Employees Have Won A String Of Important Minnesota Supreme Court Victories Since The Onset Of The COVID-19 Pandemic

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Introduction

Nearly two years after COVID-19 began to spread across the world, the pandemic continues to have a devastating impact. Since the start of 2020, countless lives have been lost or irreparably harmed because of COVID-19 and the disparities underlying and/or exacerbated by the spread of the disease.

One of the few positive developments during this time, aside from the creation of safe and highly effective COVID-19 vaccines, is a series of decisions by the Minnesota Supreme Court that have reinforced and even expanded rights for employees. As discussed below, the outlook is good for plaintiffs prosecuting employment and civil rights cases under State law going forward.

I. Civil Rights Protections In The Workplace Must Be Applied And Enforced Broadly Now

In a unanimous decision, *Kenneh v. Homeward Bound, Inc.*,[1] the Minnesota Supreme Court clarified the legal standards for, and the analysis of, harassment claims pursued under the Minnesota Human Rights Act ("MHRA")[2]. Given the breadth of the decision in *Kenneh*, as explained more fully below, this precedent will likely also affect the future prosecution of other types of claims under the MHRA. Notably, the Minnesota Association for Justice jointly prepared and filed an *amici curiae* brief in support of the plaintiff in the case.

In *Kenneh*, the Minnesota Supreme Court effectively changed the law in several ways. First, *Kenneh* substantially lowers the bar for proving that a plaintiff experienced illegal harassment. Specifically, Minnesota courts must now consider the totality of the circumstances while construing the MHRA liberally.[3] Second, *Kenneh* explicitly rejects the previously favored approach of deferring to Federal precedent under Title VII and similar statutes.[4] This Federal precedent too often turns on an antiquated notion of what constitutes illegal harassment or other illegal discrimination. Third, *Kenneh* emphasizes that whether a plaintiff experienced illegal harassment should generally be decided by a jury at trial rather than by a judge at the summary judgment stage.[5] In other words, plaintiffs in harassment cases ordinarily should no longer be denied their proverbial day in court.

In the course of rendering its expansive decision in favor of fundamental workplace fairness, the Minnesota Supreme Court stated the governing legal standards and analysis in ways that should significantly help employees and other plaintiffs going forward after *Kenneh*:

- The MHRA provides "more expansive protections" than Federal law does;[6]
- The MHRA must be interpreted broadly to ensure robust enforcement of civil rights protections;[7]
- A lower court's interpretation of the MHRA will be reviewed de novo;[8]
- The standard for what is illegal harassment "***must evolve to reflect changes*** in societal attitudes towards what is acceptable behavior";[9]
- Finders of fact, normally a jury, "***must consider the totality of the circumstances***" when deciding whether illegal harassment has happened;[10]
- "A single, severe incident" or a series of non-actionable incidents can be enough to prove illegal harassment;[11]
- Every case "***must be considered on its facts, not on a purportedly analogous federal decision***";[12]
- Summary judgment must be denied whenever a "reasonable person could find the alleged behavior objectively abusive or offensive";[13] and
- Whether the conduct at issue is illegal harassment is "generally a question of fact for the jury."[14]

It seems evident that *Kenneh* resulted from the advocacy inspired by the #MeToo and #TimesUp movements. In any event, the updated legal standards and upgraded analytical approach to harassment claims should help to reduce the amount of harassment in the workplace and beyond.

