. 2000).


The FCRA and the private sector Whistleblower’s Act were intended to provide dual remedies in “overlap” cases seeking protection from retaliation. Yarcheski v. Keiser Sch., Inc., 508 Fed. App’x 916, 918 (11th Cir. 2013) (noting that the Florida Civil Rights Act’s anti-

### III. CONSTRUCTIVE DISCHARGE


### IV. WRITTEN AGREEMENTS

#### A. Standard “For Cause” Termination

Under Florida law, unless a written employment agreement indicates the contrary, employees are deemed to have an at-will status. *See J.R.D Mgmt. Corp. v. Dulin*, 883 So. 2d 314, 316 (Fla. 4th Dist. Ct. App. 2004), rev. denied, 900 So. 2d 553 (Fla. 2005) (concluding that the statement “[i]f I am terminated for any reason other than good cause at any time during the first twelve months I will be given a severance payment of $15,000” is not an expression of a definite term of employment). Where an employment agreement is indefinite as to the period of employment, the employee may be terminated without cause. *Id. See also Linafelt v. Bev., Inc.*, 662 So. 2d 986, 989 (Fla. 1st Dist. Ct. App. 1995), citing *Bryant v. Shands Teaching Hosp. & Clinics, Inc.*, 479 So. 2d 165, 167 (Fla. 1st Dist. Ct. App. 1985). However, the at-will rule does not apply if (1) the employment agreement expressly provides for termination only upon a showing of cause, *Falls v. Lawnwood Med. Ctr.*, 427 So. 2d 361 (Fla. 4th Dist. Ct. App. 1983), or (2) the agreement provides for a definite term of employment. *Gheorghita v. Royal Caribbean Cruises, Ltd.*, 93 F. Supp. 2d 1237 (S.D. Fla. 2000); *Olsen v. Allstate Ins. Co.*, 759 F. Supp. 782 (M.D. Fla. 1991).

#### B. Status of Arbitration Clauses

The Revised Florida Arbitration Code, *Fla. Stat.* §§ 682.01, et seq., provides in pertinent part as follows:
(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

... FLA. STAT. § 682.02.

Florida courts have repeatedly recognized that “agreements to arbitrate are favored by the courts.” Brasington v. EMC Corp., 855 So. 2d 1212, 1215 (Fla. 1st Dist. Ct. App. 2003) (an arbitrator has the power to award injunctive relief in a Florida Civil Rights Act and Florida Whistleblower’s case). See Rosier v. Safamarwa, Inc., 2007 U.S. Dist. LEXIS 80092, at *6 (M.D. Fla. Oct. 27, 2007) (noting “[a]t the state and federal level, courts favor enforcement of arbitration agreements.”). An arbitration clause carries a presumption of arbitrability. Royal Prof’l Builders, Inc. v. Roggin, 853 So. 2d 520, 522 (Fla. 4th Dist. Ct. App. 2003). In view of the strong public policy favoring arbitration, all questions regarding the scope or waiver of the right to arbitrate should be resolved in favor of arbitration. Bill Heard Chevrolet Corp. v. Wilson, 877 So. 2d 15 (Fla. 5th Dist. Ct. App. 2004); see also Lopez v. Ernie Haire Ford, Inc., 974 So. 2d 517, 519 (Fla. 2d Dist. Ct. App. 2008) (failure to read the arbitration provision does not defeat enforceability).

The Florida Supreme Court has held that, under either the Federal Arbitration Act or the Florida Code, there are three elements for courts to consider in ruling on a motion to compel arbitration: “(1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived.” Spurgeon v. Marriott Int’l, Inc., 2017 U.S. Dist. LEXIS 32095, at *8 (S.D. Fla. Mar. 7, 2017); Raymond James Fin. Services v. Saldukas, 896 So. 2d 711 (Fla. 2005), citing Seifert v. U.S. Home Corp., 750 So. 2d 633,636 (Fla. 1999). Accordingly, under either federal or Florida law, when determining the existence of a valid written agreement or an arbitrable issue, the inquiry and result would be the same. Thus, an inquiry into waiver should also yield the same result,
regardless of whether the dispute is to be arbitrated pursuant to the Federal Arbitration Act or the Florida Code.


V. **ORAL AGREEMENTS**

A. **Promissory Estoppel**

Florida does not recognize an actionable claim for promissory estoppel in the inducement of an employment at will relationship. *Leonardi v. City of Hollywood*, 715 So. 2d 1007, 1009-10 (Fla. 4th Dist. Ct. App. 1998). Promissory estoppel requires reliance on a promise, while equitable estoppel requires reliance on a representation of fact. *See Nova Info. Sys. v. Greenwich Ins. Co.*, 365 F.3d 996, 1005 (11th Cir. 2004) (applying Florida law). To state a cause of action for promissory estoppel, a plaintiff must establish the following three elements: (1) a representation as to a material fact that is contrary to a later-asserted position; (2) a reasonable reliance on that representation; and (3) a change in position detrimental to the party claiming estoppel caused by the representation and reliance thereon. *FCCI Ins. Co. v. Cayce’s Excavation, Inc.*, 901 So. 2d 248, 251 (Fla. 2d Dist. Ct. App. 2005), citing *Almerico v. RLI Ins. Co.*, 716 So. 2d 774, 777 (Fla. 1998).

