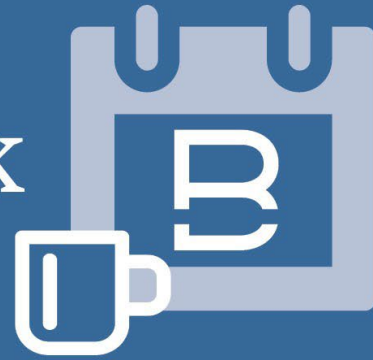


The Work Week

Bassford Remele Employment Practice Group



July 8, 2024

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](#)

Amendments to the Minnesota Human Rights Act and the Uncertainty of the FTC's Non-Compete Ban

[Beth L. LaCanne](#)

Two important dates are approaching for employers – August 1 and September 4. Employers should circle August 1 in red permanent marker while circling September 4 in red dry-erase marker. This week's edition of *The Work Week* covers the amendments to the Minnesota Human Rights, which become effective August 1, 2024, and the legal challenges to the FTC's non-competes ban, which become effective September 4, 2024, unless a court enjoins enforcement nationwide.

1. Minnesota Human Rights Act

On August 1, 2024, [several amendments to laws](#) coming out of the 2024 Minnesota legislative session become effective, including important changes to the Minnesota Human Rights Act (MHRA).

A. Definitions

Several definitions were amended this past legislative session, including the [expanded definition of "disability"](#) discussed in a previous *Work Week*. Although it probably went without saying before, the amended MHRA will explicitly recognize that discrimination can be based on more than one of the protected classes under the MHRA. The definition of "discriminate" will now include "harassment" premised on any of the protected classes. Previously, the definition only discussed harassment in the context of discrimination based on sex.

Additionally, the definition of "familial status" will recognize parents and guardians with legal status or custody of a minor. In other words, the minor does not need to reside with the parent or legal guardian to qualify. The amended definition also extends to adults who reside with and require care due to their inability to care for themselves or make decisions regarding their health or safety.

B. Damages

The amendment to the MHRA also moves the civil penalties and damages provisions to a new section. While much remains the same as before, there are two significant changes to the damages provision. First, the amendment clarifies that both economic damages and mental anguish or suffering (*i.e.*, emotional distress) damages may be tripled (trebled). Second, there will no longer be a cap on punitive damages for cases involving private-sector employers filed on or after August 1, 2024. The current \$25,000 cap applies to all cases filed before August 1, 2024. The section also clarifies that a jury determines the damages if the case is tried to a jury, including whether to treble damages and award punitive damages.

C. Procedural

Absent tolling due to settlement negotiations/ADR or investigations by another enforcement agency, the Department of Human Rights (the Department) must make a probable cause determination within one year from the date the case was filed. The complexity of a case will no longer matter. Regarding ADR or settlement negotiations, the Department must also offer the charging parties and employers the opportunity to resolve a charge of discrimination through mediation or another ADR process. Finally, a charging party will have 90 days to commence a lawsuit once they receive a right-to-sue letter from the Department. The offering of mediation/ADR and 90-day time period will align the MHRA with federal law.

D. Service Animals

Although not employment-related, the amendment to the MHRA's section on service animals will impact any employer whose business is open to the public. Beginning August 1, a person with a disability, even one that is not outwardly apparent (*e.g.*, deafness, blindness), may have a service animal so long as it is properly harnessed or leashed. Additionally, an individual with a disability cannot be charged money for having a service animal in a place of public accommodation. Previously, the prohibition on charging was limited to individuals who were blind, deaf, or physically disabled. Employers who open their doors to the public should review their policies regarding service animals before August 1, 2024.

2. Uncertainty of the FTC's Non-Compete Ban

As previewed in the [June 24, 2024 Work Week](#), opponents of the FTC's noncompete ban filed lawsuits in Texas and Pennsylvania requesting the FTC be prohibited from enforcing the ban until the courts determine whether the FTC had the authority to issue the non-compete ban. The first of the decisions was issued on July 3. In *Ryan, LLC v. FTC*, U.S.D.C. N.D. Tex., No. 3:24-CV-00986, the court granted the plaintiffs' motion for injunctive relief, issuing a preliminary injunction staying enforcement of the non-compete ban. The decision cited to the United States Supreme Court's *Loper Bright* decision which gutted the *Chevron* doctrine that was covered in last week's *Work Week*.

While the preliminary injunction in *Ryan* was significant, the court limited its decision to the plaintiffs in that case. The focus will now shift to *ATS Tree Services, LLC v. FTC*, E.D. Penn., No. 2:24-cv-01743, in the Eastern District of Pennsylvania, and that decision is expected later this month. Unless the court in *ATS Tree Services* or another court grants a nationwide injunction, employers should be prepared for the September 4 effective date of the non-compete ban. Unlike the Minnesota ban on non-competes which has been effective for nearly a year, the FTC ban is retroactive and will apply to all existing non-competes unless the employee meets certain salary and supervisory thresholds.

At Bassford Remele, we constantly monitor case law and legislative updates to keep our clients apprised of new developments in employment law. Please feel free to reach out to our [employment team](#) with any questions!

LEARN MORE ABOUT OUR EMPLOYMENT PRACTICE » »