The revised legal standards and analytical approach established by *Kenneh* regarding harassment claims under the MHRA should apply with equal force to retaliation claims and to discrimination claims under the MHRA. To conclude otherwise would undermine the compelling public policy codified by the MHRA: to prevent civil rights violations to the extent possible and, when they still occur, to provide meaningful remedies to those harmed by the violations.[15] Those remedies include treble compensatory damages, punitive damages, and attorney's fees.[16]

In *Abel v. Abbott Northwestern Hospital*,[17] the Minnesota Supreme Court reiterated the liberal approach that must be used with employment claims under the MHRA. To that end, *Abel* applied the continuing violations doctrine broadly to rule that employment discrimination claims pursued by the plaintiff should be considered timely filed.[18] In addition, *Abel* held that the employment protections under the MHRA apply to unpaid interns.[19] When concluding that the prohibitions against discrimination, harassment, and retaliation under MHRA now indisputably apply to interns, the Minnesota Supreme Court reasoned as follows:

> [R]eliance ***on common-law agency principles alone is unnecessarily restrictive in light of the liberal construction we must afford the Human Rights Act.*** While common-law principles impose reasonable constraints on the maintenance of employment discrimination suits, we conclude that Title VII's hybrid test is the more appropriate approach in this case. Under the hybrid test, the existence of an employment relationship "is construed in light of general common-law concepts, taking into account the economic realities of the situation."[20]

As in *Kenneh*, then, the Minnesota Supreme Court in Abel reaffirmed the requirement to construe rights under the MHRA expansively in furtherance of the compelling public policy codified in the MHRA.[21]

II. Progressive Legislation At The Local Level To Provide Paid Sick Leave And To Increase The Minimum Wage Have The Force Of Law

In *Minnesota Chamber of Commerce v. City of Minneapolis*,[22] the Minnesota Supreme Court upheld the Minneapolis Sick and Safe Time ("SST") Ordinance.[23] The corporate interests opposed to the SST Ordinance[24] argued that State law somehow "preempted" the progressive local law adopted by Minneapolis.[25]

The Minnesota Supreme Court decisively rejected the preemption arguments against the SST Ordinance.[26] In *Chamber of Commerce*, the Minnesota Supreme Court also dismissed the argument that the Minneapolis ordinance has an illegal impact beyond Minneapolis borders.[27] The Minnesota Supreme Court ruled that requiring employers to provide paid sick leave and paid safe time for employees working in Minneapolis, even when an employer has no office or facility within city limits, is proper because the paid sick leave and paid safe time obligations address primarily a local concern.[28]

As the ongoing COVID-19 pandemic shows, compelling employers to provide paid sick leave to employees in Minneapolis addresses public health concerns that go well beyond Minneapolis. The legal victory in *Chamber of Commerce*, which means that approximately 100,000 more employees in Minneapolis now have paid sick leave, reinforces the growing trend of cities and counties across the country requiring employers to provide paid sick leave. This trend has taken on even greater importance given the lack of responsible leadership at the Federal level. Recognizing the inadequate response at the Federal level to people's needs, Minnesota Governor Tim Walz and Lieutenant Governor

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Peggy Flannagan as well as the leadership of the Minnesota House of Representatives have been seeking to establish a right to paid sick leave for all Minnesotans. Unfortunately, Republicans in the Minnesota Legislature have continued to block those efforts – even as the COVID-19 pandemic has continued.

In *Graco, Inc. v. City of Minneapolis*,[29] the Minnesota Supreme Court rendered another nationally significant decision that reinforces the importance of progressive action at the local level. Significantly, Republican-appointed Chief Justice Lorie Gildea authored the unanimous decision in *Graco*.

For two main reasons, the Minnesota Supreme Court in *Graco* unanimously rejected the conflict and preemption arguments conjured up by corporate interests opposed to a more balanced economy achieved via local wage laws. First, progressive local action to increase wages does not conflict with State law, the Minnesota Fair Labor Standards Act ("MFLSA"),[30] given State law provides a floor rather than a ceiling for wages.[31] Second, State law does not preempt progressive local action to increase wages because State law does not fully occupy the field of employee wages given wages are not solely a matter of State concern.[32] In short, local jurisdictions like Minneapolis now indisputably have the ability to raise the minimum wage for employees who work there to $15 or more per hour. The legal authority to take such progressive action generally flows from localities' home rule powers over public health, safety, and the general welfare of those who live and/or work there.