Similarly, to state a cause of action for equitable estoppel, a plaintiff must prove: (1) a representation of fact by one party contrary to a later-asserted position; (2) a good-faith reliance by another party upon that representation; and (3) a detrimental change in position. *Mobile Med. Indus. v. Quin*, 985 So. 2d 33, 36 (Fla. 1st Dist. Ct. App. 2008), citing *LaCroix Constr. Co. v. Bush*, 471 So. 2d 134, 136 (Fla. 1st Dist. Ct. App. 1985); *In re Estate of Sterile,*
B. **Fraud**

The essential elements of fraudulent misrepresentation are:

1. false or fraudulent misrepresentation of a specific material fact made;
2. for the purpose of inducing another to act or refrain from acting in reliance upon it; and
3. injury resulting from reliance on the representation.


C. **Statute of Frauds**

Under the Statute of Frauds, any agreement that is not to be performed within one year is not enforceable. FLA. STAT. § 725.01; see also *Gray v. Prime Mgmt. Group, Inc.*, 912 So. 2d 711, 712 (Fla. 4th Dist. Ct. App. 2005) (reversing temporary injunction enjoining two former employees from soliciting existing clients of a former employer because enforcement of the non-compete clause after its expiration violated the statute of frauds). An oral employment contract for an indefinite time is not barred by the statute of frauds because it could be performed within one year. *Elliott v. Winslow*, 737 So. 2d 609, 609 (Fla. 2d Dist. Ct. App. 1999).

VI. **DEFAMATION**

A. **General Rule**

To state a cause of action for defamation in Florida, a plaintiff must allege that:

1. the defendant published a false and defamatory statement about the plaintiff,
2. to a third party, and
3. defendant did so with “knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person,” and
4. that the falsity of the statement caused injury to the plaintiff.

1. Libel


2. Slander

Slander is “defined as the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business, or means of livelihood.” Spears v. Albertson’s, Inc., 848 So. 2d 1176 (Fla. 1st Dist. Ct. App. 2003) (citations omitted).

B. References

See the discussion on “Privileges” below.

C. Privileges

1. Common Law

The elements of qualified privilege are: (1) good faith; (2) an interest to be upheld; (3) a statement limited in its scope to this purpose; (4) published on a proper occasion; and (5) published in a proper manner.

As the Florida Supreme Court observed in Nodar v. Galbreath, 462 So. 2d 803, 809 (Fla. 1984), there is a broad range of occasions when communication, even if defamatory, is privileged:

[A] communication made in good faith on any subject matter by one having an interest therein, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which would otherwise be actionable, and though the duty is not a legal one but only a moral or social obligation.


An absolute privilege extends to a witness’s testimony in connection with or in the course of an existing judicial proceeding. Fullerton v. Fla. Med. Ass’n, Inc., 938 So. 2d 587 (Fla. 1st Dist. Ct. App. 2006).

An absolute privilege extends to actions in connection with, or in the course of, an existing quasi-judicial proceeding, such as an arbitration hearing. Kidwell v. GMC, 975 So. 2d 503, 505 (Fla. 2d Dist. Ct. App. 2007).

2. Statutory

Florida Statute Section 768.095 provides immunity from civil liability to an employer who, pursuant to a request, discloses information about a former or current employee to a prospective employer. The former employee can recover only upon proving by clear and convincing evidence that the information was “knowingly false.” FLA. STAT. § 768.095 (2004). The statute is an affirmative defense, so the plaintiff must first demonstrate a prima facie case of defamation. Linafelt v. Beverly Enterprise-Fla., Inc., 745 So. 2d 386, 388 (Fla. 1st Dist. Ct. App. 1999). See Boehm v. Am. Bankers Ins. Group, 557 So. 2d 91 (Fla. 3d Dist. Ct. App. 1990).

Communications, either oral or written, by and among the employer, the employee, and the state unemployment agency are privileged. FLA. STAT. § 443.041(3).

D. Other Defenses

1. Truth

If the alleged defamatory statements are true, the claim will be dismissed. Cape Publications, Inc. v. Reakes, 840 So. 2d 277, 280 (Fla. 5th Dist. Ct. App. 2003); Razner v. Wellington Reg’l Med. Ctr., Inc., 837 So. 2d 437 (Fla. 4th Dist. Ct. App. 2002). See also Johnson v. Clark, 484 F. Supp. 2d 1242, 1252 (M.D. Fla. 2007).

2. No Publication

3. Self-Publication

Florida law does not recognize compelled self-publication as an exception to the publication requirement. See *Valencia v. Citibank Int’l*, 728 So. 2d 330, 330-31 (Fla. 3d Dist. Ct. App. 1999) (an employee who alleged that she was compelled by law to disclose to a prospective employer her former employer’s false reason for her termination failed to satisfy publication requirement).

4. Invited Libel

See immediately preceding subsection.

5. Opinion

Statements of pure opinion cannot constitute actionable defamation and are constitutionally protected. *Magre v. Charles*, 729 So. 2d 440, 442 (Fla. 5th Dist. Ct. App. 1999). A statement is pure opinion if based on facts known to the listener. *Rasmussen v. Collier County Publ’g Co.*, 946 So. 2d 567, 571 (Fla. 2d Dist. Ct. App. 2006). However, a statement is not a protected opinion if it implies the existence of undisclosed defamatory facts as its basis. *Scholz v. RDV Sports, Inc.*, 710 So. 2d 618, 628 (Fla. 5th Dist. Ct. App. 1998).

