

*Wisconsin Chiefs of Police Association*

**LEGAL UPDATE**

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Mount Pleasant, Wisconsin

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## **I. DISCRIMINATION/RETALIATION**

- A.** *Burlington Northern and Sante Fe Railway Company v. White*, 126 S.Ct. 2405 (June 22, 2006). U.S. Supreme Court analyzes standards in retaliation cases; comparison of new Supreme Court standard to Seventh Circuit standard asking whether the alleged retaliation is “material to a reasonable employee.”
- B.** *Sullivan v. Village of McFarland*, 2006 U.S. Dist. Lexis 54138 (August 3, 2006) (involving the WCPA’s own Chief Leck). Probationary employee unsuccessfully tries to use a discrimination complaint to challenge her termination during the probationary period.
- C.** *Prichard v. City of Bryant, Arkansas*, 2006 WL 751296 (E.D. Arkansas, Western Division, 2006). Police officer attacks discharge decision based on his own unsuccessful suicide attempt.
- D.** EEOC Lawsuits filed in various jurisdictions raise concerns about proper language for waivers; review all waiver and release language carefully.

## **II. FREE SPEECH AFTER GARCETTI**

- A.** *Day v. Borough of Carlisle*, 180 LRRM 2022 (M.D. PA. 2006). Courts begin to apply the *Garcetti* standards to new facts.
- B.** *Thaeter v. Palm Beach County Sheriff’s Office*, 449 F.3d 1342 (11<sup>th</sup> Cir., 2006). Police officers moonlighting as porn stars attempt to use a First Amendment defense to discipline.
- C.** *Fuerst v. Clarke*, 454 F.3d 770 (7<sup>th</sup> Cir., 2006). Seventh Circuit Court of Appeals applies First Amendment standards to demotion decision in Milwaukee County Sheriff’s Department.
- D.** *Mills v. City of Evansville, Indiana*, 452 F.3d 646 (7<sup>th</sup> Cir., 2006). Police officers internal complaints and criticisms of Police Chief’s reassignment decisions did not give her First Amendment protections.

- E. *Littrell v. City of Kansas City, Missouri*, 459 F.3d 918 (8<sup>th</sup> Cir., 2006). Self reporting of repeated sexual conduct on duty in the firehouse did not cloak the self-reporter with First Amendment protections.

### III. FLSA DEVELOPMENTS

- A. *McGavock v. City of Water Valley, Mississippi*, 452 F.3d 423 (5<sup>th</sup> Cir., 2006). Courts strike down the 20% limitation on nonexempt activities as applied to Police and Fire Employees' Section 7(k) exemption after redraft of FLSA by legislature.
- B. *Adair v. Charter County of Wayne*, 452 F.3d 482 (6<sup>th</sup> Cir., 2006). Requiring police officers to carry pagers, remain close to home, and respond to pages did not prevent officers on the bomb squad and canine units from using their off-duty time for their own purposes, and thus the on call time was not considered compensable under the FLSA.

### IV. DISCIPLINE

- A. *State v. Brockdorf*, 717 N.W. 2d 657 (2006). Wisconsin Supreme Court analyzes and applies *Garrity* principles to communications with law enforcement officers who are not specifically given *Garrity* warnings.
- B. *Sliwinski v. Board of Police and Fire Commissioners of the City of Milwaukee*, 289 Wis. 2d 422 (2006). Court of Appeals analyzes the adequacy of a due process hearing where the witness against the officer refused to provide certain information to protect ongoing investigation.
- C. *City of Oak Creek*, MA-12847 (Jones, 6/30/06). Arbitrator attempts to articulate a difference between "very suspicious" circumstances of sick leave abuse, and actual proof of abuse in disciplinary grievance.

- D.** *Milwaukee Board of School Directors*, Decision No. 31732 (WERC, 8/2006). WERC supports the ability of unionized employees in a school district setting to display Union buttons and signs in the classroom; impact on police agencies unclear.
- E.** *Castaneda v. Welch*, 2006 WL 2773082 (September 28, 2006). Court of Appeals analyzes rule making authority of Milwaukee Police and Fire Commission; draws distinctions between First Class Cities and all other municipalities in statutory interpretation of significance to Municipal Police and Fire Commissions.
- F.** *City of Philadelphia v. IAFF, Local 22*, 122 LA 277 (Lang, 2006). As if we needed reasons to avoid arbitration, Arbitrator reinstates firefighter who stole supervisor's credit card, attempted to withdraw money from the supervisor's account, and then lied when claiming he found the credit card on the floor of the fire station. See also SB21, introduced February 1, 2007.
- G.** *Colon v. City of Newark (Not Published)*, 2006 WL 1194230 Superior Court of New Jersey, Appellate Division, discusses and applies the "deliberate indifference" standard under constitutional law in the employer's dealing with a police officer with a potentially violent history.
- H.** *Gentilli v. Board of Police and Fire Commissions of the City of Madison*, 717 N.W. 2d. 853 (2006); discharged firefighters' last-ditch attempt to challenge his discipline based on allegations of "vagueness" of the rules fails; Madison firefighter cases now over.
- I.** *Durand School District*, Case 43 No. 64762 MA-13004 (Morrison, August 30, 2006). Arbitrator analyzes contractual language, and draws a distinction between leaves of absence under the Collective Bargaining Agreement, and income continuation under a long term disability income insurance program; clarifies whether leaves of absence must be granted during the entire time the employee is receiving LTD benefits from outside carrier.