Minnesota Tip Sharing Decision Sets the Table For More Wrongful Discharge Claims

by Brandon J. Wheeler - Wednesday, October 11, 2017

A divided Minnesota Supreme Court just ruled that a restaurant worker who was fired for refusing to share tips with his co-workers can sue for wrongful discharge even though the statute in question does not authorize such claims.

This is a major concern for Minnesota employers because the decision seems to serve up a chance for anyone to file a wrongful discharge lawsuit whenever the Minnesota Fair Labor Standards Act (MFLSA) is on the menu of alleged wrongs.

Fair or Not Fair, Employee Won't Share

Minnesota's tip sharing law bars employers from "requir[ing]" an employee to share a gratuity received by the employee with other employees or to contribute to a tip-sharing pool. Tips can be shared voluntarily as long as this is done through agreement among the employees without any "employer coercion." If the employer violates this provision, the law says that the employee may obtain restitution in the amount of the tips wrongfully diverted.. The law is silent, however, on whether an employee may be fired for refusing to share tips, and whether an employee may sue for wrongful discharge if terminated as a result of such refusal.

The case involved a bartender who sued Bunny's Bar & Grill claiming that they fired him after he declined to share his tips with the employees who bus the tables. Among their various defenses, Bunny's argued that the Minnesota tip-sharing statute does not prohibit an employer for terminating an employee for refusing to share tips, nor does it permit anyone to sue for

wrongful discharge in such a situation. They asserted that Minnesota is an “at will” state and that, absent express statutory language to the contrary, an employer may terminate an employee for any reason.

Court Adds Wrongful Discharge to the Menu

After the trial court ruled for the employer, the terminated employee appealed to the Minnesota Court of Appeals, which reversed and ruled for the employee. The case then went up to the Minnesota Supreme Court, which in a split decision affirmed the previous decision favoring the employee. The majority of the Court first ruled that terminating an employee for refusing to do what the statute prohibits (in this case, requiring an employee to share tips) is tantamount to requiring the employee to share tips, which violates the statute.

The majority then decided, notwithstanding the statute’s silence on the issue of wrongful discharge, that an employee may indeed sue for wrongful discharge in such a situation. They observed that the MFLSA (which encompasses the tip-sharing statute) contains a clause allowing an employee to “seek damages and other appropriate relief” for all violations of the law. According to the Court, this ability to pursue “damages and other appropriate relief” indicated that the Legislature had expressly abrogated the “at will” doctrine in these instances and had created a wrongful-discharge claim for any termination accompanying an alleged violation of the MFLSA.

The dissent argued that the Legislature clearly had not intended to alter the “at will” doctrine. The dissent noted that the Legislature had explicitly created a wrongful discharge claim in many other statutes so it knew how to do so if they wished. As the Legislature did not do so here, according to the dissent, it must not have intended to create such a cause of action and alter the “at will” doctrine.

BOTTOM LINE

This decision is likely to be highlighted by every employee claiming to have been fired in violation of any provision of the MFLSA. While the Legislature can certainly amend the statute to clarify their intentions, in the meantime wrongful discharge lawsuits probably will increase by about 15%, or perhaps up to 20% if you are feeling generous.

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