E. Job References and Blacklisting Statutes

Florida has a blacklisting statute applicable to agricultural employees. See FLA. STAT. § 487.2031(7).

F. Non-Disparagement Clauses

These clauses should be enforceable under general principles governing contracts, although with the caveat that the EEOC is scrutinizing broadly worded non-disparagement clauses.

VII. EMOTIONAL DISTRESS CLAIMS

A. Intentional Infliction of Emotional Distress

It is well-settled in Florida that to prove a claim for intentional infliction of emotional distress, the plaintiff must show: (1) a deliberate or reckless infliction of emotional suffering; (2) by outrageous conduct; (3) which conduct must have caused the suffering; and (4) the suffering must have been severe. *Zorn v. McNeil*, 2016 U.S. Dist. LEXIS 134374, at *29-30 (M.D. Fla. Sep. 29, 2016); *Martinez v. Pavex Corp.*, 2006 U.S. Dist. LEXIS 46602 (M.D. Fla. June 30, 2006) (racial epithets, coupled with threatening gestures, do not meet the standard). The question of whether the actor’s conduct is deemed atrocious and utterly intolerable to a

The Florida courts continue to resist claims for intentional infliction of emotional distress in employment cases in the absence of physical contact. See, e.g., Lopez v. Target Corp., 676 F. 3d 1230 (11th Cir. 2012); Vance v. S. Bell Tel. & Tel. Co., 983 F.2d 1573, 1575 n.7 (11th Cir. 1993) (hanging a noose over an employee’s work station, assigning the employee to supervise white women who attacked her, and transporting the employee to the wrong hospital when she had a breakdown was not sufficiently “outrageous” to support an intentional infliction of emotional distress claim); Studstill v. Borg Warner Leasing, 806 F.2d 1005, 1008 (11th Cir. 1986) (no cause of action for intentional infliction of emotional distress where plaintiff alleged sexual harassment and that defendant grabbed her breast); Alina Lezcano Saavedra v. USF Bd. of Trs., 2011 U.S. Dist. LEXIS 48748 (M.D. Fla. May 6, 2011)(dismissing claim with prejudice) Martz v. Munroe Reg’l Med. Ctr., Inc., 2007 U.S. Dist. LEXIS 49561, at *8-9 (M.D. Fla. July 9, 2007) (being involuntarily placed on medical leave, employer’s failure to find suitable work alternative, and resulting discharge, does not amount to “outrageous, extreme, atrocious, and utterly intolerable” conduct); Vamper v. UPS, 14 F. Supp. 2d 1301, 1306 (S.D. Fla. 1998) (intentional infliction of emotional distress “sparingly recognized” and arises “where there is the presence of relentless physical, as well as verbal, harassment”); Blount v. Sterling Healthcare Group, Inc., 934 F. Supp. 1365, 1367 (S.D. Fla. 1996) (no cause of action where plaintiff alleged defendant repeatedly failed to remedy alleged sex discrimination); Ayers v. Wal-Mart Stores, Inc., 941 F. Supp. 1163, 1168 (M.D. Fla. 1996) (no cause of action where plaintiff alleged defendant negligently trained and supervised its managerial employees and retained alleged harasser); Watson v. Bally Mfg. Corp., 844 F. Supp. 1533, 1536 (S.D. Fla. 1993) (no cause of action where plaintiff alleged a pattern of relentless verbal sexual harassment dismissed); Forde v. Royal’s, Inc., 537 F. Supp. 1173, 1175-176 (S.D. Fla. 1982) (claim based on allegations of sexual harassment); Valdes v. GAB Robbins N. Am., Inc., 924 So. 2d 862 (Fla. 3d Dist. Ct. App. 2006) (dismissal affirmed where employer’s workers’ compensation carrier filed false criminal charges with the Department of Insurance, the employee was arrested, and the charges were ultimately dropped), rev. denied; Williams v. Worldwide Flight Services Inc., 877 So. 2d 869, 870 (Fla. 2d Dist. Ct. App. 2004) (per curiam) (being referred to as “nigger” and “monkey” over the walkie-talkie and work radio, as well as being persistently threatened with job termination, is not reprehensible, objectionable, and offensive enough to support a claim of intentional infliction of emotional distress); Gillyard v. Delta Health Group, Inc., 757 So. 2d 601, 602-603 (Fla. 5th Dist. Ct. App. 2000) (claim based on discharge of employee dismissed).

In sum, liability for intentional infliction of emotional distress does not extend to “mere insults, indignities, threats, annoyances, petty oppressions or other trivialities.” Scheller v. Am. Med. Int’l Inc., 502 So. 2d 1268, 1271 (Fla. 4th Dist. Ct. App. 1987), quoting RESTATEMENT (SECOND) OF TORTS § 46 (1965). Indeed, the only intentional infliction claims which recently have been allowed to proceed to trial were typically sexual harassment cases involving relentless

B. Negligent Infliction of Emotional Distress


VIII. PRIVACY RIGHTS

A. Generally

There are four types of privacy claims: “(1) appropriation--the unauthorized use of a person’s name or likeness to obtain some benefit; (2) intrusion--physically or electronically intruding into one’s private quarters; (3) public disclosure of private facts--the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye--publication of facts which place a person in a false light even though the facts themselves may not be defamatory.” Allstate Ins. Co. v. Ginsberg, 863 So. 2d 156, 162 ( Fla. 2003). In Anderson v. Gannet Co., 994 So 2d 1048, 1049(Fla. 2008), the Florida Supreme Court recently held that the “false light” cause of action is not recognized under Florida law. See also Jews for Jesus v. Rapp, 997 So. 2d 1098 (Fla. 2008).

