2016 Minnesota State Employment Law Update

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***Olson v. Push, Inc.*, 640 Fed. App'x. 567 (8th Cir. 2016)**

Plaintiff Shawn Olson was a West Virginia resident offered a position in West Virginia by Defendant Push, Inc., a Wisconsin corporation which did business in Minnesota. Olson took a pre-employment drug test in Minnesota, which he failed. Push terminated his employment as a result of his drug test result. Olson filed a lawsuit in Minnesota state district court alleging violations of the Minnesota Drug and Alcohol Testing in the Workplace Act ("DATWA"). Push removed the action based on diversity jurisdiction and the federal district court dismissed the complaint as failing to state a claim upon which relief could be granted. The Eighth Circuit reversed the decision of the district court.

DATWA defines an "employer" as a "person or entity located or doing business in [Minnesota] and having one or more employees." Minn. Stat. § 181.950, subd. 7. An "employee" is defined as a "person…who performs services for compensation, in whatever form, for an employer." *Id.* at subd. 6. Push conceded that it did business in Minnesota, but the district court concluded that "doing business," as used in DATWA, included only "relevant business – namely, the employment for which [the entity] is conducting drug testing," and concluded that "doing business" should not be construed as a broad, stand-alone qualification that applies to any employer who conducts any amount of business in Minnesota, regardless of where the employment is taking place."

The Eighth Circuit reviewed the decision of the district court de novo and reversed, concluding that based on the plain language of DATWA, as well as a review of other Minnesota employment statutes with similar language, that the Minnesota legislature "did not intend for there to be a requirement of a nexus between the drug testing and 'relevant business.'" The Court further held that "where a state's contacts with the parties or the transaction satisfy the 'significant contacts' test for personal jurisdiction," applying DATWA to the parties did not violate due process.

***Peterson v. City of Minneapolis*, 878 N.W.2d 521 (Minn. App. 2016)**

Plaintiff Scott Peterson filed an age-discrimination complaint with Defendant Minneapolis Police Department's ("MPD") human resources department in November of 2011, alleging he had been transferred due to his age. In January of 2013, the MPD determined that the transfer was not motivated by Peterson's age. Peterson then filed a charge of discrimination with the Minnesota Department of Human Rights ("MDHR"), then filed an age-discrimination lawsuit in May of 2014, alleging that his transfer constituted age discrimination in violation of the Minnesota Human Rights Act ("MHRA"). The district court dismissed Peterson's age discrimination claim on the basis that it was untimely under the MHRA's one-year statute of limitations.

The tolling provision of the MHRA provides in relevant part that:

> The running of the one-year limitation period is suspended during the time *a potential charging party and respondent are voluntarily engaged in a dispute resolution process involving a claim of unlawful discrimination under this chapter*.

Minn. Stat. § 363A.28, subd. 3.

Peterson argued on appeal that the MPD's human resources complaint process tolled the statute of limitations because the parties were "voluntarily engaged in a dispute resolution process" while Peterson's age discrimination complaint was pending with the MPD's human resources department, thus tolling the statute of limitations under Minn. Stat. § 363A.28, subd. 3. The Court of Appeals agreed, using canons of interpretation to hold that the "statutory list of 'arbitration, conciliation, mediation or grievance procedures' represents some but not necessarily all of the dispute resolution procedures that toll the statute of limitations." Therefore, the Court held that the MPD's human resources complaint process constituted a dispute resolution process tolling the statute of limitations. The Court also found that the MPD's process was "voluntary" within the meaning of the statute, and that the process only needed to "involve" not "resolve" a potential MHRA claim, and reversed the district court's decision.

***Boldt v. Northern States Power Company d/b/a Xcel Energy*, No. CV 16-232 ADM/SER, 2016 WL 3937211 (D. Minn. July 18, 2016)**

Plaintiff Wade Boldt, a union employee, sued Defendant Northern States Power Company d/b/a Xcel Energy ("NSP") in state court for disability discrimination under the Minnesota Human Rights Act ("MHRA") on the basis of a perceived disability of alcoholism. NSP removed to federal court, arguing the matter belonged in federal court because Boldt's claims were preempted by the Labor Management Relations Act ("LMRA") and the Energy Reorganization Act ("ERA"). Boldt brought a motion to remand to state court, arguing that his MHRA claims were not preempted under the LMRA because the claims did not depend on an analysis of the labor agreement between Boldt and his union and was not preempted by the ERA because the claims did not implicate NSP's ability to operate a safe nuclear facility in accordance with the ERA.

Boldt alleged that NSP had imposed additional requirements on him relating to alcohol testing over and above those provided in the labor agreement, and that this was evidence of discrimination on the basis of a perceived disability of alcoholism. The court held that Boldt's claims substantially depended on the interpretation of the labor agreement's provisions related to drug and alcohol testing and safety requirements and therefore his MHRA claims were preempted by the LMRA.

The court also held that Boldt's claims were preempted by the ERA because the ERA provides that nuclear facilities must ensure that those who have access to those facilities are "trustworthy and reliable as demonstrated by the avoidance of substance abuse" and "that the workplaces…are free from the presence and effects of illegal drugs

and alcohol." 10 C.F.R. § 26.23(a), (d). The Court found that a claim under the MHRA for disability discrimination on the basis of perceived alcoholism has the potential to conflict with the ERA because the employer can be forced to decide between being potentially liable under the MHRA for imposing alcohol testing and other conditions on the member of a protected class or potentially violating the ERA by allowing a person with a substance abuse problem access to a nuclear facility.