Powerful corporate interests, including the Chamber of Commerce, fought for 3 years against the progressive local action ultimately endorsed by the Minnesota Supreme Court in *Graco*. Like in other parts of the country, corporate groups have sought to thwart local democracy through costly litigation and aggressive lobbying orchestrated by the American Legislative Exchange Council and similar groups. Those efforts to put profits over people in Minnesota failed, however, and over 70,000 employees in Minneapolis have received substantial wage increases because of the ruling in *Graco*.

III. Employee Handbooks May Create More Actionable Employee Rights Now

In *Hall v. City of Plainview*,[33] the Minnesota Supreme Court extended the legal doctrine recognizing that an employee handbook can create obligations for employers regarding their employees.[34] In particular, such handbooks can be a contract between employers and employees about, for example, employee benefits or other compensation.

Hall represents an important advance in the law because the Minnesota Supreme Court ruled that employee handbooks can establish an employee's contractual right to compensation even when those handbooks have a general disclaimer. Such disclaimers, which appear in virtually every employee handbook, typically declare that the handbooks do not create contractual rights in any respect. In *Hall*, however, the Minnesota Supreme Court made clear that a claim for unpaid compensation based on a specific promise in an employee handbook should now at least survive summary judgment even if the handbook has a general disclaimer about not creating any contract rights. In other words, these types of claims should be decided by a jury at trial rather than by a judge at the summary judgment stage.

Hall takes on greater importance given the amendments to the Minnesota Payment of Wages Act ("MPWA").[35] Although that law does not create a substantive right to compensation, as the Hall ruling acknowledged, the relevant statutory provisions provide a robust basis for pursuing compensation claims nonetheless.[36] The MPWA offers a powerful vehicle to enforce the contract rights expanded under *Hall* and the compensation claims based on any other legal authority, including local wage ordinances and government policy.[37] Consequently, the MPWA provides a vital complement to enforcement under the Federal Fair Labor Standards Act[38] and the MFLSA.

Conclusion

Although employees still face a number of challenges when pursuing claims in State court, the legal landscape has greatly improved because of the precedent established by the Minnesota Supreme Court since the COVID-19 pandemic began. Indeed, a number of the cases decided during this time have received national acclaim for providing a principled and progressive path toward more workplace fairness.

[1]944 N.W.2d 222 (Minn. 2020).

[2]Minn. Stat. §§ 363A.01, *et seq.*

[3]*Kenneh*, 944 N.W.2d at 231.

[4]*Id.*

[5]*Id.* at 232.

[6]*Id.*at 229.

[7]*Id.* at 232.

[8]*Id.* at 228.

[9]*Id.* at 231.

[10]*Id.*

[11]*Id.* at 232.

[12]*Id.* at 231.

[13]*Id.* at 232.

[14]*Id.*

[15]Minn. Stat. § 363A.02.

[16]Minn. Stat. § 363A.29; Minn. Stat. § 363A.33.

[17]947 N.W.2d 58 (Minn. 2020).

[18]*Id.* at 73.

[19]*Id.* at 76.

[20]*Id.*

[21]Minn. Stat. § 363A.02.

[22]944 N.W.2d 441 (Minn. 2020).

[23]*Id.* at 456.

[24]MCO §§ 40.10, *et seq.*

[25]*Id.* at 447.

[26]*Id.* at 449, 453.

[27]*Id.* at 456.

[28]*Id.* at 454-55.

[29]937 N.W.2d 756 (Minn. 2020).

[30]Minn. Stat. §§ 177.21, *et seq.*

[31]*Graco, Inc.*, 937 N.W.2d at 763.

[32]*Id.*

[33]954 N.W.2d 254 (Minn. 2021).

[34]*Id.* at 267-68.

[35]Minn. Stat. §§ 181.13-.14, 181.171.

[36]Minn. Stat. §§ 181.13-.14.

[37]Minn. Stat. §§ 181.13-.14, 181.171.

[38]29 U.S.C. §§ 201, *et seq.*

QUESS WHO?

Answers for page 9:

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