With respect to category two, the Florida Supreme Court has refused to extend a cause of action for invasion of privacy in the employment context where the plaintiff was subjected to offensive touching and comments. See Allstate Ins. Co. v. Ginsberg, 863 So. 2d 156 (Fla. 2003) (no cause of action for invasion of privacy where intrusion involves touching of the body; reaffirming the tort embraces intrusion into a “place” where there is a reasonable expectation of privacy).

B. New Hire Processing

1. Eligibility Verification & Reporting Procedures

Fla. Stat. § 409.2576 requires all employers to report newly hired and rehired employees within 20 days of their start date.

2. Background Checks

There are no state statutes on this topic.

C. Other Specific Issues

1. Workplace Searches
There are no statutes specifically covering searches, and, therefore, this issue would be governed by common law. See Cohen Bros., LLC v. ME Corp., 872 So. 2d 321, 324 (Fla. 3d Dist. Ct. App. 2004) (“Society does not recognize an absolute right of privacy in a party’s office or place of business.”). “Florida courts have consistently held that the constitutional protections of a reasonable expectation of privacy do not extend to an individual’s place of business.” Avrich v. State, 936 So. 2d 739, 742 (Fla. 3d Dist. Ct. App. 2006). “[T]he reasonableness of an employee’s expectation of privacy in his or her office or the items contained therein depends on the ‘operational realities’ of the workplace, and not on legal possession or ownership.” State v. Young, 974 So. 2d 601, 608 (Fla. 1st Dist. Ct. App. 2008) (citations omitted).

2. Electronic Monitoring

Florida’s “Security of Communications Act,” Fla. Stat. §§ 934.01 et seq., makes it unlawful to intercept or record any wire, oral or electronic communications unless all the parties to the communication have given prior consent. See Horning-Keaton v. Employers Ins. of Wausau, 969 So. 2d 412, 418 n.4 (Fla. 5th Dist. Ct. App. 2007) (applies in the workplace). If the Employee Handbook has a Communications Systems policy that advises employees that the employer’s systems may be monitored or intercepted, there should be no expectation of privacy in a company’s voicemail, E-mail or computer systems generally.

An intrusion may be physical or electronic. Agency for Health Care Admin. v. Associated Indus. of Fla., Inc., 678 So. 2d 1239, 1252 n.20 (Fla. 1996).

3. Social Media

There are no Florida statutes on this topic.

4. Taping of Employees

Florida law prohibits tape recording of a person’s communications, absent permission of the person being recorded. Fla. Stat. § 934.02, et seq., states in pertinent part that “any person whose wire or oral communication is intercepted . . . in violation of this chapter shall have a civil cause of action against any person who intercepts . . . such communications. . . .” Fla. Stat. § 934.10. The term “person” is defined as “any employee or agent of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.” Fla. Stat. § 934.02(5).

5. Release of Personal Information on Employees

6. Medical Information

Improper disclosure of medical information under state law would be governed by the common law on invasion of privacy, and may be governed by FLA. STAT. § 456.057(8).

IX. WORKPLACE SAFETY

A. Negligent Hiring


In Florida, employers have a presumption of reasonable care in negligent hiring claims, if the employer takes certain steps. FLA. STAT. § 768.096. These steps include at least one of the following: (1) obtain a criminal background investigation by requesting a check of information in the Florida Crime Information Center through the Florida Department of Law Enforcement; (2) make a reasonable effort to contact references and former employers, which should include requests about the prospective employee’s suitability for employment; (3) require the prospective employee to complete a job application that includes questions about whether the individual has ever been convicted of a crime, as well as information about whether an applicant has ever been accused in a civil action of an intentional tort and the disposition of the case; (4) if driving is relevant to the work, get the authorization to obtain a driver’s license record check; or (5) interview the prospective employee. Id.

B. Negligent Supervision/Retention


C. Interplay with Worker’s Compensation Bar

There is some debate in the courts on this topic. See *Gerber v. Vincent’s Men’s Hair Styling, Inc. et al.*, 57 So. 3d 935 (Fla. 4th Dist. Ct. App. 2011).

D. Firearms in the Workplace

Fla. Stat. § 790.251, “The Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008,” prohibits employers from precluding their employees (and independent contractors) from bringing guns to work if kept in their cars.

E. Use of Mobile Devices

Effective October 2013, Florida law bans drivers from texting while driving but they may text while at red lights or stuck in traffic. Fla. Stat. § 316.305.

X. **TORT LIABILITY**

A. **Respondeat Superior Liability**

See *Valeo v. East Coast Furniture Co.*, 95 So. 3d 921 (Fla. 4th Dist. Ct. App. 2012) discussing when employer is liable for employee’s criminal act.

