A Timely Analysis of Legal Developments

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Minnesota Court Overturns 20 Years of Precedent to Extend Whistleblower Statute of Limitations to Six Years

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On December 15, 2014, the Minnesota Court of Appeals extended the statute of limitations for Minnesota Whistleblower Act (MWA) claims from two to six years. In *Ford v. Minneapolis Public Schools*,[1] the court overturned 20 years of precedent[2] and held that because the claim was created by statute, recent Minnesota Supreme Court case law[3] dictates that the longer six-year limitations period applies. Unless and until the Minnesota Supreme Court considers the issue, this will become the latest expansion of employee rights under the MWA in the past two years.

The Plaintiff's Whistleblower Claim

The plaintiff is a former Minneapolis Public School employee who reported alleged financial improprieties and discrepancies to the superintendent in 2007. The following April, she was informed that her position was going to be eliminated and her last day of work was June 30, 2008. She filed a whistleblower lawsuit on June 29, 2010, and the district court dismissed the case finding that the two-year statute of limitations commenced in April when she learned of her job elimination. The Court of Appeals affirmed, and the plaintiff appealed to the Minnesota Supreme Court.

While the plaintiff's appeal was pending, the Minnesota Supreme Court ruled in another case that the statute of limitations for a claim under the Minnesota Drug and Alcohol Testing in the Workplace Act is six years because it is a statutory claim.[4] The court then remanded the plaintiff's case to the Court of Appeals to determine if the new standard changed the MWA limitations period.

The Court's Analysis

Prior to the Supreme Court's decision in *Sipe v. STS Mfg., Inc.*, the MWA statute of limitations was two years based on the rationale that it is a tort resulting in personal injury."[5] Minnesota courts

1 Case No. A13-1072 (Minn Ct. App. Dec. 15, 2014).

2 *Larson v. New Richland Care Ctr.*, 538 N.W.2d 915 (Minn. Ct. App. 1995).

3 *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683 (Minn. 2013).

4 *Id.* at 686-87.

5 Minn. Stat. § 541.07(1).

had determined that because the MWA was akin to an intentional tort, the two year statute applied.[6] After *Sipe*, the analysis turns on whether the tort "originates at common law."[7] The Court of Appeals determined that whether the MWA meets this criterion "depends upon whether the whistleblower claim was created by statute or first existed at common law and was later recognized by statute."[8]

In 1986, the Minnesota Court of Appeals first recognized a tort of wrongful discharge for reasons that contravene a clear mandate of public policy.[9] The Supreme Court modified the appellate court holding to prevent wrongful discharge for refusing to violate the law.[10] While the case was pending before the Supreme Court, the Minnesota Legislature enacted the MWA which prohibits discipline or discharge for, among other things; 1) reporting a violation of any law to an employer or 2) refusing to perform an employer's order the employee believes violates any state or federal law.[11] The *Ford* court reviewed this history and determined that Ford's claim arose under the reporting provision of the MWA and did not have a prior basis in common law. Accordingly, the court determined that the plaintiff's claim was subject to the six-year limitations period.

Questions for Employers

There remain unanswered questions in the wake of the *Ford* decision. The court is clear that the six-year statute of limitations applies to actions in which an employee claims retaliation because she reported a violation of law. However, the court did not answer the question of whether a refusal claim under the MWA is subject to the six-year statute as well? This type of claim was established at common law prior to the enactment of the MWA[12] and its inclusion in the statute appears to have simply codified this common law claim. The rationale in *Sipe* would dictate a two-year statute for these claims. But will the courts allow different limitations periods for different subsections of the same statutory claim? And if not, does the two-year or six-year statute apply?

For now, employers must be wary that potential whistleblower claims have a shelf life of six years. Employers should carefully investigate employee allegations of wrongdoing and document the steps taken in those investigations. Strong documentation regarding both the investigation and the reasons for any adverse action against an employee will remain critically important in avoiding whistleblower liability in Minnesota, and *Ford* counsels that employers should retain such documentation for at least six years.

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6 *Larson*, 538 N.W.2d at 920.

7 *Sipe,* 834 N.W.2d at 687.

8 Case No. A13-1072, at *7-8.

9 *Phipps v. Clark Oil & Ref. Corp.*, 408 N.W.2d 569, 570 (Minn. 1987).

10 *Id.* at 571.

11 Minn. Stat. § 181.932, subd.1 (1), (3).

12 *Phipps,* 408 N.W.2d at 571.