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Attorneys at Law

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.

APPELLATE CASES ADDRESS NON-COMPETE ISSUES

8th Circuit Court of Appeals Issues Two Rulings



Marshall H. Tanick



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

High-level executive; new employment enjoined. A high-placed corporate executive was enjoined from moving from one company to a competitor, who successfully sued to enforce its noncompete agreement. Upholding a lower court decision, the Eight Circuit Court of Appeals held that the former employer's "legitimate business interests" were served by a preliminary injunction because the new employer was one of its largest competitors, which created a likelihood of irreparable harm in the absence of injunctive relief. *Cigna Corp. v. Bricker*, 103 F.4th 1336 (8th Cir. 2024).

Termination of agreement; injunction reversed. A temporary injunction against an employee who had signed a two year noncompete agreement as part of the acquisition of the employee's former employer, prevailed in his challenged to a preliminary injunction entered by the trial court. The Eighth Circuit reversed and vacated an injunction against competing or soliciting customers within a 100-mile radius for two years after his employment was terminated. The lawsuit, which was brought nearly four years after the agreement terminated, could not survive termination of the agreement that had occurred because the terms of the agreement stated that the restrictive covenants barring competition or solicitation do not survive the end of the year relationship.

Wilbur-Ellis Company, LLC v. Erikson, 103 F.4th 1352 (8th Cir. 2024).

Age discrimination; hostile environment claim rejected. An employee who resigned from the Department of Veterans Affairs failed in his claims of an age discrimination and disability discrimination that contributed to a hostile work environment. The Eighth Circuit affirmed and dismissed the lawsuit because the employee did not establish a prima facie case of hostile work environment, constructive discharge, disparate treatment, or retaliation, warranting dismissal of his lawsuit. *Hill v. McDonough*, 2024 WL 2890977 (8th Cir. 2024).

Employment misrepresentation; some claims upheld, others dismissed. A pro se claim by an employee that his employer misrepresented the employment relationship by terming an arrangement an "employment contract," and then later asserted he was an "independent contractor" overcame dismissal on grounds of misrepresentation of employment relationship, fraudulent misrepresentation, and whistleblower retaliation. Affirming a decision of the Hennepin County District Court, but reversing another part, the Minnesota Court of Appeals held that the allegations in the handwritten complaint sufficiently stated claims that could be pursued, although the claims for defamation and intentional infliction of emotional distress were properly dismissed.

Robinson v. Amos, 2024 WL 2885587 (Minn. App. June 10, 2024)(nonprecedential).

Unemployment compensation; rude, aggressive employee loses. An employee who was fired for engaging in rude and aggressive behavior lost his claim for unemployment compensation benefits. The Court of Appeals upheld a determination of an Unemployment Law Judge (ULJ) with the Department of Employment &

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Economic Development (DEED) based, in part, on the “rude and aggressive” behavior of the employee during the unemployment hearing, which gave credence to the employer’s allegation that the employee committed disqualifying “misconduct.” *Scott v. Jerry’s Enterprises, Inc.*, 2024 WL 2885587 (Minn. App. June 10, 2024)(nonprecedential).

Unemployment compensation; untimely appeal. Repeating established case law that an unemployment applicant must file an appeal from an initial determination of a ULJ within 20 days, the Court of Appeals in an Order, upheld an employee’s request for reconsideration. Noncompliance to the 20 days time period for a request for reconsideration after an adverse decision bars the claim. *Hancock v. Aldrich Boarding Care, LLC*, 2024 WL 2891210 (Minn. App. June 4, 2024)(nonprecedential).

Unemployment compensation; not available due to restrictions. An employee whose physical restrictions limited her work opportunities was deemed ineligible for unemployment compensation benefits because she was not “available for suitable employment.” The Court of Appeals, upholding a ULJ decision, held that benefits were barred under Minn. Stat. § 268.085, subd. 1(4) in *In re Mohamoud*, 2024 WL 243648998 (Minn. App. August 5, 2024)(nonprecedential).

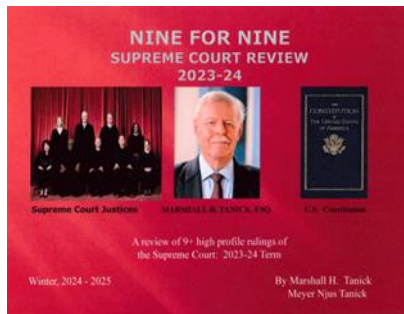
Quitting employee; benefits denied. An employee who quit his job a month after starting as a maintenance engineer at a resort in Ottertail County was denied unemployment benefits. Affirming a ruling of an Unemployment Law Judge (ULJ) with the Department of Employment & Economic Development (DEED), the Court of Appeals held that although given an increased workload, he did not suffer any adverse action like a reduction in pay that constituted “good reason” to quit under Minn. Stat. § 268.095, subd. 1 (1), (3). *Kovarik v. JP Hospitality Group*, 2024 WL 3565647 (Minn. App. July 29, 2024)(nonprecedential).

Overpayment of benefits; repayment required. An unemployed individual who sought and received Emergency benefits during the COVID pandemic was required to reimburse the funds because he was employed and receiving income that he did not report while he was paid those benefits. Upholding a ULJ decision, the appellate court held that repayment was required for misrepresentation under Minn. Stat. § 268.18, subd. 1(a), including a 40% penalty. *Thigpen v. Best Home Care, LLC*, 2024 WL 3564541 (Minn. App. July 29, 2024)(nonprecedential).

ATTORNEY’S DIVERSE ACTIVITIES



Post Office Advisory



Supreme Court Review



At Pride

Marshall H. Tanick of the law firm of **MEYER NJUS TANICK** participated in a number of diverse events earlier this year. He wound up his decade of service on the Twin Cities Postal Consumer Advisory Council (TCPCAC), an organization that provides guidance to the Postal Service, which concluded its services in 2024. (left). He also gave his annual presentation reviewing recent and prospective Supreme Court cases for the Ramsey County Law Library (center), along with Hamline University Professor **David Schultz** (center). **Mr. Tanick** also participated in the Golden Valley PRIDE Day events for the LGBTQ+ community. (right).

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