B. **Tortious Interference with Business/Contractual Relations**

The four elements of this tort are: (1) the existence of a business relationship not necessarily evidenced by a written contract; (2) knowledge of the relationship on the part of the defendant; (3) an intentional and unjustified interference with the relationship by the defendant; and (4) damage to the plaintiff as a result of the breach of the relationship. *Ingenuity, Inc. v. Linshell Innovations Ltd.*, 2014 U.S. Dist. LEXIS 40336, at *11 (M.D. Fla. Mar. 25, 2014); *Gunder's Auto Ctr. v. State Farm Mut. Auto. Ins. Co.*, 422 F. App'x 819, 821 (11th Cir. 2011); *Barco Holdings, LLC v. Terminal Inv. Corp.*, 967 So. 2d 281, 293 (Fla. 3d Dist. Ct. App. 2007); *Network IP, LLC v. Spread Enterprises, Inc.*, 922 So. 2d 355 (Fla. 3d Dist. Ct. App. 2006) (protecting a company’s own economic interests to reduce the risk of incurring further loss does not constitute intent to damage); *Mariscotti v. Merco Group at Akoya, Inc.*, 917 So. 2d 890 (Fla. 3d Dist. Ct. App. 2005). The tort of interference with a contractual relationship can include attempts to alter or change only a single contractual provision whether the attempt is to extinguish the provision entirely or instead, simply to alter it, so long as the effect is to interfere with benefits otherwise due the plaintiff. *Shands Teaching Hosp. & Clinics, Inc. v. Beech Street Corp.*, 899 So. 2d 1222, 1228 (Fla. 1st Dist. Ct. App. 2005). To satisfy the intent requirement, the plaintiff must show that the defendant’s actions were purposely directed at the interference. *MKT REPS S.A. DE C.V. v. Std. Chtd. Bank Int'l (Ams.) Ltd.*, 2012 U.S. Dist. LEXIS 101363, at
XI. RESTRICTIVE COVENANTS/NON-COMPETE AGREEMENTS

A. General Rule

Covenants not to compete are recognized in Florida and are enforced if they meet the statutory guidelines. Most importantly, the employer seeking enforcement must plead and prove the existence of a legitimate business interest. Fla. Stat. § 542.335(1)(b); See White v. Mederi Caretenders Visiting Servs. of Se. Fla., LLC, 226 So. 3d 774, 786 (Fla. 2017) (holding that section 542, 335, Florida Statutes, is non-exhaustive; and, therefore, referral sources may constitute a legitimate business interest); Zodiac Records, Inc. v. Choice Envtl. Servs., 112 So. 3d 587 (Fla. 4th Dist. Ct. App. 2013) (a former employer’s customer relationships do not automatically qualify as trade secrets); Fla. Hematology & Oncology v. Tummala, 927 So. 2d 135 (Fla. 5th Dist. Ct. App.), rev. granted, 937 So. 2d 122 (Fla. 2006). Florida Statute Section 542.335, which applies only to contracts entered into on or after July 1, 1996, governs restrictive covenants and non-competes. Because the statute was amended in 1990 and 1996, there are three sets of rules governing the enforceability of restrictive covenants in Florida, depending on the effective date of the contract:

<table>
<thead>
<tr>
<th>Date of Contract</th>
<th>Applicable Statute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Since July 1, 1996</td>
<td>FLA. STAT. § 542.335</td>
</tr>
<tr>
<td>Between June 28, 1990</td>
<td>FLA. STAT. § 542.33</td>
</tr>
<tr>
<td>and June 30, 1996</td>
<td></td>
</tr>
<tr>
<td>Prior to June 28, 1990</td>
<td>FLA. STAT. § 542.33 (prior version)</td>
</tr>
</tbody>
</table>

Continued employment will supply the necessary consideration as long as the same clearly is stated in the agreement. Balasco v. Gulf Auto Holding, Inc., 707 So. 2d 858 (Fla. 2d Dist. Ct. App. 1998).

The most recent version of the statute requires that the court apply a general test of reasonableness to the covenant, and extraordinary or specialized training can supply the necessary showing of business necessity. See, e.g., Fulford v. Drawdy Bros. Constr. II, Inc., 903 So. 2d 1007, 1007 (Fla. 4th Dist. Ct. App.) (per curiam), rev. dismissed, 2005 Fla. LEXIS 1896 (Fla. Sept. 2, 2005). The employer must show that the interest is actually threatened by the breach of the agreement; the burden may not be met simply by showing the employee is engaged in competition with the former employer. See Edwards v. Harris, 964 So. 2d 196, 198 (Fla. 1st Dist. Ct. App. 2007) (reversing an injunction that enjoined employee from competing with employer in any capacity where the only support for the order was the existence of a non-compete agreement); see also Harden & Associates, Inc. v. Hall, 764 So. 2d 691 (Fla. 1st Dist. Ct. App. 2000). Further, in situations “where a written employment contract has expired and the employee has continued working under an oral contract, a covenant not to compete contained in the original contract cannot always be enforced.” Gray v. Prime Mgmt. Group, Inc., 912 So. 2d
It is well established in Florida that “a non-compete period [may] be equitably extended to allow for what was intended in the bargain.” Michele Pommier Models, Inc. v. Diel, 886 So. 2d 993, 955 (Fla. 3d Dist. Ct. App. 2004), citing Capelouto v. Orkin Exterminating Co., 183 So. 2d 532, 534 (Fla. 1966); Kverne v. Rollins Protective Servs. Co., 515 So. 2d 1320, 1321 (Fla. 3d Dist. Ct. App. 1987). However, the party seeking enforcement of the non-compete must file suit to extend the time prior to the expiration of the non-compete period. Michele Pommier Models, Inc., 886 So. 2d at 955.

B. Blue Penciling


C. Confidentiality Agreements

There are no specific statutes on this topic, other than those contained in this section.

D. Trade Secrets Statute

Florida has adopted the Uniform Trade Secrets Act. See Fla. Stat. §§ 688.001, et seq.

