

LANDMARKS IN THE LAW

Current developments in judicial law, legislation, and administrative action together with a foretaste of emergent trends in law and the legal profession for the complete Minnesota lawyer.

Employment & Labor Law

Age, race discrimination; not similarly situated.

A Black man lost his lawsuit claiming racial and age discrimination after he was fired for a safety infraction when heavy equipment that was not properly secured fell from the truck he was driving. The 8th Circuit Court of Appeals upheld dismissal of the case on grounds that his employer had a “legitimate, non-discriminatory reason” to fire him and he did not show that other similarly situated employees who were not in his protected classes were treated preferentially. *Whitehorn v. Maverick Tube Corp.*, 2024 WL 489365 (Minn. 2024) (nonprecedential).

Race bias, retaliation; not pretextual. A discharged Black man overseeing school attendance met the same fate for the same reasons when he challenged his discharge after submitting fraudulent records. The 8th Circuit affirmed dismissal because of the “legitimate” reason to fire him, which was not a “pretext” for race discrimination, and there was no evidence that similarly situated others

were treated better. *Collins v. Kansas City Missouri Public School District*, 92 F.4th 770 (8th Cir. 2024).

Health insurance; firefighters coverage reinstated.

The statutory obligation of a public sector employee to continue to provide health insurance coverage to a duty-disabled first responder continues until age 65 even if the individual waives participation and then later seeks to be reinstated. Affirming a ruling of the Washington County District Court, the Minnesota Court of Appeals held that reinstated coverage is mandated under Minn. Stat. §299A.465, subd. 1(c). *Aldean v. City of Woodbury*, 2 N.W.3d 918 (Minn. Ct. App. 2024).

Union bargaining unit; employee “over-fragmentation” reversed. A determination of the appropriate bargaining unit for clerical and technical employees of the Anoka County Sheriff’s Office was overturned by the Supreme Court. Reversing a ruling of the Minnesota Court of Appeals that had upheld the decision of the Bureau of Mediation Services, it held that the county’s proposal to place them in a countywide clerical technical employee unit was improper and that the union’s proposal for a smaller, separate departmental unit comports with the legislative policy of allowing the employees to organize themselves as they wish without “over-fragmentation.” *Anoka County v. Law Enforcement Labor Services, Inc. (LELS)*, 2024 WL 323339 (Minn. 2024) (nonprecedential).

Teacher license; denial upheld. In a high-profile case involving a former St. Anthony police officer who killed a Black man during a traffic stop in 2016, the denial to the ex-officer of a teacher license by the Professional Educa-

(Minn. App. 4/1/2024) (nonprecedential).

An unsuccessful reprisal lawsuit was brought by a graduate student employee of the university on grounds that the school was aware that a co-worker filed a false sexual harassment complaint against her in retaliation for a similar complaint she had filed against the other employee. The court of appeals upheld a ruling of the Ramsey County District Court that her contention was properly dismissed on summary judgment because no adverse employment action occurred. *Winegar-Schultz v. University of Minnesota*, 2024 WL 1046994 (Minn. App. 3/11/2024) (nonprecedential).

Unemployment compensation; “misconduct” bars benefits. A bank employee who told her manager that she wanted “to punch” a co-worker and “kick them [sic] where it counts” was denied unemployment compensation benefits. The appellate court, concurring with a determination by an unemployment law judge with the Department of Employment & Economic Development (DEED), held that the belligerent remarks constituted disqualifying “misconduct.” *Koch v. Wells Fargo Bank*, 2024 WL 1047361 (Minn. App. 3/11/2024) (nonprecedential).

ADMINISTRATIVE ACTION

New federal regulations. Two federal agencies recently issued a pair of long-awaited proposed regulations affecting employers and employees in Minnesota.

The Federal Trade Commission (FTC) issued an edict banning nearly all noncompete agreements. The prohibition is broader

sota adopted last year, Minn. Stat. §181.988, joining three other states, California, North Carolina, and Oklahoma, since it retroactively precludes enforcement of pre-existing noncompetes, although the FTC measure has an exception for policymaking executives earning more than \$150,000 annually.

The measure, which does not go into effect until late August, was challenged on multiple grounds in litigation brought by the business community, which may take months, indeed years, to be resolved. If it ultimately does go into effect, the measure is expected to affect about 20% of the workforce, including an estimated 300,000 in Minnesota.

The U.S. Department of Labor (DOL) concurrently issued new rules for overtime pay, increasing the minimum salary threshold for exempt employees, raising the standard salary level to the 35th percentile of the annual earnings of full-time salaried employees. The measure, which is to go into effect this month, will affect some 3.5 million workers by requiring 1.5 times pay for work in excess of 40 hours per week by most salaried employees earning less than \$55,000 annually or \$1,059 per week, a boost of about 60% from the current \$35,568 annual/\$684 weekly threshold.



Marshall H. Tanick
Meyer, Njus & Tanick
mtanick@meyernjus.com