

By Senator Rodriguez

37-00744A-18

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1 A bill to be entitled
2 An act relating to employment discrimination; creating
3 s. 448.077, F.S.; providing definitions; prohibiting
4 an employer from taking retaliatory personnel action
5 against an employee who has left a place of employment
6 to evacuate under an mandatory evacuation order;
7 providing exceptions; providing employee remedies and
8 relief; providing for attorney fees and costs;
9 providing applicability; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Section 448.077, Florida Statutes, is created to
14 read:

15 448.077 Employment discrimination on basis of participation
16 in mandatory evacuation prohibited.-

17 (1) DEFINITIONS.-As used in this section, the term:

18 (a) "Emergency" has the same meaning as defined in s.
19 252.34.

20 (b) "Mandatory evacuation order" means an official
21 statement issued by the President of the United States, the
22 Governor, or a political subdivision of this state to mandate
23 the evacuation of all or part of the population of an area
24 stricken or threatened by an emergency.

25 (c) "Emergency personnel" means a law enforcement officer
26 as defined in s. 943.10, a firefighter as defined in s. 633.102,
27 an emergency medical technician or paramedic as defined in s.
28 401.23, or other individuals who are required, in the course and
29 scope of their employment, to provide services for the benefit

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30 of the general public during an emergency.

31 (d) "Employee" has the same meaning as established under
32 the federal Fair Labor Standards Act and its implementing
33 regulations.

34 (e) "Employer" has the same meaning as established under
35 the federal Fair Labor Standards Act and its implementing
36 regulations.

37 (f) "Retaliatory personnel action" means the discharge,
38 suspension, or demotion by an employer of an employee or any
39 other adverse employment action taken by an employer against an
40 employee in the terms and conditions of employment.

41 (g) "Vital services" means only the utility and roadway
42 services necessary immediately after an emergency.

43 (2) DISCRIMINATION PROHIBITED.—An employer may not take any
44 retaliatory personnel action against an employee if the
45 employee:

46 (a) Left the employee's place of employment to evacuate
47 under a mandatory evacuation order.

48 (b) Evacuated because the employee's residence or place of
49 employment was included in the mandatory evacuation zone.

50 (c) Returns to work within 14 days after the mandatory
51 evacuation order is lifted or by a time agreed upon between the
52 employee and employer.

53 (3) EMPLOYEE'S REMEDY; RELIEF.—

54 (a)1. An employee who has been the object of a retaliatory
55 personnel action in violation of subsection (2) may institute a
56 civil action in a court of competent jurisdiction for relief as
57 set forth in paragraph (b) within 2 years after discovering that
58 the alleged retaliatory personnel action was taken, or within 4

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59 years after the personnel action was taken, whichever is
60 earlier.

61 2. Any civil action authorized under this subsection may be
62 brought in the county in which the alleged retaliatory personnel
63 action occurred, in which the complainant resides, or in which
64 the employer has its principal place of business.

65 3. An employee may not recover in any action brought
66 pursuant to this subsection if he or she failed to notify the
67 employer about the applicable evacuation order or if the
68 retaliatory personnel action was predicated upon a ground other
69 than the employee's exercise of a right protected by this
70 section.

71 (b) In any action brought pursuant to paragraph (a), the
72 court may order relief as follows:

73 1. An injunction restraining continued violation of this
74 section.

75 2. Reinstatement of the employee to the same position held
76 before the retaliatory personnel action, or to an equivalent
77 position.

78 3. Reinstatement of full fringe benefits and seniority
79 rights.

80 4. Compensation for lost wages, benefits, and other
81 remuneration.

82 5. Any other compensatory damages allowable by law.

83 (4) ATTORNEY FEES AND COSTS.—A court may award reasonable
84 attorney fees, court costs, and expenses to the prevailing
85 party.

86 (5) APPLICABILITY.—This section does not apply to:

87 (a) Individuals employed as emergency personnel if the

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88 employer provides adequate emergency shelter for those
89 individuals.

90 (b) A person who is necessary to provide for the safety and
91 well-being of the general public, including a person necessary
92 for the restoration of vital services.

93 (c) Individuals employed at a nursing home facility, as
94 defined in s. 400.021; hospice, as defined in s. 400.601;
95 assisted living facility, as defined in s. 429.02; or hospital,
96 as defined in s. 395.002.

97 Section 2. This act shall take effect July 1, 2018.