

Minnesota Employment Law Update By Patti J. Skoglund and Marlene S. Garvis

Minnesota Human Rights Act (MHRA) Amendments

On May 13, 2014, Governor Dayton signed a bill to modify the MHRA that took effect on August 1, 2014. Previously, plaintiffs bringing claims under the MHRA were only entitled to a bench trial; however, under the modified statute, "A person bringing a civil action seeking redress for an unfair discriminatory practice, or a respondent, is entitled to a jury trial." This change can significantly impact the outcome of MHRA claims as a jury is far more unpredictable than a judge. But, employees are still barred from bringing a second claim under the Minnesota Whistleblower Act if they are already seeking redress for discriminatory practices on the same facts through MHRA procedures because the MHRA provides that its procedure, while pending, shall be exclusive.

Women's Economic Security Act (WESA)

WESA seeks to close the gender pay gap, increase income for working women and their families, expand access to high quality childcare, protect women from discrimination in the workplace, encourage women in non-traditional high-wage jobs, etc., as noted below.

Sexual and Domestic Assault: Unemployment compensation coverage has been expanded to include victims of domestic abuse, sexual assault, or stalking. This coverage includes the employee or immediate family member of the employee. And the definition of employment misconduct now excludes employment misconduct that was a result of being a victim of sexual assault or stalking. (Effective October 5, 2014.)

Parental Leave Amendment: The Minnesota Parental Leave Law has been amended to require a twelve week unpaid leave for pregnancy, birth or adoption. This leave is available to the biological or adoptive parent in

conjunction with the birth or adoption of a child, or a female employee for prenatal care or incapacity due to pregnancy, child birth or related health conditions. And, paid parental, disability, personal, medical, or sick leave or accrued vacation provided by the employer is included in the twelve weeks unless otherwise agreed to by the employer. This leave can be taken anytime within twelve months after the child is adopted or leaves the hospital. (Effective August 1, 2014.)

Care of Relatives and Sick Leave:

Employees may now take sick leave to care for their mother-in-law, father-in-law, and grandchild in addition to the previously approved relative list. Sick leave may also be used as safety leave, whether or not the employer allows sick leave for that purpose, for such reasonable periods of time as necessary. Safety leave is "leave for the purposes of providing or receiving assistance because of sexual assault, domestic abuse, or stalking." (Effective August 1, 2014.)

Pregnancy Accommodations:

Employers must provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if she so requests, with the advice of her health care provider, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business. A list of reasonable accommodations would include: temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting. Certain accommodations would not require that the employee obtain advice from the employee's health care provider, nor may an employer claim undue hardship for the following: more frequent restroom, food, and water breaks; seating; and limits on lifting over 20 pounds. (Effective May 13, 2014.)

Firm News

Jardine, Logan & O'Brien takes pleasure in announcing that **Matthew P. Bandt** has become a partner of the firm, effective October 1, 2014.



JLO also welcomes new associates **Brittany Cannon**, **Hannah Okins** and **Nick Matchen**.

Industry News

Title VII prohibits disparate treatment based on religious belief or practice, or lack thereof. Employers are required to make exceptions to their dress and grooming requirements once they are notified by the employee that an accommodation is needed for religious beliefs. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106 (10th Cir. 2010), petition for certiorari certiorari granted, 83 USLW 3069, U.S., October 2, 2014. ●

Some courts are applying a clear and unambiguous standard to a determination of whether a reservation of rights letter is effective in placing the insured on notice of a potential coverage issue. *Builders & Exteriors, Inc. v. Mid-Continent Casualty Co.*, No. WD 76880 (Mo. Ct. App. Sept. 2, 2014). ●

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Nursing Mother Accommodations: Employers must provide a nursing mother area, which must be someplace other than a bathroom. This area must be “shielded from view and free from intrusion from co-workers and the public and include access to an electrical outlet.” (Effective August 1, 2014.)

Government Contracts and Pay Equity: Any private business with more than 40 employees and State of Minnesota contract[s] of, or in excess of, \$500,000 must ensure compliance with equal pay laws. This requires that private businesses have an equal pay certificate or certified in writing that it is exempt. Equal pay certificates and exemptions can be acquired through the Minnesota Department of Human Rights. (Effective August 1, 2014.)

Whistleblower Law

Last year, the Minnesota legislature amended the Minnesota Whistleblower ACT (MWA) such that the amendments may have a significant impact on how whistleblower claims are handled within the state. Most notably, statutory definitions were added to the act in order to define the words “good faith,” “penalize,” and “report.” These definitions no longer require a strict interpretation of the words, allowing courts to maintain a suit for longer than was previously allowed per the established case decisions surrounding the MWA.

Medical Marijuana

Minnesota’s Medical Marijuana Law will have major implications for employers regarding their drug and alcohol testing policies. An employer is not allowed to discriminate against a person who is legally registered with the medical cannabis program, in hiring, termination, or any term or condition of

employment for the employee’s positive drug test for cannabis components or metabolites. This prohibition is excepted if a registered patient used, possessed, or was impaired by medical cannabis on the premises of the place of employment or during the hours of employment. Employees required to undergo employer drug testing may present verification of enrollment in the patient registry as part of the employee’s explanation of cannabis use.

Minimum Wage

New minimum wage standards are in effect as of August 1, 2014. The new standards still draw a distinction between large and small employers, but the threshold defining the two categories has changed.

Large Employers: Large employers are enterprises whose annual gross volume of sales or business is not less than \$500,000 exclusive of excise taxes at the retail level, compared to the prior \$625,000 threshold. For them the minimum wage pay rate is \$8.00 per hour as of August 1, 2014; \$9.00 per hour as of August 1, 2015; and \$9.50 per hour as of August 1, 2016.

Small Employers: Small employers are enterprises with gross sales or business less than \$500,000. For them the new minimum wage rate is \$6.50 per hour as of August 1, 2014; \$7.25 per hour as of August 1, 2015; and \$7.75 per hour as of August 1, 2016.

No Update Needed

This is it! The classic pumpkin bars recipe you’ve been looking for. It’s all here: the spicy flavor, the tender and moist texture, and that luscious cream cheese frosting. Enjoy!

<http://www.bhg.com/recipe/bars/autumn-pumpkin-bars/>

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About the Authors

Jardine, Logan & O’Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region’s largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. View our website at www.jllolaw.com to obtain additional information. Please call us to discuss a specific topic.



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