

It Just Got MUCH Easier to Sue as a Whistleblower in Minnesota

by Dennis J. Merley - Thursday, August 10, 2017



The Minnesota Supreme Court just made it easier to be a whistleblower in Minnesota by **ruling** that making a “good faith” report of an impropriety does not require that the employee actually be motivated by the intent to expose illegal behavior.

James Friedlander was fired from his job at Edwards Lifesciences, LLC. Friedlander sued the company under the **Minnesota Whistleblower Act (MWA)** claiming that he was let go for objecting to and reporting the company’s plan to breach a contract with an outside party. The company denied this, explaining instead that he was let go for violating the company’s expense report policies for which he had been warned previously.

The Law

The MWA bars employers from terminating an employee who “in good faith” reports a violation or suspected violation of law to their employer or to a government agency or official.

For many years, Minnesota courts had interpreted the “good faith” standard to entail a two-part test:

(1) The report was not knowingly false or made in reckless disregard for the truth; and

(2) The reporter acted with the “purpose of blowing the whistle, i.e., to expose an illegality.”

The employee had to satisfy both parts of the test for the report of illegal behavior to meet the “good faith” standard.

What Changed?

The company filed a motion to dismiss, noting that Friedlander only raised his concerns with company officials whom he knew were already aware of his concerns. One cannot expose an illegality that has already been brought to light so his “report” simply could not have made for that purpose. He therefore failed the second prong of the “good faith” test under the statute.

Friedlander countered, however, that the legislature amended the statute in 2013 to define “good faith” merely as “conduct that does not violate section 181.932, subd. 3.” In turn, that provision prohibits disclosures that are false or made in reckless disregard of the truth. Accordingly, by codifying only the first prong of the traditional interpretation of good faith, the legislature obviously intended to eliminate the second prong and render the employee’s motivations for the report irrelevant.

The conflict made its way to the Minnesota Supreme Court, who ruled in Friedlander’s favor. They explained that it is always assumed that the legislature intends to change the meaning of the law when they amend it. Since the legislature is presumed to be aware of how a statute has been interpreted, their decision to amend it by including just one of the two prongs of the good faith test obviously meant that the other prong was to be eliminated. Otherwise, there would have been no reason for them to amend the statute as they did.

Accordingly, employees complaining about illegalities no longer have to show that they intended to complain on that basis – basically, they just have to show that they are not just fabricating the whole thing.

Bottom Line

This is bad news for Minnesota employers who can now expect an increase in whistleblower claims. Any employee who has complained about violations of their rights or illegal behavior by their employer can now claim whistleblower status for any subsequent discipline or other adverse action. All they have to show is that their complaint was not knowingly false or in reckless disregard of the truth – a pretty low bar.

Interestingly, in reaching their decision the Supreme Court chose to ignore recorded statements from the author of the 2013 amendments who professed that the bill was not intended to change the law

The silver lining here is that the complaint still has to meet the requirement of being about a violation or suspected violation of law. Many of the matters about which employees might complain do not relate at all to legal issues so not every complaining employee automatically

becomes a legally protected whistleblower.

If you need to issue corrective action to an employee who has made such complaints, be absolutely sure that you have a good deal of proof of that employee's wrongdoing. In addition, avoid doing so right after the employee has made a complaint (this may not be possible with the chronic complainers). Finally, be patient – perhaps the legislature will see what havoc the court has created and will amend the statute to say what they apparently meant it to say in the first place.

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