



MEYER NJUS TANICK

Attorneys at Law



Marshall H. Tanick

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.

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

DOCTOR LOSES DUAL BIAS CASE

Courts also rule against unemployment claimants

Doctor's dual claim rejected; misconduct not discrimination. An African-American Egyptian Muslim physician lost his discrimination claim following his resignation from The Mayo Clinic in the wake of an investigation that led to a recommendation that he be fired. The Eighth Circuit Court of Appeals, upholding a decision of U.S. District Court Judge Eric Tostrud, held that the physician committed misconduct including sexual harassment, which defeated his claim of religious and racial bias. *Said v. Mayo Clinic*, 2022 WL 3440394 (Minn. Ct. App. 08/17/2022) (unpublished).

FLSA; Expert testimony improperly excluded. The faulty exclusion of expert testimony in a Fair Labor Standards Act (FLSA) wage case warranted further proceedings. The Eighth Circuit vacated the exclusionary rulings in a class action brought by commercial truck drivers claiming they were not properly paid for off-duty time while participating in a student training program. *Petrone v. Werner Enterprises, Inc.*, 42 F.4th 962 (8th Cir. 08/03/2022).

Workers compensation; company exempt from liability. A locomotive engineer who brought a negligence claim against a company that had contracted with his employer was not entitled to proceed with his action. The Eighth Circuit held that because the claimant had received a workers' compensation settlement from his employer, the other contracting entity was exempt from liability on grounds that the injured party was covered by his immediate employer. *Blanton v. The Kansas City Southern Railway Company*, 33 F.4th 979 (8th Cir. 05/10/2022).

Workers compensation; exposure to noise covered; An employee, whose job included monitoring workplace noise levels was entitled to workers compensation benefits due to exposure to hazardous noise, which was deemed a "significant contributing factor" in the development of his hearing loss. The Minnesota Supreme Court, partially upholding a decision of the Workers' Compensation Court of Appeals, held that there was sufficient evidence that the employee sustained occupation disease for which compensation was required, and the court properly ordered payment of medical benefits by the employer, whom the employee was most recently exposed to the hazard of the diseases. However, the court overruled the compensation judge in determining that all issues, other than medical benefits were moot, and remanded for determination whether the

MEYER NJUS TANICK

www.meyernjus.com
(612) 341-2181

Minneapolis * St. Paul * St. Louis Park
Direct Dial (612)630-3221

“last-exposure employer” was entitled to reimbursement from the “last exhibit exposure” employer under Minn. Stat. § 176.12, subd. 5 and Minn. Stat. § 176.66, subd. 10. *Sershen v. Metropolitan Council*, 2022 WL 1482048 (Minn. App. 05/11/2022)(unpublished).

Unemployment compensation; not available for suitable employment. An employee with a 15-pound lifting restriction that prevented him from doing his plumbing work was not available for suitable employment and, thus, denied unemployment benefits. The Minnesota Court of Appeals affirming a ruling of an Unemployment Law Judge (ULJ) with the Department of Employment & Economic Development (DEED) held that the six-week period of inability to work barred benefits for that period. *In re Miezwa*, 2022 WL 3348571 (Minn. Ct. App. 08/15/2022) (unpublished).

Unemployment compensation; pandemic assistance denied. An employee was deemed ineligible for pandemic unemployment assistance (PUA). *In re Chandler*, 2022 WL 3348646 (Minn. Ct. App. 08/15/2022) (unpublished).

Unemployment compensation; two misconduct rulings. The appellate court upheld a pair of ULJ denials of benefits due to misconduct.

Failure to comply with the employer’s COVID policy barred benefits for another employee for failure to adhere to a “reasonable” policy. *Costello v. Fon du Lac Reservation*, 2022 WL 3348567 (Minn. Ct. App. 08/15/2022) (unpublished).

An employee who took air filters from his work without permission constituted disqualifying “misconduct” in *Christenson v. RIHM Motor Co.*, 2022 WL 3149257 (Minn. Ct. App. 08/08/2022) (unpublished).

TANICK DISCUSSES & DONATES



*Recalling Watergate to
“Ham & Eggs” in Edina*



*Food for the Needy
at Bet Shalom*



*Supreme Court Review
with “Gyro’s” in Edina*

Marshall H. Tanick of the law firm of **MEYER NJUS TANICK** squeezed in helping to donate food to the needy between a couple of discussions on hot legal topics to two social groups in Edina. **Mr. Tanick** completed his series of PowerPoint presentations about “Watergate at 50: The Minnesota Connections” commemorating the 50th anniversary of the Watergate scandal to the “Ham & Eggs” Breakfast Club at the Edina Country Club, where he joined afterwards, with members **Tim Sullivan** and **James Dunn**, two Minnesota lawyers (left). He also spoke to the Gyro’s dinner group at the same site on a different topic: “The Tumultuous Term”, a review of recent and upcoming U.S. Supreme Court cases, joining with Gyro’s members, **Ross Davis**, President, and **Gordon Johnson**, (right). Between a pair of presentations, he participated in a food drive organized by Bet Shalom synagogue in Minnetonka as part of its annual Holiday food donation program for the underprivileged (center).

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