

Practice Question 4: Model Answer

First, does the statute apply here? Yes. The boarding house is “housing subject to the provisions of §§ 381.008-381.00897” (see § 381.00895(1)) because it is a “migrant labor camp.” It’s a migrant labor camp because the housing is furnished as an “incident of employment,” § 381.008(5),¹ and Alcee is a “migrant farmworker” because he harvests crops and has moved in the last 12 months, § 381.0008(4).

Section 381.00895 says the owner or operator of the housing (FarmCo) (FC) may not *for the purpose of retaliation* discriminatorily terminate a tenancy by eviction. Is FC’s action retaliatory?

To be retaliatory, the eviction must have been triggered by conduct described in (1)(a) or (b) of 381.0095. As to (1)(a),² A didn’t complain to FC or a government agency. He complained to a newspaper reporter. He could point out that the statute is not exhaustive (it says, “*examples* of conduct . . .”), and argue that the reporter and newspaper article served the function of alerting the government. FC might reply that the point is to protect actions that are likely to be immediately effective (like complaining directly to the owner or the government), not just generate bad publicity.

A would likely [win on (1)(a) because MFWs are relatively powerless and the statute ought to be read broadly to protect them] **OR** [lose on (a)(1) because while the story had some impact this time, in general it’s more effective to complain to entities that have a direct connection to the housing, like its owner, the employer, or the government agencies regulating them.]

As to (1)(b), A could also say it protects a resident who has exercised any legal right provided in the statute with respect to housing. That raises the question whether Alcee had a legal right to invite the reporter in.

Reporters aren’t “other authorized visitors” (OAV) under the definitions section 381.008(6), so there’s no access as an OAV under 381.00897(2). But under 00897(1), a resident can decide who visits them in their “private living quarters.” Under 381.008(7), private living quarters would include A’s room and the bathroom (a “building or portion of a building” for sleeping, with a bathroom, in a migrant labor camp).

Is a reporter an invited guest under 00897(1)? Under the definitions section 008(3), an invited guest is someone invited to “visit.” That might mean just social visits, but A could argue that he should be able to invite anyone he wants. That’s part of the basic dignity to which anyone is entitled – the ability to invite someone to your place. So, unless “visit” means only a social visit, Alcee would have exercised a “legal right” under 381.00895(1) when he invited the reporter in.

The next question is whether FC could forbid all reporters or limit visits by anyone to 1 hour a day. First, A might be able argue that the rules are not enforceable. It’s true they were posted as required under 381.00897(6). But the inspector’s thought as he entered suggests the Department wasn’t given a copy, as also required.

¹ [If you said it’s “housing subject to the provisions of §§ 381.008-381.00897” because it’s residential migrant housing, that would be incorrect, because the latter term covers housing *not* furnished as an incident of employment. § 381.008(8)(a). But you would get partial credit for correctly seeing that you need to find a basis in the statute for § 381.00895 to apply.]

² [Usually it’s better to give the full cite. But where the section numbers are very long, and you have to cite them repeatedly, it’s ok on the exam to use shorter forms, so long as the context makes clear exactly which section you’re referring to.]

Second, FC might argue that a rule forbidding all invited visits by reporters is reasonable under 00897(5). A could respond that the rule isn't "reasonably related" to the workers' health, safety, welfare or security, as (5) requires. Allowing a blanket "no reporters" rule would be inconsistent with the idea that it's the other residents who get to determine whether a visitor (including a reporter) can remain.

Third, A might argue that while FC can set some visiting hours, its rules are not "reasonable" under 00897(5). Only one hour a day is not much time for guests to visit. It's even less than OAVs are guaranteed under 00897(2). FC might respond that the limit is reasonable because it's to protect the privacy of the boarding house residents.

Assuming A was protected under 381.0095(1)(a) (complaining about housing conditions) or (b) (exercising a legal right as to housing), FC's eviction is "retaliatory" under 381.00895(1).

Even so, Alcee must also show that his own action was "in good faith." 00895(2). FC would say it wasn't, because calling the reporter was revenge for being denied an advance on his pay. On the other hand, good faith might mean whether the employee had a reasonable basis for thinking that Section 00895 was being violated. Here, he did have a reasonable basis: After all, the Department ended up fining FC for violating the statute.

The final problem A faces is that 00895 applies only if the termination/eviction meets two other requirements.

First, the eviction must be discriminatory. 00895(1). If the reason was purely for owing back rent, it would seem discriminatory, since other people are behind in rent and aren't being evicted.

Second, the eviction *is* permitted if it "is for good cause including good faith action for non-payment of rent, violation of reasonable rules of owner or violation of employment agreements." 00895(3). FC would say its action in seeking to evict A is in good faith because of his lateness in paying rent. A might ask how it can be good faith to single out the one person who took effective action to improve living conditions at the boarding house. It looks more like evicting a "troublemaker." On the other hand, a good faith action for eviction may mean only that the employer in fact truly believes what it is claiming – that A is behind in the rent, which he definitely is. Maybe the legislature meant to protect only those whistleblowers who are respecting all their own obligations.

[A would likely win on the good cause/good faith requirement because the statute is intended to provide a reasonable place for migrant farm workers to live and to encourage them to report problems.] **OR** [FC would likely win on the good cause/good faith requirement because there's no reason the legislature wanted to force an owner/operator to continue providing housing to someone who's not paying rent.]