In 1997, the statute was amended to further define the term “misappropriation” as follows:

b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

1. Used improper means to acquire knowledge of the trade secret; or

2. At the time of disclosure or use, knew or had reason to know that her or his knowledge of the trade secret was:

   a. Derived from or through a person who had utilized improper means to acquire it;

   b. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
c. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use;

3. Before a material change of her or his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Id. § 688.002(2).

E. Fiduciary Duty and Other Considerations

See discussion above.

XII. **DRUG TESTING LAWS**

A. Public Employers

The public sector Drug Free Workplace Act regulates the drug testing of public employees and encourages employers to provide employees who have drug use problems with an opportunity to participate in an employee assistance program or an alcohol and drug rehabilitation program. FLA. STAT. § 112.0455. The Act sets forth the types of testing allowed and the procedures for the testing, as well as procedures for employee protection and confidentiality of results.

B. Private Employers

The Drug Free Workplace Act as it applies to the private sector was enacted as a part of the workers’ compensation scheme. FLA. STAT. § 440.102. If an employee is discharged because of a positive, confirmed drug test, the claimant is not entitled to unemployment compensation. FLA. STAT. § 443.101.

An employer who elects not to operate a drug-free workplace program under § 440.102, is not prohibited from conducting drug testing. See *Laguerre v. Palm Beach Newspaper, Inc.*, 20 So. 3d 392 (Fla. 4th Dist. Ct. App. 2009).

There is no private right of action for an employee under FLA. STAT. § 440.102. See *McCullough v. Nesco Res., LLC*, 2019 WL 117486 (11th Cir. Jan. 7, 2019) (upholding the dismissal of an employee's claim that an employer was liable for requiring the employee to submit to a drug test without offering employment).

XIII. **STATE ANTI-DISCRIMINATION STATUTE(S)**

The Florida Civil Rights Act of 1992 (“FCRA”) (formerly called the Florida Human Rights Act), FLA. STAT. §§ 760.01-11, prohibits discrimination based on a broad number of protected categories, and includes a retaliation provision. See *Donovan v. Broward County Bd. of Commissioners*, 974 So. 2d 458 (Fla. 4th Dist. Ct. App. 2008).
In Florida, no employer shall discriminate on the basis of sex by paying wages to employees at a rate less than the rate at which he pays wages to employees of the opposite sex for equal work, except when such payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any reasonable factor other than sex. FLA. STAT. § 448.07. Any employer who violates the statute is liable to the employee for the amount of the difference between the amount the employee was paid and the amount he should have been paid. Id. The aggrieved employee must file the claim for unpaid wages within six months after termination of employment. Id.

Further, no public sector employer may discriminate in the employment of any person solely on the basis of age, unless age restrictions have been specifically established through published specifications for a position. FLA. STAT. § 112.043.

A. Employers/Employees Covered

The FCRA covers employers with 15 or more employees. FLA. STAT. § 760.02(7).

B. Types of Conduct Prohibited


C. Administrative Requirements

As with Title VII claims, the plaintiff must exhaust certain administrative remedies prior to bringing a civil action under the FCRA. The plaintiff has 365 days from the date of the violation to file a complaint with the Florida Commission on Human Relations (“FCHR”). Within 180 days, the FCHR must complete its investigation and determine whether there is reasonable cause to believe that the claimed discriminatory practice has occurred. If the investigation is not complete after 180 days, the plaintiff may file a civil or administrative action. The Florida Supreme Court has held that when the FCHR fails to make a determination within 180 days, the four-year limitations period applies. Joshua v. City of Gainesville, 768 So. 2d 432, 433 (Fla. 2000). If no reasonable cause is found, the complaint will be dismissed. The plaintiff has thirty-five days to request an administrative hearing. If no request for hearing is brought, the claim is barred from going further and cannot be litigated in a civil action. However, where a claim is dual filed with the FCHR and EEOC, and the EEOC issues a Dismissal and Notice of Rights Form 161 indicating that “the EEOC is unable to conclude that the information obtained
establishes violations of the statutes,” the claimant may file suit without pursuing administrative appellate remedies. *Woodham v. Blue Cross Blue Shield of Fla.*, 829 So. 2d 891, 892 (Fla. 2002).

D. Remedies Available

Under the FCRA, plaintiffs may recover back pay, damages for mental anguish, loss of dignity, and other intangible injuries. Plaintiffs can also recover punitive damages not to exceed $100,000.00, and the prevailing party may recover attorneys’ fees. There are no caps on compensatory damages, including mental anguish. *FLA. STAT.* § 760.11(5).

XIV. **STATE LEAVE LAWS**

A. Jury/Witness Duty

No employee may be discharged or threatened with discharge for participating in jury service. *FLA. STAT.* § 40.271. One court has held that there is individual liability under the statute. *Pier 66 Co. v. Poulos*, 542 So. 2d 377, 381 (Fla. 4th Dist. Ct. App.), *rev*, denied, 551 So. 2d 462 (Fla. 1989). The statute applies only to jury service in the state courts. *Scott v. Estalella*, 563 So. 2d 701 (Fla. 3d Dist. Ct. App. 1990).

No employee may be discharged for taking time off to testify at a judicial proceeding upon receipt of a subpoena. The statute also prohibits dismissal based on the nature of the testimony involved. *FLA. STAT.* § 92.57.

