

Minnesota Statutory Whistleblower Claims Subject to Six-Year Limitations Period, Court Rules

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Effectively tripling the amount of time in which aggrieved employees may sue their employers in statutory whistleblower suits, the Minnesota Court of Appeals holds that claims under Minnesota's Whistleblower Act (Minnesota Statute section 181.932) are *not* subject to the two-year statute of limitations in Minnesota Statute section 541.07(1), but instead are subject to the six-year statute of limitations under Minnesota Statute section 541.05, subd. 1(2), reversing a long-held position. *Ford v. Minneapolis Public Schools*, No. A13-1072 (Minn. Ct. App. Dec. 15, 2014). Employers and employees alike have understood for almost 20 years that all whistleblower claims must be brought by an employee within two years of the alleged adverse action (which often is some other form of discipline, including employment termination). *Larson v. New Richland Center*, 538 N.W.2d 915 (Minn. Ct. App. 1995).

Relying on a 2013 Minnesota Supreme Court decision, the intermediate appellate court in *Ford* held that the time for commencing suit for Yvette Ford's whistleblower claim based on the Whistleblower Act was six years, because a liability "based on a statute" implicates the six-year statute of limitations. (Ford's claim was therefore timely.)

The effect on employers will be substantial if the Minnesota Supreme Court leaves the Court of Appeals' decision intact. Apart from having to wait a much longer time to gain assurance that they will not be sued, employers terminating an employee or engaging in some other adverse personnel action must plan to keep employment records regarding the action for at least six years. Employers also may have to consider taking statements from witnesses to alleged events regarding an adverse action, for claims may be brought long after many of them (including the participants in the action) have left the business. Finally, to avoid a lengthy period of uncertainty, employers may be more willing to consider entering into severance agreements and releases with terminated employees to foreclose the prospect of claims, being brought nearly six years later.

Please contact your Jackson Lewis attorneys if you have any questions about this or other workplace developments.

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