THE LATEST FROM

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The Work Week
with Bassford Remele

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

Bassford Remele Employment Practice Group

Proposed Paid-Leave Legislation Makes Headlines

Daniel R. Olson

Minnesota's proposed paid-leave legislation landed on the front page of both the *StarTribune* and *Pioneer Press* over the weekend. While the coverage primarily focused on the costs associated with the program, including an estimated $1.7 billion initial-funding expense, the legislation would fundamentally alter the way many employers handle family and medical leave for their employees.

If passed, the bill would entitle employees to take up to 12 weeks of paid medical leave for themselves and an additional 12 weeks of paid family medical leave to care for their loved ones. The bill also provides for a more-expansive definition of "family" than does the FMLA; the proposed legislation would allow employees to take paid leave to care for an individual "who is related by blood or affinity and whose association with the [employee] is [the] equivalent of a family relationship."

The program would pay employees on leave through a fund administered by the state. The fund would be financed through a proposed 0.7% payroll tax assessed against employers. Employers would have the option to pass up to half of the 0.7% payroll tax onto employees. Employers would also have the option to opt-out of the program altogether by providing matching paid-leave benefits.

An amendment proposed last Thursday would limit employees to a maximum of 20 total weeks of combined paid medical and paid family leave in a calendar year, rather than the 24 total weeks available

under the initial bill. Either way, this represents a significant change for employers, particularly small businesses. Notably, a separate bill presently before the senate would also require employers to grant employees one hour of paid sick-time for every 30 hours worked, up to 48 hours of paid sick-time per year.

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Bassford Remele regularly monitors legislative developments for our clients. Check out next week's edition of The Work Week, in which we'll be summarizing a remarkably active legislative session for Minnesota employment law this year.

Minnesota Supreme Court Clarifies Analysis For Constructive-Discharge Discrimination Claims Under Minnesota Human Rights Act

Bryce D. Riddle

A recent decision by the Minnesota Supreme Court has modified the constructive-discharge analysis under the Minnesota Human Rights Act.

In *Henry v. Independent School District #625*, 57-year-old Barbara Henry sued her former employer for engaging in disparate-treatment age discrimination and creating a hostile-work environment. Henry alleged that she was placed on an unfair and unjustified performance-improvement plan intended to force her to quit, in addition to other examples of age discrimination. When Henry failed to satisfy her performance-improvement plan, her department head informed her that he was considering terminating her, but that she could make a statement in her defense before any final decision was made. Rather than making a statement, Henry resigned and sued.

The School District argued that Henry's claims failed as a matter of law. The School District argued that Henry's hostile-work-environment claim failed because her allegations fell short of unwelcomed harassment. With respect to Henry's age-discrimination claim, the School District argued that Henry could not establish an adverse-employment action for two reasons: (1) she resigned; and (2) she failed to take advantage of the School District's anti-discrimination policies.

The Minnesota Supreme Court agreed in part with the School District. The Court first agreed that Henry's hostile-work-environment claim failed because the conduct at issue did not rise to the level of pervasiveness or severity required to demonstrate that the alleged harassment affected a term, condition, or privilege of her employment. However, the Court determined that Henry did present an actionable claim for age-discrimination.

The Court first noted that a plaintiff can satisfy the adverse-employment action element of a disparate treatment claim under the Human Rights Act by demonstrating constructive discharge if the plaintiff shows: (1) objectively intolerable working conditions; (2) that are created by the employer with the intention of forcing the employee to quit. The Court also held that for a plaintiff to prevail on a disparate-treatment-based constructive-discharge claim, they must either demonstrate that: (1) the employer deliberately created intolerable working conditions with the intent of forcing the employee to quit; or (2) that the resignation was a reasonably foreseeable consequence of the employer's discriminatory actions.

In doing so, the Court rejected the argument set forth by the School District that Henry must have notified the School of the intolerable conditions or otherwise attempted to mitigate the alleged mistreatment before resigning. Having found that Henry provided sufficient evidence to demonstrate that the School District took a number of deliberate steps that were calculated to make Henry's working environment unbearable so that she would resign, the Court concluded that Henry's age-discrimination claim did not fail as a matter of law.

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The Minnesota Supreme Court's ruling in *Henry* both reiterated the high threshold for hostile-work-environment claims and clarified the law surrounding constructive discharge under the Minnesota Human Rights Act. At Bassford Remele, our employment team regularly defends against discrimination lawsuits and conducts training to help clients safeguard against hostile-work-environment claims. Our extensive experience enables us to navigate these new developments in the law and advance the best defenses available for our clients.

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