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Minnesota Supreme Court: Workers' Compensation Retaliation Claims Can Result in Jury Trial, But Employers Have No Defense Based on Complaint Resolution Procedure

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An employee claiming workers' compensation retaliation under Minnesota's workers' compensation retaliation statute, Minnesota Statute Section 176.82, has a right to a jury trial, the Minnesota Supreme Court has held. *Schmitz v. U.S. Steel*, No. A12-709 (Minn. Aug. 27, 2014). The Court also held that an employee may sue his employer where his supervisor threatened to discharge him if he filed for workers' compensation benefits, even though no adverse action was ever taken.

Finally, the Court held that employer liability for the supervisor's threat cannot be avoided by providing employees with a complaint reporting system in which the employer would have the opportunity to investigate complaints and take appropriate corrective action. This is a troubling change in the law, explained below.

The Facts

Darrell Schmitz was a maintenance worker for U.S. Steel at its taconite operations in Keewatin, Minnesota. Schmitz claimed he injured his back at work in October 2006, but that when he told his supervisor about the alleged injury, his supervisor warned him not to file a workers' compensation claim because it may jeopardize his employment. The supervisor denied making any such comments. After being examined by his doctor, Schmitz returned to work a few days later, without any work restrictions.

In December 2006, Schmitz injured his back at home and was not cleared to return to work until October 2007. The employer concluded Schmitz's restrictions from that injury precluded him from working in his prior position. With no other positions available, Schmitz's restrictions effectively ended his employment.

Schmitz brought workers' compensation retaliation claims for his discharge from employment. He also brought a claim for allegedly being threatened by his supervisor about filing a workers' compensation claim, even though it was undisputed he continued to work after the alleged threat, and his employment was ended only after injuring his back in December 2006.

Lower Court Decisions

Citing a the Minnesota Court of Appeals' decision in *Snesrud v. Instant Web, Inc.* (Minn. Ct. App. 1992), the state District Court found Schmitz was not entitled to a jury trial for his workers' compensation retaliation claims. It explained that such claims were created by the Minnesota Legislature as part of the workers' compensation system, which abrogated common law claims for injuries occurring in the workplace. The case proceeded to trial without a jury.

The District Court decided the employer had not retaliated against Schmitz when his employment ended and was not liable for workers' compensation retaliation. However, it found that the employer was vicariously liable for $15,000 for emotional distress to Schmitz, as well as the related attorney's fees, for the supervisor's threat to Schmitz's employment (even though the alleged threat was never fulfilled; that is, Schmitz's supervisor never terminated his employment and his employment was not negatively affected due to the alleged threat), because

the workers' compensation retaliation statute, Minnesota Statute Section 176.82, gave the employer no defense for not having the opportunity to investigate or remedy an alleged threat and so protect itself from liability.

The Minnesota Court of Appeals reversed the District Court's determination, in part. It held Schmitz was entitled to a jury trial on his retaliatory discharge claim, but it affirmed the District Court's finding that a threat-alone claim exists in Minnesota law and that an employer may not remedy a threat-alone claim by investigating and remedying the alleged threat.

Supreme Court Decision

The Minnesota Supreme Court granted review to decide two questions: 1) was Schmitz entitled to a jury trial on his workers' compensation retaliation discharge claims; and 2) where Schmitz indisputably had not suffered any adverse employment action from the alleged threat about filing a workers' compensation claim, could the employer defend itself from liability by maintaining a procedure for employees like Schmitz to report such threats, and for the company to investigate the reports and take corrective action, if warranted.

The Supreme Court first addressed Schmitz's right to a jury trial. While acknowledging the language of Minnesota Statute Section 176.82 does not expressly provide for a jury trial, the Court found nonetheless that because workers' compensation retaliation claims were a form of wrongful discharge claims, and because Schmitz was seeking damages at law for the alleged wrongful discharge, those claims having existed at common law when the Minnesota Constitution was adopted, he was entitled to a jury trial under the Minnesota Constitution. The case will now be remanded to District Court and re-tried before a jury.

Justice Barry Anderson dissented on the jury trial question. He asserted that because the workers' compensation system did not exist in the common law, the common law remedy of a jury trial for legal relief (damages) was unavailable for workers' compensation retaliation claims. He explained that Minnesota Statute Section 176.82 was enacted at the same time that the rest of the workers' compensation statutes were enacted, including the provision stating that the entire system was enacted to replace all claims at common law for actions involving injuries in the workplace.

The Supreme Court next held that, consistent with the District Court and the Court of Appeals, that a threat-alone claim exists in Minnesota law and that an employer may not remedy a threat-alone claim by investigating and remedying the alleged threat.

Implications

Following *Schmitz*, jury trials on workers' compensation retaliation claims may be sought more frequently.

Moreover, an essential element of virtually all retaliation claims in Minnesota under state and federal law, including those under whistleblower and civil rights laws, appears to have been omitted in cases of such threats. An employee typically must show he or she has suffered an adverse action, such as termination, demotion, suspension, loss of benefits, loss of duties, and the like. Following the Supreme Court decision, a plaintiff like Schmitz may state a viable cause of action for retaliation under Minnesota Statute Section 176.82 based on a mere alleged threat, without showing he suffered any actual adverse employment action.

In addition, when an employer is faced with a claim involving alleged harassment (as opposed to a tangible employment action, such as termination, demotion, or suspension), the employer may defend against liability by causing it to be brought to its attention, investigating it, and remedying it if warranted, by virtue of a suitable policy. This has been true regardless of whether the statute involved has provided such a defense, as is the case with certain harassment claims under the Minnesota Human Rights Act. *See Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96 (Minn. 1999). The Supreme Court in *Schmitz* takes a different tack. Even though an employee may have had an obligation under the employer's employment policies to report the alleged threat, it does not matter, according to the Court. Under *Schmitz*, if the threat occurred, the employer is liable and cannot absolve itself of liability through investigation and remedy.

Employers in Minnesota should take even greater care to train their supervisors about accepting and processing

workers' compensation claims without any editorial comments to employees about the claims, understanding that such comments could be misconstrued as a threat, even though no adverse action occurs.

If you have any questions about this or other workplace developments, please contact Kurt J. Erickson, at EricksonK@jacksonlewis.com, in our Minneapolis office, (612) 341-8131, or the Jackson Lewis attorney with whom you regularly work.

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