



## MEYER NJUS TANICK

Attorneys at Law



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Here is a glimpse at some recent cases decided by the Federal and State courts regarding the rights and obligations of employers and employees in Minnesota taken from Marshall Tanick's recent monthly columns on employment law in *Bench & Bar* magazine.

### DISCRIMINATION, TERMINATION CLAIMS FAIL IN 8<sup>th</sup> CIRCUIT CASES

*Appellate Court Upholds Dismissals*

Keeping an eye on  
Developments in  
Employment Law for  
Employers and  
Employees

**Age discrimination and retaliation; claims dismissed.** An employee who alleged age discrimination retaliation after she was fired by a Twin Cities bank lost her appeal. The Eighth Circuit Court of Appeals affirmed a ruling by U.S. District Chief Judge John Tunheim dismissing the lawsuit on grounds that the bank articulated a legitimate, non-discriminatory reason for the termination and the retaliation claim failed to establish causation.

**McKey v U.S. Bank National Association**, 2020 WL 6220010 (Minn. Ct. App. 10/23/2020) (unpublished).

**Wrongful termination; safety issues not actionable, but cost award reversed.** A plant worker at an automobile manufacturing plant lost his challenge to a wrongful termination claim after he reported safety issues with the plant's manufacturing process. The Eighth Circuit upheld summary judgment under the Federal Moving Ahead for Progress in the 21<sup>st</sup> Century Act, which governs safety matters "relating to motor vehicle defects," on grounds that the complaint about the quality control process did not fall within the "defect" provision of the statute and, therefore, the employee did not engage in statutorily protected activity. However, the Court did reverse the minor determination award for costs for posting and shipping for the employer. **Barcomb v. General Motors, LLC**, 2020 WL 6072606 (Minn. Ct. App. 10/15/2020) (unpublished).

**An appeal of a noncompete injunction; mootness doctrine defeats appeal.** An employee who was enjoined for violating a noncompete clause was not entitled to challenge the injunction after it expired. The Eighth Circuit ruled that the case was moot and, therefore, dismissed the appeal. **Perficient, Inc. v. Munley**, 973 F.3d 914 (8th Cir. 9/3/2020).

**One time claim; estoppel inapplicable.** A flight paramedic who sued for unpaid overtime wages under his company's policy prohibiting overtime pay unless an employee works more than 82 hours over a two week time period, pursuant to the Fair Labor Standards Act, was unsuccessful in challenging dismissal of his lawsuit. The Eighth Circuit, in a decision written by Judge David Stras of Minnesota, affirmed the dismissal on grounds that the employer was not equitably estopped from arguing that a statutory exemption for "air carriers" applied and the employer was covered by that classification. **Riegelsberger v. Air Evac EMS, Inc.**, 970 F.3d 1061 (8th Cir. 8/17/2020).

**Long term disability benefits not covered by ERISA.** A governmental employee who applied for long term disability benefits under the Employee Retirement Income Security Act (ERISA) was unsuccessful because the arrangement under which he sought the benefits was as government plan that was not subject to the statute. The Eighth Circuit affirmed dismissal because on grounds that ERISA did not extend to governmental plans and, furthermore, a breach of contract claim was not actionable because the employer acted in accordance with a

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contract in denying the claim after the employee elected a refund of his plan contributions, which ended his participation in the benefits pool. *Hampton v. Standard Insurance Company*, 2020 WL 4557654 (Minn. Ct. App. 8/7/2020) (unpublished).

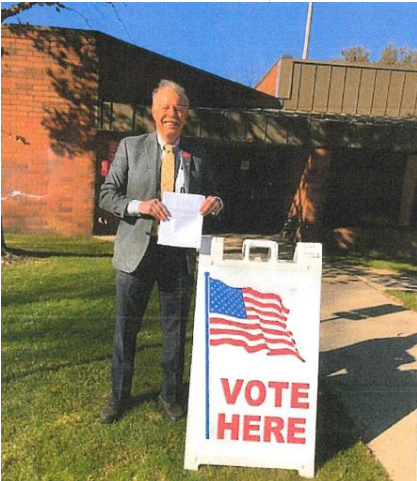
**Workers Compensation Intervention; collateral attack disallowed.** The health care provider who does not intervene in a workers compensation proceeding after receiving notice of an employee's pending workers compensation proceeding cannot collaterally attack the award on stipulation. The Supreme Court, affirming a decision of the workers' compensation court of appeals, held that when a health care provider who voluntarily declines to intervene in a pending proceeding after receiving timely and adequate notice, cannot initiate the collateral attack on the award under Minn. Stat. §§ 176.271, 291 or Minn.R. 1420.1850, subp. 3B. *Koehnen v. Flagship Marine Co.*, 947 N.W.2d 448 (Minn. Ct. App. 8/12/2020).

**Whistleblower claim dismissed; no causal connection established.** A custodian failed in a challenge to dismissal of a whistleblowing claim against the school district for which he worked under the dismissal whistleblower statute, Minn. Stat. § 181.932, and Minnesota Occupational Safety & Health Act, MOSHA. The Minnesota Court of Appeals affirmed dismissal on grounds that the employee failed to show a causal connection between reporting air and quality concerns and other safety hazards and a determination, further noting that the employee intentionally disobeyed directives from the school's principal regarding when to lock the school's fire doors. *Slaughter v. Ind. Sch. Distr. #833*, 2020 WL 4579014 (Minn. Ct. App. 8/10/2020) (unpublished).

An Employee who was fired after he missed two days of work while he was in jail was denied unemployment compensation benefits. The Court of Appeals, upholding a decision by an Unemployment Law Judge, held that the applicant was disqualified due to employment "misconduct," but it reversed the portion of the determination that the employee engaged in aggravated misconduct on grounds that he was discharged for absenteeism. *Leuze v. Minnesota Alfalfa Producers*, 2020 WL 4743505 (Minn. Ct. App. 8/17/2020) (unpublished).

## HOLIDAY HELPING HAND

Marshall H. Tanick ↓



Poll Watching

Marshall H. Tanick ↓



Post Office Award

Marshall H. Tanick ↓



Goods for Goodwill

**Marshall H. Tanick**, of the law firm of **Meyer Njus Tanick** helped out in the community prior to the end-of-the-year Holiday. He served as a poll watcher at two Golden Valley precincts during the fall elections (left). He also participated as a member of the Twin Cities Consumer Postal Advisory Council at an event recognizing the Elmhurst branch office as Post Station of the Year in the Minneapolis area (Center, third from right). **Mr. Tanick** lent a hand to the Goodwill Store by making his family's annual contribution of goods and items to the Goodwill facility in St. Louis Park (right).

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