



MEYER NJUS TANICK

Attorneys at Law



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



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.*

EMPLOYEES LOSE WORK CLAIMS

Eighth Circuit Court of Appeals Upholds Dismissal of Lawsuits

Wage Payment Claims; non-employee not entitled to sue. A claim of failure to pay compensation under the state Payment of Wages Act, Minn. Stat. § 181.79 failed because the claimant was not an “employee” of the nonprofit organization for which he performed services, while also being on its board of directors. The Minnesota court of appeals upheld the Hennepin County District Court setting aside the jury verdict in favor of the employee. ***Pakonen v. Housing Alternatives***, WL 2023 7292822 (Minn. Ct. App. Nov. 6, 2023)(unpublished).

Disability lawsuit; failure to state claim. A Dakota County employee’s disability discrimination lawsuit, which included breach of contract and negligence claims, was dismissed for failure to state a claim. The Court of Appeals affirmed dismissal by the Dakota County District Court for failure to plead sufficient facts that the claimant had a “disability” recognized under the federal Americans With Disabilities Act or the Minnesota Human Rights Act either. ***Banks v. Dakota County Board of Commissioners***, WL 2023 8178145 (Minn. Ct. App. Nov. 27, 2023)(unpublished).

Employment discrimination; summary judgment affirmed. An insufficient appeal doomed an employment discrimination claim seeking to overturn summary judgment. The Eighth Circuit held that the appeal did not preserve the judgment, refusing amendment to the complaint, and that judgment was proper on the merits. ***Hossan v. Job Service of North Dakota***, WL 2023 8232205 (Minn. Ct. App. Nov. 28, 2023)(unpublished) (per curiam).

Age bias retaliation; partial reversal. A woman who was fired after her employer offered her several alternatives, then changed its position and required her to accept either a demotion or a resignation with severance, lost her age discrimination claim. Affirming a lower court ruling, the Eighth Circuit Court of Appeals held that the employers’ concerns over the employees’ work performance was not pretextual. But it reversed and remanded dismissal of a retaliation claim due to the timing of the discharge and supported an inference of retaliation. ***Lightner v. Catalent CTS***, WL 2023 8885025 (8th Cir. Dec. 26, 2023)(unpublished).

Overtime pay; settlement bars appeal. A post-settlement appeal of the settlement of an overtime wage claim under the Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* barred an appeal by the employer of a pre-settlement order for partial summary judgment for the employee. The Eighth Circuit dismissed the appeal because the settlement “dispensed” with the claims and, thus, the prior ruling was not a final order subject to appellate jurisdiction. ***Folta v. Norfolk Brewing***, WL 2023 8858748 (8th Cir. Dec. 22, 2023)(unpublished).

Retaliatory termination; no pretext. The termination of a number of employees by a company that had a contract to maintain engines for the U.S. Air Force, after the employees had been discussing unionization and

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had met with union officials did not constitute an improper retaliatory termination in violation of the National Labor Relations Act. The Eighth Circuit Court of Appeals, granting a petition by the company, overruled the determination by the National Labor Relations Board (NLRB) that the claimed reason for the termination, poor performance by the employees, was a pretext for retaliation. However, there was insufficient evidence to demonstrate that that reason was a pretext for retaliation due to the employee consideration of unionization by the employees, which warranted setting aside the NLRB decision that the company had been improper in discharging them. *Strategic Technology Institute, Inc. v. National Labor Relations Board*, 87 F.4th 900 (8th Cir. 2023).

No return to work date; termination upheld. An employee who was out on short term disability for nine months and did not respond to her employer’s request for a return-to-work date was properly terminated. The Eighth Circuit, upholding the lower court ruling, held that the termination of the employee the day after she told her company that her doctor had not released her to return to work, did not constitute unlawful discrimination based upon disability, which warranted granting of summary judgment against the employee on her state law discrimination claim. *Johnson v. Midwest Division-RBH, LLC*, WL 2023 8535262 (8th Cir. 2023)(unpublished).

Discrimination claim; summary judgment upheld. An employee who did not establish any basis to reverse a trial court’s summary judgment on a discrimination claim lost an appeal. The Eighth Circuit, upholding the lower court, ruled that summary judgment was appropriate and was not refuted by any cognizable arguments on appeal. *Nahum v. LMI Aerospace, Inc.*, WL 2023 8469936 (8th Cir. 2023)(unpublished) (per curiam).

Ride sharing dispute; dismissal of contract claim upheld. A dispute between a driver for a vehicle ride sharing company and the company was maintainable for breach of contract and breach of the implied duty of good faith and fair dealing regarding a refusal by the company to arbitrate. Affirming in part, reversing in part, and remanding a ruling of the Ramsey County District Court, the Minnesota Court of Appeals held that the claim for breach of contract was maintainable, although a number of other claims were properly dismissed. *Mariano v. Raiser*, WL 2023 8536448 (Minn. Ct. App. Dec. 11, 2023)(unpublished).

SPORTS IN SPOTLIGHT

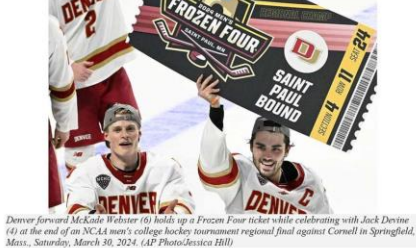
MINNESOTA LAWYER



Marshall Tanick

Perspectives: Frozen Four returns amid litigation lore

Marshall H. Tanick/April 11, 2024



Denver forward McKale Weber (6) holds up a Frozen Four ticket while celebrating with Jack Devine (4) at the end of an NCAA men's college hockey tournament regional final against Cornell in Springfield, Mass., Saturday, March 30, 2024. (AP Photo/Drew Hitt)

"A good hockey player plays where the puck is; a great hockey player plays where the puck is going to be."

Hockey superstar Wayne Gretzky

Frozen Four Here

Baseball law for Ramsey County

MINNESOTA LAWYER



Marshall Tanick

Perspectives: Twins are back, and litigation looms here

Marshall H. Tanick/April 4, 2024/



Target Field is viewed during the seventh inning of a baseball game between the Minnesota Twins and the Kansas City Royals on Monday, July 3, 2023, in Minneapolis. (AP file photo: Abbie Parr)

"People ask me what I do in winter when there's no baseball ... I stare out the window and wait for spring."

Hall of Fame baseball player Rogers Hornsby (1896-1963)

Twins Law & Lore

Marshall H. Tanick of the law firm of **MEYER NJUS TANICK** spotlighted sports this spring. HE devoted his weekly **Perspectives** column in *Minnesota Lawyer* magazine to a review of hockey-related lawsuits in Minnesota in connection with the Frozen Four NCAA college championship at the Xcel Center in St. Paul (left). He also looked at baseball law cases in Minnesota in a PowerPoint presentation at the Ramsey County Law Library (center) and addressed the legal history of the Minnesota Twins in his **Perspectives** column in *Minnesota Lawyer* magazine (right).

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