



## **Lilienthal v. JLK, Inc., et al. (A23A0290, May 24, 2023)**

The Georgia Court of Appeals recently issued an opinion regarding a claimant's challenge to the validity of an employer's posted panel on the basis that the panel was not posted in a "prominent" location in accordance with O.C.G.A. § 34-9-201(c). Although the employer had a valid panel that was posted on a wall on the employer's premises, there is a dispute as to whether the location of the panel complied with the requirement that it be posted in a "prominent" place. It should be noted throughout the pendency of the claim, the panel was found to be valid and in compliance with O.C.G.A. § 34-9-201 by the ALJ, the Appellate Division and the Superior Court.

In this case, the employer is a daycare facility responsible for caring for young children. The employer's premises contained no teacher/employee breakroom. However, there was a resource room on the premises which held teacher supplies and items for use by the teachers, including paint, scissors, a paper cutter, as well as other items that could pose a harm to the children onsite. As such, the door to the resource room was locked. Facts found by the State Board show the door to the resource room, as documented in photographic evidence submitted into the record, had a full panel of glass almost the entire size of the door (not just the upper half of the door) allowing a person outside of the room to see inside the room. The Board also found that the key to the resource room was kept in an unlocked box in a drawer at the front desk of the facility. Teachers and employees were allowed to grab the key at any time they wanted to enter the resource room. The employee in this claim argued she and other employees rarely went into the resource room due to it not often being fully stocked, while other testimony from witnesses claimed the room was appropriately stocked. These were all facts considered by the ALJ and Appellate Division in rendering their decisions.

The recent Court of Appeals decision did not decide whether the panel in this case was posted in a prominent location. Rather, the Court of Appeals appeared to interpret the ALJ's observation that the employee was not precluded from accessing the resource room to mean the ALJ had failed to determine whether the panel was posted in a "prominent" location, particularly because the ALJ never specifically stated the panel was posted in a prominent place. Thus, the Court of Appeals concluded that substituting, if that is what the State Board had done, the word "prominent" for the word "accessible," would be a mistake of law. Therefore, the Court of Appeals reversed and remanded the case to the State Board to confirm that the Board also thought that the panel was posted in a prominent location.

Whether a panel is posted in a prominent location on the employer's premises is a factual question not to be overturned on appeal if supported by any evidence. The Court of Appeals has not redefined the word "prominent" to mean anything different than its usual meaning. While some observers have suggested the Court of Appeals has found the panel in this case to be invalid because it was not prominently located, this is a misstatement. Instead, the Court of Appeals simply wants to ensure the State Board, by concluding the employer complied with the provisions of O.C.G.A. § 34-9-201 which is the provision of law that requires a prominent placement of the panel, intended to also find the panel was prominently placed.

If you wish to further discuss this case or have any questions about the validity of your panel of physicians, please contact a Swift Currie attorney.

*The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.*

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