Accordingly, the court found that Boldt's MHRA claims were preempted by the LMRA and ERA and denied Boldt's motion to remand to state court.

***Friedlander v. Edwards Lifesciences, LLC*, No. 16-CV-1747 (SRN/KMM), 2016 WL 7007489 (D. Minn. Nov. 29, 2016)**

***Childs v. Fairview Health Servs.*, No. A16-0849, 2016 WL 6923709 (Minn. Ct. App. Nov. 28, 2016)**

***Scarborough v. Fed. Mut. Ins. Co.*, Civ. No. 15-1633 (DWF/FLN) (Feb. 1, 2017).**

These three cases all dealt with the 2013 amendment to the Minnesota Whistleblower Act ("MWA"), which, among other things, added a definition of "good faith" to the statute. Prior to 2013, the requirement that an employee's report of illegal activity to the employer be made in "good faith" was not statutorily defined. Absent a statutory definition of the term "good faith," the Minnesota supreme court held in *Obst v. Microtron, Inc.*, 614 N.W.2d 196, 202 (Minn. 2000) that a good faith report must be made for the "purpose of exposing an illegality" in order to constitute protected activity. In 2013, the Minnesota legislature amended the MWA to define good faith as conduct that is not knowingly false or in reckless disregard of the truth. Minn. Stat. §§ 181.931, subd. 4, .932 (subd. 3).

Plaintiffs Julie Childs, James Friedlander, and Jonathan Scarborough brought MWA claims against their employers – Childs in Minnesota state court and Friedlander and Scarborough in federal district court for the District of Minnesota. Their claims all involved questions of whether their reports of alleged illegal activity to the employer were made in 'good faith' pursuant to the post-amendment definition of good faith and whether the Minnesota courts' pre-amendment holdings regarding the definition of good faith reports had been abrogated by the 2013 amendment's addition of a definition of good faith to the MWA.

In *Childs*, the Minnesota Court of Appeals held that "the addition of a definition of good faith does not abrogate prior MWA-related precedent" and that "the clarification to the definition of good faith does not erase the common-law interpretation of a statutorily protected report." *Childs*, 2016 WL 6923709, at *1.

The day after the decision in *Childs*, noting that there was no controlling Minnesota court precedent on point which had adequately analyzed the effect of the 2013 amendments on the definition of a good faith report under the MWA, the *Friedlander* court certified the following question to the Minnesota supreme court:

> Did the 2013 amendment to the Minnesota Whistleblower Act defining the term "good faith" to mean "conduct that does not violate section 181.932, subdivision 3" eliminate the judicially created requirement that the putative whistleblower act with the purpose of "exposing an illegality?"

Friedlander, 2016 WL 7007489, at *5. The Minnesota supreme court has granted review in *Friedlander.*

The *Scarborough* court granted summary judgment for the employer, finding that because the *Childs* court had held that the 2013 amendment did not abrogate prior caselaw, Scarborough had not engaged in protected activity under the MWA.

***Andren v. Woodhull*, No. A15-1465, 2016 WL 1619440 (Minn. Ct. App. Apr. 25, 2016)**

The Court of Appeals overturned the district court's grant of summary judgment in a retaliatory discharge claim under the Minnesota Workers' Compensation Act ("WCA"). The district court granted summary judgment for the employer, holding that in order to prevail on a retaliatory discharge claim under the WCA, the plaintiff must show there was an obstruction of benefits. The Court of Appeals reversed, holding after a review of the statutory language and prior caselaw that there was no requirement that a plaintiff in an MWA retaliatory discharge claim show that there was an actual or attempted obstruction of workers' compensation benefits by the employer. Instead, the Court held that the plaintiff must show that he was discharged because he sought workers' compensation benefits, regardless whether there was obstruction of benefits.

***Sanchez v. Dahlke Trailer Sales, Inc.*, No. A15-1183, 2016 WL 3129352 (Minn. Ct. App. June 6, 2016), *review granted* (Aug. 23, 2016)**

The plaintiff, an undocumented worker, brought a claim of retaliatory discharge under the WCA. The plaintiff had worked for the employer since 2005. In 2013, he was injured at work and filed a workers' compensation claim. The plaintiff alleged that the employer had known for years prior to his workplace injury about his immigration status. During his deposition for the workers' compensation case, Sanchez admitted that he was not eligible to work in the United States. As a result of Sanchez's admission in the workers' compensation proceeding, the employer placed him on an indefinite, unpaid leave of absence, pending him becoming eligible to work in the United States.

The district court granted summary judgment for the employer, holding that the plaintiff could not establish a prima facie case of retaliatory discharge because he could not show that being placed on an indefinite, unpaid leave of absence was an adverse employment action. The Court of Appeals reversed, holding that the WCA was not pre-empted by the Immigration Control Act, that being placed on an indefinite, unpaid leave of absence was an adverse employment action, and that there were genuine issues of material fact as to whether the employer was aware of the plaintiff's immigration status prior to his workers' compensation deposition.