Minnesota Supreme Court Upholds the Legislative Fix of Minnesota's Whistleblower Law – to the Benefit of Plaintiffs and the Rule of Law

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Much like the Americans with Disabilities Act[1] ("ADA") before the 2009 Congressional amendments to that statute, Minnesota's whistleblower law[2] before the 2013 Minnesota Legislature amendments provided little protection to employees. Like Congress concerning the ADA, the Minnesota Legislature amended Minnesota's whistleblower law to restore integrity and efficacy to the statutory regime. Before the amendments, plaintiffs struggled to invoke Minnesota's whistleblower law successfully, just as plaintiffs had under the ADA, because it had become increasingly difficult to show that the law as courts were construing the statutes more and more narrowly.

As to Minnesota's whistleblower law, plaintiffs often found it difficult before 2013 to convince a court they actually engaged in protected activity such that they could assert valid whistleblower claims when employers took adverse action against them because of the activity. Thus, the Minnesota Legislature revised the language of Minnesota's whistleblower law explicitly and unequivocally to reestablish a sweeping definition of protected activity.

Thanks to the 2013 amendments by the Minnesota Legislature, Minnesota's whistleblower law expressly defines protected activity as a good faith report – verbally or in writing – of any actual or apparent violation of a legislatively, administratively, or judicially established standard by the employer or a third party.[3] In that regard, good faith reports include anything that is not akin to fraud.[4] Among other things, this means that Minnesota's whistleblower law protects employees when making reports when doing so is part of their job.[5] Furthermore, the amended law protects those who report anticipated violations.[6]

The corporate world has reacted strongly and negatively to these positive developments for whistleblowers under Minnesota law. In fact, the United States Chamber of Commerce became involved in a case recently before the Minnesota Supreme Court to seek essentially a nullification of the Minnesota Legislature's 2013 amendments. In that case, *Friedlander, v. Edwards Lifesciences, LLC*,[7] the United States Chamber of Commerce argued that a whistleblower supposedly makes a "good faith" report, such that he or she

receives protection under Minnesota's whistleblower law, only if the purpose of the report is to "expose an illegality." As a practical matter, the adoption of that argument would likely have caused a significant and deleterious chilling effect on whistleblowing.

Fortunately – and in a unanimous decision authored by the Chief Justice – the Minnesota Supreme Court upheld the legislative fix of Minnesota's whistleblower law by the Minnesota Legislature in 2013. In particular, the Minnesota Supreme Court held that a "good faith" report by a whistleblower means any report not knowingly false or recklessly disregarding the truth. By affirming the Minnesota Legislature's expansive definition of "good faith" report, the Minnesota Supreme Court has enabled whistleblowers to prosecute retaliation claims more effectively going forward. In that regard, an employee needs not be fired or suffer other economic loss to experience adverse action for purposes of a whistleblower claim.[8] Moreover, retaliation under Minnesota's whistleblower law includes "conduct that might dissuade a reasonable employee from making or supporting a report, including post-termination conduct by an employer or conduct by an employer for the benefit of a third party."[9]

[1]42 U.S.C. §§ 12101, *et seq.*

[2]Minn. Stat. §§ 181.931, *et seq.*

[3]Minn. Stat. § 181.931, Subds. 4, 6; Minn. Stat. § 181.932, Subd. 1.

[4]Minn. Stat. § 181.931, Subd. 4.

[5]*Id.*; Minn. Stat. § 181.932, Subd. 1.

[6]Minn. Stat. § 181.932, Subd. 1.

[7]Case No.: A16-1916 (Minn. 2017).

[8]Minn. Stat. § 181.931, Subd. 5.

[9]*Id.*