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OUR INSIGHTS

Minnesota Court Creates "Wrongful Discharge" Damages Claim for MFLSA Violations

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In an unexpected surprising broadening of employee rights under the Minnesota Fair Labor Standards Act, the Minnesota Court of Appeals held, on June 27, 2016, that an employee who is discharged for refusing to obey an employer's directive that violates the act can sue for "damages normally associated with a wrongful-discharge cause of action" and not merely lost wages. *Burt v. Rackner, Inc. d/b/a/ Bunny's Bar & Grill,* No. 12-CV-15-11477 (June 27, 2016).

Factual Background

Todd Burt was a server at a restaurant where the employer had directed that tips be shared with buspersons. The employer told Burt that "there would be consequences if that did not happen." Burt refused and was discharged, he claimed, because "he was not properly sharing tips with other staff." The Minnesota Fair Labor Standards Act (MFLSA) prohibits mandatory tip-pooling or tip-sharing arrangements, although employees may voluntarily and without the involvement of their employer agree to share tips amongst themselves.

After he was discharged, Burt sued claiming that his employer had wrongfully terminated his employment in violation of the MFLSA. Burt had not shared any of his tips, so he had not lost any pay. He sought damages, however, for his lost income due to his becoming unemployed when his employer allegedly wrongfully terminated his employment in violation of the MFLSA. The state district court granted the employer's motion for

judgment on the pleadings, ruling that the MFLSA “does not contemplate an action for wrongful discharge.” The district court reasoned that “if the Legislature had intended for employees [to] be able to sue for wrongful discharge, it would have included that language explicitly in the MFLSA, as it has done in numerous other statutes.” Burt appealed the district court’s decision.

Court of Appeals Finds Implied Action for Wrongful Discharge

A three-judge panel of the Minnesota Court of Appeals reversed. In an opinion authored by Judge Rodenberg, the court held that the employee had stated a viable claim upon which relief could be granted. Based on the court’s reading of the “employer liability” provision of the MFLSA, section 177.27, subdivision 7, the court focused on the statute’s inclusion of the term “back pay,” which it termed “an item of damages that typically flows from a wrongful termination.” The court held that where “an employee claims to have been discharged in violation of the MFLSA, resulting in lost wages by reason of the employee’s resulting unemployment, the remedies available for violation of the MFLSA include the ordinary wrongful-discharge money damages.”

The employer argued that the employee had not suffered any actual loss of tips and had not asserted a claim for unpaid minimum wages or overtime under the MFLSA. Thus, the employer’s position was that the employee must look elsewhere—either in the Minnesota Whistleblower statute or the common law—to advance a claim for wrongful discharge based on his refusal to comply with a work requirement that violated the MFLSA.

But, the Court of Appeals looked to other Minnesota statutes, which the Minnesota Supreme Court has held allows for a private cause of action for damages, although they lack a specific provision for a claim for wrongful discharge for refusal to violate the law, e.g., the state polygraph statute. Moreover, disagreeing with an argument advanced by the employer, the Court of Appeals held that the Minnesota Supreme Court, in a previous case, *Nelson v. Productive Alternatives, Inc.,* 715 N.W.2d 452 (Minn. 2006), had reaffirmed that a public policy exception to the at-will employment doctrine remained viable and had not been abrogated by the Minnesota Whistleblower statute.

Rejecting the employer’s argument that no claim for refusing to violate the MFLSA existed, the Court of Appeals stated, “That position is inconsistent with the plain language of the statute, the supreme court’s consideration of similar language in *Nelson,* and any common-sense understanding of the legislature’s intention in broadly providing employees a civil remedy for MFLSA violations.” Accordingly, the court held, the employee had stated

a claim for damages for an illegal termination under the MFLSA.

Issues With the Court’s Reading of the Law

The Court of Appeals’s expansive reading of the statute is troubling on several levels. First, the text of the MFLSA does not contain an express provision for a *civil* action for either retaliation or wrongful discharge. The MFLSA does include misdemeanor *criminal* penalties for various violations, including discharging an employee who complains either to the Minnesota Department of Labor and Industry or to the employer. The court did not address this point, nor did it consider whether the Minnesota Legislature had already addressed the issue in the remedial scheme of the statute.

Second, the MFLSA, has been viewed as providing for the recovery of minimum wages, overtime compensation, recovery of improper deductions, and various penalties that are expressly set out in the law. The decision goes beyond the “make whole” remedial scheme of the statute and could lead to the MFLSA becoming a type of “employment law tort” statute for any disagreement between an employer and employee concerning the payment of wages that could operate on a parallel track with routine claims under the state’s wage payment statute.

Third, the court did not elaborate on precisely what the damages might be, but its reference to other cases indicates that the damages may include typical damages associated with tort cases, as well as the statutory multipliers, penalties, equitable relief, and attorneys’ fees available under the MFLSA. Again, these types of damages, divorced from the underpayment of wages, are not found in the statute.

Lastly, this decision seems to be in conflict with an earlier decision of the Minnesota Supreme Court, as well as the Court of Appeals’s decision, which the supreme court affirmed, holding that the public policy exception to the employment at will rule does not apply to a termination resulting from an employee’s application for unemployment benefits. *Dukowitz v. Hannon Security Services,* 841 N.W.2d 147 (Minn. 2014). Whether this expansion of rights under the MFLSA will withstand scrutiny by the Minnesota Supreme Court remains to be seen.

Conclusion

The Court of Appeals’ decision could be a game-changer for employment law cases in Minnesota. Unless the

Minnesota Supreme Court reverses the court’s decision or the Minnesota Legislature amends the statute, employees may have a new arrow in their quivers—one that could target employers in the state.

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