

THE LATEST FROM



**BASSFORD REMELE**

**The Work Week  
with Bassford Remele**

**March 20, 2023**

Welcome to *The Work Week with Bassford Remele*. We are excited to launch this new distribution, which we designed to help keep you updated on relevant developments in the employment arena. Each Monday morning, we will publish and send a new article to your inbox, and hopefully assist you in jumpstarting your work week.

Bassford Remele Employment Practice Group

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**Increasing Prosecution of Employers for Wage Theft**

[Beth L. LaCanne](#)

Back in 2019, Minnesota enacted the Minnesota Wage Theft Prevention Act (“WTPA”). At the time, the WTPA was considered to be one of the most-stringent wage-theft laws in the country. Not only are employers subject to civil penalties, but they can also be charged with crimes.

The Minnesota Department of Labor and Industry (“DOLI”) and the Minnesota Office of the Attorney General (“AGO”) are both empowered to investigate and enforce the WTPA. After the WTPA was enacted, Attorney General Keith Ellison built a team to investigate potential violations of the WTPA. At that time, he publicly emphasized a focus on enforcing the WTPA against repeat offenders, specifically looking to protect marginalized individuals, such as migrant workers.

Prosecution efforts slowed during the pandemic, but according to an article published in the Star Tribune last week, DOLI has resumed its efforts to educate employees on their rights under the WTPA and is preparing for an increase in complaints as a result. Attorney General Ellison also added three new labor investigators to his staff, noting that “[w]e expect that our enforcement activity will increase” moving forward.

“Wage theft” under the WTPA occurs when an employer, with intent to defraud:

- (i) Fails to pay an employee all wages, salary, gratuities, earnings or commissions at the employee’s rate or rates of pay or at the rate or rates required by law, whichever is greater.
- (ii) Directly or indirectly causes any employee to give a receipt for wages for a greater amount than that actually paid to the employee for services rendered.
- (iii) Directly or indirectly demands or receives from any employee any rebate or refund from the wages owed the employee under contract of employment with the employer.
- (iv) Makes or attempts to make it appear in any manner that the wages paid to any employee were greater than the amount actually paid to the employee.

Common examples of wage theft include paying less than minimum wage, not paying tips, pooling tips or applying tips toward the employee’s minimum wage, not paying overtime (more than 40 hours under federal law and more than 48 hours under Minnesota state law), uncompensated work performed off-the-clock, unauthorized deductions from paychecks, and misclassification of workers (*e.g.*, identifying a worker as an independent contractor to avoid minimum wage and overtime laws). Bassford Remele regularly advises clients on these issues and our attorneys are available to handle any questions you have to ensure your practices remain compliant.

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## 5 Reasons Why You Should Hire an Outside Investigator

[Jessica L. Kometz](#)

In Minnesota, an employer has a duty to take “prompt and appropriate” action to correct harassment or discrimination once it knows or should have known of its existence. Additionally, an employer’s investigation may allow an employer to escape liability for discriminatory acts of certain employees.

So, what should an employer do when an employee reports potential harassment, discrimination, or policy violations? The inclination may be to have a human resources or other employee investigate the matter to determine whether the allegations are true. However, that may not be the most-prudent course of action. In many cases, it is much more advisable to retain an outside investigator to look into the alleged conduct. Here are five reasons why:

**1. Bias:** Oftentimes when an employee makes a report of discrimination or harassment, the report is made to a supervisor or to an employee working in human resources. In the event the employee investigating the alleged conduct has had interactions with either the complaining employee or the accused, there can be actual bias (even if unintentional) or a perception of bias when it comes to the outcome of the investigation. If the matter escalates to litigation, the impartiality of the investigator may be questioned.

**2. Experience Level/Training:** Many employees do not have significant experience conducting impartial investigations, especially if the employer has had very few reports. As a result, employees tasked with handling an internal investigation may not be familiar with the relevant law (or changes to it). Additionally, in cases of alleged sexual harassment especially, using an investigator trained in trauma-informed interview techniques is extremely helpful. An investigation can be more easily supported in the event of litigation if the investigator has consistent experience conducting investigations.

**3. Identity of Involved Employees:** Simple disputes between low-level employees are routinely handled internally by employers. However, what happens when an allegation is made against a high-level employee, such as an officer or director, or against a member of your human resources department? Oftentimes, the individual that would typically investigate the matter is a supervisee of an involved employee. Employees may have a difficult time asking necessary questions of those that they report to. Moreover, there could be pressure (even if unintentional) to come to a conclusion supportive of a high-level employee to avoid reprisal. On the other hand, outside investigators are easily able to ask questions of high-level employees and make unbiased findings.

**4. Numerosity and Scope of Complaints:** The scope of many reports may be limited to a single comment or action or to a single accused employee. Sometimes, however, an employer may receive numerous complaints relating to a single accused employee or a report may be made relating to workplace culture or widespread discrimination or harassment. This is a signal that certain behavior may be the cause of ongoing workplace issues. In cases such as these, an outside investigator will have the time and expertise necessary to conduct a broad investigation and may even potentially recommend changes to policy and training that an internal investigator may miss.

**5. Potential for Litigation:** While this may go without saying, if an employee has retained an attorney, or if the employer recognizes that a report may expose the employer to liability, an outside investigator is likely the best fit to investigate the report. If the investigator is an attorney, an employer *may* be able to utilize the attorney-client privilege to protect the findings of the investigator. Additionally, if the employer waives privilege, the investigation can be more easily defended in court due to the impartiality and experience of an outside investigator.

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At Bassford Remele, our employment law team is trained and experienced in handling workplace harassment and discrimination investigations, as well as Title IX investigations for K-12 and postsecondary institutions. Our extensive experience enables us to navigate the law and employer policies, as well as the complex personal and emotional dynamics that make these situations especially difficult.

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Finally, Bassford Remele is pleased to welcome Danielle W. Fitzsimmons as a shareholder of the firm. Ms. Fitzsimmons has extensive experience in employment litigation and counseling and has been recognized by *The Best Lawyers in America* for her work in this area. Ms. Fitzsimmons will Co-Chair Bassford's Employment Law Practice Group. To learn more about her background and how she can assist with your employment-law needs, click [here](#).

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