



## Case Law Update

March 17, 2017

**WINTER PARK**  
1560 ORANGE AVENUE, SUITE 500  
WINTER PARK, FL 32789  
TEL: (407) 571-7400  
FAX: (407) 571-7401  
[www.hrmcw.com](http://www.hrmcw.com)

This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week. Please feel free to contact Rogers Turner ([rturner@hrmcw.com](mailto:rturner@hrmcw.com)) with questions or comments on any of the listed cases.

### *District Court of Appeal Cases*

**Atha v. Overbeke, D.M.D., P.A., (Fla. 2d DCA 3/10/17)**

**440.205/Sufficiency of Allegations in Complaint to Survive Motion to Dismiss**

The DCA reversed the circuit court's order dismissing the Plaintiff's second amended complaint with prejudice. The Plaintiff was injured while working at a dental practice. She received medical benefits and temporary indemnity and was subsequently released to return to full time work. Despite the availability of full time work, the employer scheduled her for only one day a week and then terminated her three weeks later. To establish a prima facie case of workers' compensation retaliation under section 440.205, the plaintiff must prove the following elements: (1) a statutorily protected activity, (2) an adverse employment action, and (3) a causal connection between the statutorily protected activity and the adverse employment action. The first two elements were not in dispute. In considering the contested third element, the court noted that a claimant can satisfy this pleading requirement "by showing the protected activity and the adverse action are not completely unrelated." The temporal connection between the protected activity and the adverse employment action in itself might be sufficient to establish a causal connection, but the temporal proximity must be "close." After examining the allegations in the second amended complaint and taking them as true (as is required at Motion to Dismiss phase), the DCA found the complaint contained adequate information to survive the Motion to Dismiss. [Click here to view Opinion](#)

*Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.*

Treasure Coast	North Florida	Miami-Dade	Broward	Southwest Florida
772-489-2400	850-222-1200	305-423-7182	954-794-6933	239-939-2002