B. Voting

An employer who discharges or threatens to discharge an employee for voting or not voting is guilty of a third degree felony. *FLA. STAT.* § 104.081. There are also several local ordinances on this subject.

C. Family/Medical Leave

There is no state statute covering private employers, other than the general prohibition on disability discrimination contained in the FCRA. Florida does have a family or medical leave statute applicable to public employers. *FLA. STAT.* § 110.221.

D. Pregnancy/Maternity/Paternity Leave

See above.

E. Day of Rest Statutes

Florida does not have a uniform day of rest statute.

F. Military Leave
No employee may be discharged because of obligations as a reservist in the
Armed Forces, or because of active duty in the Florida National Guard. Fl. Stat. §§ 250.481-
250.482.

Unemployment benefits cannot be denied because of voluntary resignation
because of a relocation due to an employee’s or the employee’s spouse’s change of station,
activation, or unit deployment orders. Fl. Stat. § 443.101(1)(a)(1).

G. **Domestic Violence Leave**

In Florida, employers with fifty or more employees must provide employees who
have worked for three months or longer with up to three days of unpaid leave in any rolling
twelve-month period if the employee (or a family or household member of an employee) is the
victim of domestic violence. Fl. Stat. §741.313. The three days of leave may be used to seek
an injunction for protection, obtain medical care or mental health counseling for either the
employee or a family or household member, obtain services from a victim services organization
(such as a shelter or rape crises center), make the employee's home secure, or seek legal
assistance or prepare for court-related proceedings. An employee seeking leave under this statute
must exhaust all annual or vacation leave, personal leave, and sick leave that is available to the
employee. However, the employer may waive this requirement. Employees are required to
provide "appropriate notice" before taking leave under this statute, unless the employee (or the
employee's family/household member) is in imminent danger. "Appropriate notice" is not
defined by the statute, but is to be interpreted pursuant to the employer's policy on providing
notice ahead of other leaves afforded by the employer. Fl. Stat. §741.313(4)(a).

The employer must keep all information relating to an employee's use of this

No employer may interfere with an employee's use of leave under this statute, or
discharge, demote, suspend, or retaliate against an employee who exercises his or her rights
under the statute. Employees may file a civil suit for damages in circuit court and is able to
recover damages including wages and benefits. The statute does not provide for attorney's fees.

Miami-Dade County has an ordinance that provides additional leave and other

H. **Other leave laws**

Florida does not have any other statutes regarding other forms of leave.

XV. **STATE WAGE AND HOUR LAWS**

A. **Current Minimum Wage in State**

The Florida Minimum Wage Act, Fl. Stat. §448.110, governs the minimum
wage hourly rates to be charged to Florida employees and includes an anti-retaliation provision.
Florida’s minimum wage is reviewed and adjusted on September 30 of each year. Adjusted minimum wage rates take effect January 1 of the following year.

In 2017, the Third District Court of Appeal invalidated a City of Miami Beach ordinance which gradually raised the minimum wage private employers would be required to pay employees. *City of Miami Beach v. Fla. Retail Fed., Inc.*, 233 So.3d 1236 (Fla. 3d Dist. Ct. App. 2017). In February 2019, the Florida Supreme Court declined review of that decision.

**B. Deductions from Pay**

There are no statutes on this topic.

**C. Overtime Rules**

There is a statute on this topic but one court has held that it does not apply to individuals compensated on an hourly basis. *Quaker Oats Co. v. Jewell*, 818 So. 2d 574 (Fla. 5th Dist. Ct. App. 2002) (questioning whether statute is unconstitutionally vague). And, one federal court has held the statute is constitutionally infirm. *Posely v. Eckerd Corp.*, 433 F. Supp. 2d 1287 (S.D. Fla. 2006).

**D. Time for payment upon termination**

There is no state statute dictating when an employee must be paid upon termination. However, both Broward and Miami-Dade Counties have enacted “Wage Theft” ordinances, which have significant penalties for failure to pay wages in a timely manner.

**E. Breaks and Meal Periods**

Florida does not have any laws requiring an employer to provide a meal period or breaks to employees eighteen years of age or older.

**F. Employee Scheduling Laws**

There are no statutes on this topic.

**XVI. MISCELLANEOUS STATE STATUTES AND LOCAL ORDINANCES REGULATING EMPLOYMENT PRACTICES**

**A. Smoking in the Workplace**

The Florida Clean Indoor Air Act, Fla. Stat. § 386.201 et seq., prohibits smoking in enclosed, indoor spaces.

**B. Health Benefit Mandates for Employers**

Title XXXVII details requirements on health insurance coverage provided by HMOs in Florida.
C. Immigration Laws

There are no statutes on this topic.

D. Right to Work Laws

Article I, § 6 of the Florida constitution provides that: “The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.”

E. Lawful Off-duty Conduct (including lawful marijuana use)

Fla. Stat. § 381.986, originally enacted on June 16, 2014, permits the use of low-THC and medical cannabis under very limited circumstances, and only by patients with a terminal condition. It should be noted that the statute does not permit administration of cannabis by smoking.

On November 8, 2016, Florida voters approved an amendment to the Florida Constitution expanding the circumstances under which medical marijuana can be used. See Art. X, § 29, Fla. Const. On March 19, 2019, Gov. Ron DeSantis signed legislation which repealed Florida's ban on smoking medical marijuana, amending FLA. STAT. §381.986.

