

Legislative Fix Regarding Minnesota's Whistleblower Law Continues to Benefit Plaintiffs and the Rule of Law



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Introduction

The Minnesota Court of Appeals recently rendered an important whistleblower ruling. In that case, *Moore v. City of New Brighton*,¹ the Court reversed summary judgment for the employer and remanded the whistleblowing claims to the district court for trial on the merits.

As outlined more fully below, this case highlights the importance of the legislative process to ensuring that aggrieved parties actually have meaningful access to our civil justice system and, moreover, that culpable parties are actually held accountable. In that regard, the Minnesota Association for Justice played a pivotal role in spearheading the successful effort to amend Minnesota's whistleblower law in ways that made the *Moore* decision both possible and necessary.

I. The Significance of the Court's Ruling in *Moore*

To reach its decision in *Moore*, the Court relied heavily on the amendments to Minnesota's whistleblower law² that the Minnesota Legislature enacted in 2013. The amendments to Minnesota's whistleblower law greatly expand what courts must consider to be protected activity – that is, what action of an employee can trigger legal protection from retaliation by an employer.³ In addition, the amendments substantially enlarge the scope of what it means for an employer to retaliate against an employee and, consequently, what can cause damages prompting a monetary award to a plaintiff.⁴

Moore also provides important guidance because of how the Court analyzed whether the plaintiff presented enough evidence of illegal retaliation to warrant a trial. Specifically, the Court emphasized that questions about whether a retaliatory motive caused the challenged action against the employee and, moreover, whether the employer's reasons for taking the challenged action are a cover for retaliation must be viewed

in the light most favorable to the plaintiff and while looking at all of the evidence together.

II. The Reasoning of *Moore* in the Court's Own Words

While rejecting the employer's argument that the plaintiff's report about a breach of contract is not protected activity triggering application of Minnesota's whistleblower law, the Court explained as follows: "The statute is no longer limited to protecting reported violations of laws and rules. The legislature amended the statute in 2013 to add reports of 'common law' violations to the class of reports protected by the Whistleblower Act."⁵

The Court in *Moore* also found no merit to the employer's contention that putting the plaintiff on administrative leave, reassigning the plaintiff, and providing the plaintiff with performance evaluations and coachings did not amount to adverse action under Minnesota's whistleblower law. "***We have no difficulty concluding that, as a matter of law, an employee's assignment to administrative leave might in some circumstances constitute a penalty under the whistleblower statute.*** The act defines the term 'penalize' to include conduct 'that might dissuade a reasonable employee from making or supporting a report.' This statutory definition, which the legislature adopted in 2013, *see* 2013 Minn. Laws ch. 83, § 2, at 469, has not been construed in any Minnesota case. But its ***operative terms, 'might dissuade' and 'reasonable employee,' are plain and unambiguous, and they suggest an inclusive reach into a wide variety of unspecified employer behavior.*** Nothing on the face of the definition categorically excludes as actionable conduct an employer's decision to investigate an employee and remove him from active service by placing him on extensive administrative leave. *** [A]lthough the district court may have been correct in deeming the reassignment, performance evaluation, and coaching directive as unlikely, individually, to dissuade

a reasonable employee from engaging in protected conduct, we reach a different conclusion by **considering these actions as a collective** with the city's investigative and leave actions."⁶

Regarding whether a retaliatory motive could have caused the employer to take the challenged actions against the plaintiff, the Court concluded "yes" in *Moore*. "Here the city identifies reasonable evidence that might weaken Moore's case for causation, but on summary judgment we do not weigh the evidence. **We are not deciding whether the evidence reasonably could support a finding favoring the city's position, but whether it could support a finding favoring Moore's.** A jury could conclude both that retaliatory motives precipitated the city's treatment of Moore and also that others similarly situated were not similarly treated."⁷

Last, but certainly not least, the Court quoted longstanding Minnesota Supreme Court precedent to rule that the reasons offered by the employer for taking the challenged actions against the plaintiff could be a cover for retaliation against the plaintiff. "A **plaintiff**

can satisfy his burden of showing pretext 'either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.'

The first problem with resolving the question of pretext at summary judgment is that Moore disputed the city's underlying factual premise, saying that he never told the city that he planned on retiring. The second problem is independent of the first. The city's explanation for its extraordinary, months-long extension of Moore's administrative leave is sufficiently dubious that a factfinder might well conclude that it is merely pretextual."⁸

Conclusion

To state the obvious, legislation matters and courts matter. As the attacks on the rule of law escalate at the Federal level, the recent decision in *Moore* at the State level provides a beacon of hope and a clear path ahead for protecting and advancing fundamental legal rights. Basic fairness and the democratic mandate demand nothing less. ▀

¹ __ N.W.2d __, 2019 WL 3406314 (Minn. Ct. App. 2019)

²Minn. Stat. §§ 181.931-32

³*Id.*

⁴*Id.*

⁵*Moore*, __ N.W.2d __, 2019 WL 3406314, *5 (citing Minn. Stat. § 181.932).

⁶ __ N.W.2d __, 2019 WL 3406314, *6, *8 (emphasis added) (citing Minn. Stat. § 181.931).

⁷ __ N.W.2d __, 2019 WL 3406314, *8 (emphasis added).

⁸*Moore*, __ N.W.2d __, 2019 WL 3406314, *9 (emphasis added) (citing Minnesota Supreme Court precedent).

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