

DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CW 1337

MARK N. MATTHEWS

VS.

THE MILITARY DEPARTMENT FOR THE STATE OF LOUISIANA

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JUDGMENT RENDERED: SEP 24 2007

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ON APPEAL FROM THE  
19TH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 475,707 DIVISION "N"  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE A.J., KLING, JUDGE AD HOC

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ATTORNEY FOR

Scott G. Vincent,  
Assistant Attorney General

Counsel for Appellant/Defendant  
Military Department for the  
State of Louisiana

J. Arthur Smith, III

Counsel for Appellee/Plaintiff  
Mark N. Matthews

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ.

**PER CURIAM.**

**WRIT GRANTED IN PART; WRIT DENIED IN PART.** The trial court's judgment dated June 13, 2007, denying the Exception of Lack of Subject Matter Jurisdiction and No Cause or Right of Action, or in the Alternative, Motion for Summary Judgment filed on behalf of the Military Department for the State of Louisiana is reversed to the extent that the trial court denied the exception/motion relative to the claim asserted under the Family Medical Leave Act and the whistleblowing claim concerning the State's acquisition of the Gillis Long Hansen Disease Center. Plaintiff cannot proceed with his action under the self-care provision pursuant to 29 U.S.C. §2612(a)(1)(D) of the Family Medical Leave Act insofar as Congress in adopting subsection (a)(1)(D) of the Act did not validly abrogate Louisiana's Eleventh Amendment sovereign immunity. See Brockman v. Wyoming Dept. of Family Servs., 342 F.3d 1159 (10<sup>th</sup> Cir. 2003), cert. denied, 540 U.S. 1219, 124 S.Ct. 1509, 158 L.Ed.2d 155 (2004). We also find that plaintiff is afforded no protection under La. R.S. 23:967 or 30:2027 for his reports relative to the State's potential liability for acquisition of the Gillis Long Hansen Disease Center insofar as the reports were required as part of his normal duties. See Sasse v. U.S. Dept. of Labor, 409 F.3d 773 (6<sup>th</sup> Cir. 2005). Also, plaintiff's allegations relative to the Gillis Long Hansen Disease Center indicate that plaintiff was merely expressing his concerns about the State's potential liability in acquiring same, which concerns do not amount to whistleblowing. Moreover, plaintiff does not allege that he attempted to disclose or threatened to disclose State activity relative to the acquisition of the Gillis Long Hansen Disease Center that he reasonably believed to be in violation of an environmental law, rule, or regulation. See La. R.S. 30:2027(A)(1).

Accordingly, we grant the exception of no cause of action filed by the Military Department for the State of Louisiana and dismiss plaintiff's claims asserted under the Family Medical Leave Act and the whistleblowing claim in regard to the State's acquisition of the Gillis Long Hansen Disease Center. The writ is denied insofar as it seeks dismissal of plaintiff's whistleblower claims relative to the State's mishandling of hurricane funds.