

Jason Habinsky in Human Resource Executive: Emotional Distress and the FLSA

January 30, 2017 Jason Habinsky

PRACTICES Wage and Hour Litigation, Labor and Employment

A recent ruling from a Fifth Circuit could add a degree of difficulty for employers in a number -- albeit a small number -- of lawsuits involving FLSA violations.

Santiago Pineda and his wife, Maria Pena, lived in an apartment leased to Pena by JTCH Apartments. Pineda performed maintenance work in and around the apartment complex, for which JTCH discounted Pena's rent.

The path to the courtroom began when Pineda filed a lawsuit against JTCH and its owner and manager, seeking unpaid overtime under the Fair Labor Standards Act. Just three days after serving the summons to JTCH, however, Pineda and his wife received a notice to vacate their apartment for nonpayment of rent. According to court documents, JTCH demanded an amount equal to the rent reductions Pena had received over the period of Pineda's employment with the apartment complex. In response to the notice, the couple left the apartment...

In post-trial rulings, a district court awarded Pena liquidated damages of \$1,426.50, and awarded the plaintiffs' counsel \$76,732.88 in attorney's fees, which court records indicate was a 25-percent reduction from the amount requested. Pineda and Pena appealed, arguing that the court should have instructed the jury on damages for emotional harm. The court of appeals for the Fifth Circuit concluded that the FLSA allows only employees to bring suit, but that an employee may recover for emotional injury resulting from retaliation...

The Fifth Circuit's decision "was a technical one" signaling that other courts could similarly rule that emotional distress damages are available to a prevailing FLSA plaintiff in a retaliation action, says [Jason Habinsky](#), a New York-based partner at Haynes Boone.

"Employers must be wary of the risk of additional exposure," he says. "Now, in addition to the danger of a damages award for back pay and liquidated damages, an employer [might] also be liable for a current or former employee's emotional distress damages."

As such, HR professionals will play a critical role in managing those risks by carefully considering any employment decisions that could be construed as retaliation, says Habinsky.

Excerpted from *Human Resource Executive*. To read the full article, please [click here](#).