F. Gender/Transgender Expression

There is no state statute governing gender/transgender expression, but there are a number of local ordinances prohibiting discrimination based on gender identity (e.g., City of Miami Beach, Miami-Dade County).

G. Other Key State Statutes

1. Limits on Punitive Damages

The punitive damages statute provides that an award of punitive damages cannot exceed the greater of (1) three times the amount of compensatory damages or (2) $500,000, unless the jury finds that the wrongful conduct “was motivated solely by unreasonable financial gain” and “the unreasonably dangerous nature of the conduct . . . were actually known” by a policy maker, in which case the award cannot exceed the greater of (1) four times the amount of compensatory damages, or (2) $2,000,000. FLA. STAT. § 768.73. This statute is not applicable to the FCRA, which has its own limitation of $100,000 on a punitive damages award. FLA. STAT. § 760.11(5).

2. Employee Leasing
This statute provides some limited protection for employers in a joint employment relationship who, among other things, lack the requisite day-to-day control over the employees. FLA. STAT. § 768.098.

3. Attorney’s Fees for Successful Litigants in Actions for Unpaid Wages, FLA. STAT. § 448.08

The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorneys’ fee. FLA. STAT. § 448.08. An award is permissive, not mandatory. See Ruffa v. Saftpay, Inc., 2015 Fla. App. LEXIS 6215 (Fla. 3d Dist. Ct. App. April 29, 2015) (denial of fees reviewed for abuse of discretion).

The term “wages” has been defined as compensation paid to an employee for services rendered to his employer. Ocean Club Cmty. Ass’n, Inc. v. Curtis, 935 So. 2d 513 (Fla. 3d Dist. Ct. App.) (tennis director who prevailed on his claim that all converted fees earned from lessons was entitled to fees and costs), reh’g denied, 2006 Fla. App. LEXIS 15229 (Fla. 3d Dist. Ct. App. Aug. 31, 2006); Elder v. Islam, 869 So. 2d 600 (Fla. 5th Dist. Ct. App. 2004). Broadly read, this definition embraces salaries, commissions, bonuses, vacation pay, and severance pay. Id.; see also Strasser v. City of Jacksonville, 655 So. 2d 234 (Fla. 1st Dist. Ct. App. 1995) (annual leave credits); Ivens Corp. v. Cohen, 593 So. 2d 529 (Fla. 3d Dist. Ct. App. 1992) (commission); Woods v. United Indus. Corp., 596 So. 2d 801 (Fla. 1st Dist. Ct. App. 1992) (severance); Cmty. Design Corp. v. Antonell, 459 So. 2d 343 (Fla. 3d Dist. Ct. App. 1984) (bonus).

One court has held that an employer was entitled to recover fees under §448.08 where it prevailed on a statute of limitations defense. Ultimate Makeover Salon & Spa, Inc. v. DiFrancesco, 41 So. 3d 335 (Fla. 4th Dist. Ct. App. 2010).

4. Abortion

No employee of a hospital or a physician may be discharged for refusing to participate in an abortion procedure. FLA. STAT. § 390.0111(8).

5. Worker’s Compensation

No employee may be retaliated against for filing a workers’ compensation claim. FLA. STAT. § 440.205. The statute is not limited to claims involving discharge, but also applies to retaliatory intimidation or coercion even in the absence of an employee’s termination. Chase v. Walgreen Co., 750 So. 2d 93 (Fla. 5th Dist. Ct. App. 1999), rev. denied, 2000 Fla. LEXIS 1766 (Fla. Aug. 29, 2000). A plaintiff can prevail even if there is a mixed motive for the discharge and the plaintiff does not have to establish a specific retaliatory intent. Hornfischer v. Manatee County Sheriff’s Office, 136 So. 3d 703 (Fla. 2d Dist. Ct. App. 2014). See Stallworth v. Okaloosa County Sch. Dist., 2011 U.S. Dist. LEXIS 113250 (N.D. Fla. Sept. 30, 2011). However, a failure to provide work which respects an employee’s physical limitations is not actionable under § 440.205. Coker v. Morris, 2008 U.S. Dist. LEXIS 56525, at *27 (N.D. Fla. July 22, 2008).

6. Payroll Deductions for Alimony and Child Support

No employee may be discharged because of the enforcement of an income deduction order relating to alimony or child support payments. FLA. STAT. § 61.1301(2)(j)(2).

7. Membership in Labor Organization

No employee may be discriminated against in his employment on account of membership or non-membership in any labor organization. FLA. STAT. § 447.17.

8. Employee’s Right to Trade With Merchants of Choice

It is a criminal offense to discharge an employee for trading or refusing to trade with any particular merchant or other person in any business calling. FLA. STAT. § 448.03.

9. Discharge on Basis of Sickle-Cell Trait

No employee may be discharged because he has the sickle-cell trait, and employment cannot be conditioned upon submitting to testing for the sickle-cell trait. FLA. STAT. §§ 448.075-076.

10. Discharge on Basis of AIDS

Persons with AIDS or HIV are entitled to every protection made available to handicapped persons. An employer cannot require as a condition of employment that an employee submit to HIV testing, and no employee may be subjected to adverse job action for being so tested absent a showing that the absence of HIV is a bona fide occupational qualification of the job in question. FLA. STAT. § 760.50. This statute, unlike the Florida Civil Rights Act, does not require proof that the employee’s HIV condition amounts to a disability. Byrd v. BT Foods, Inc., 948 So. 2d 921 (Fla. 4th Dist. Ct. App. 2007).