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**MINNESOTA SUPREME COURT FINDS THE MINNESOTA FAIR LABOR STANDARDS ACT PROVIDES PRIVATE CAUSE OF ACTION FOR EMPLOYEE WHO IS TERMINATED FOR REFUSING TO SHARE GRATUITIES.**

Earlier this month, the Minnesota Supreme Court ruled that the Minnesota Fair Labor Standards Act (“MFLSA”) provides a private cause of action for an employee who is terminated for refusing to share gratuities.

In *Burt v. Rackner*, A15-2045, filed October 11, 2017, the employee, Burt, was told that he needed to give more tips to the bussers at the restaurant where he worked and that there would be consequences if he did not. Burt did not follow this directive and was subsequently terminated for “not properly sharing his tips with other staff.” Burt initiated an action against his former employer, alleging a violation of the MFLSA.

Minnesota Statute section 177.24, subdivision 3 provides that any gratuity received by an employee is the sole property of that employee. No employer can require employees to share gratuities or contribute to a “tip pool.” Employees may share gratuities voluntarily, but the agreement must be made without employer coercion or participation. Burt brought his action pursuant to this section.

The employer answered Burt’s complaint and moved for judgment on the pleadings. The district court dismissed the case, stating that the MFLSA “does not contemplate an action for wrongful discharge” because the statute does not specifically prohibit an employer from terminating an employee for refusing to share gratuities. The court of appeals reversed.

On appeal, the supreme court turned to the language of section 177.24, subdivision 3, and found that, while the statute was ambiguous, in everyday language, the term “require” means “to impose an obligation on”. Accordingly, threatening to terminate an employee for failing to share gratuities imposes a requirement on the employee that, at the very least, constitutes coercion and violates the statute.

The employer argued that, although the statute prohibits employers from requiring or coercing employees to share tips, discharging employees for refusing to share tips is allowed. The supreme court disagreed, finding that under this interpretation, the only time an employer would violate the MFLSA would be when an employer’s threats compelled compliance, which was unreasonable. Nothing in the statute states an employee must participate in the gratuity-sharing scheme in order to constitute a violation of the statute. Accordingly, Minn. Stat. § 177.24, subd. 3 is subject to only one reasonable interpretation and unambiguously prohibits an employer from terminating an employee for refusing to share gratuities.

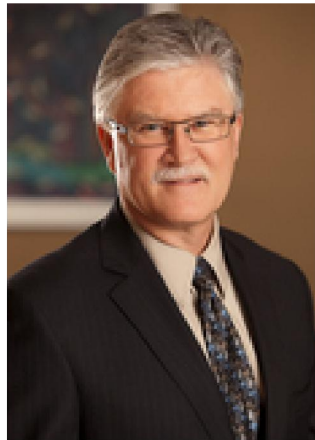
The employer next asserted that in other statutory exceptions to the employment-at-will doctrine, the Legislature expressly prohibits discharge. Because there is no express language in the statute

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at issue in this case, Burt could not sue under the MFLSA. The court did not agree with this argument, ruling that Minn. Stat. § 177.24, subd. 3 explicitly prohibits an employer from terminating an employee for not sharing tips. Further, Minn. Stat. § 177.27, subd. 8 allows an employee to bring a civil action for any violations of sections 177.21 to 177.44. In affirming the court of appeals, the supreme court held that, through Minn. Stat. 177.27, subd. 8, an employee may bring a cause of action for wrongful discharge after the employee failed to share tips. Employees who bring an action under this statute are eligible for back pay, gratuities and compensatory damages.

If you have any questions regarding the court's decision or any other employment related issues, please contact a member of our Liability Practice Group at (952) 806-0408. This case law update and other court opinion updates are available in .pdf form on the News and Resources page of our Firm's website: [www.OLWKLaw.com](http://www.OLWKLaw.com).

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