

JANUARY 25, 2016

CASE LAW UPDATE

Minnesota Supreme Court holds statute of limitations for wrongful discharge action under the Minnesota Whistleblower Act is 6 years.

In [*Ford v. Minneapolis Public Schools*](#), the Minnesota Supreme Court held that the statute of limitations for claims under subdivision 1(1) of the Minnesota Whistleblower Act (MWA), [Minn. Stat. § 181.932](#), which prohibits employment discrimination based on a good-faith report of a violation of law, is the 6-year limitations period in [Minn. Stat. § 541.05, subd. 1\(2\)](#), because the cause of action is purely statutory with no common-law counterpart.

The employee in *Ford* commenced a retaliation lawsuit against her former employer on June 29, 2010, after her position was excessed on June 29, 2008. The employee allegedly made numerous reports of unethical and illegal activities in her department, including financial improprieties, disability discrimination and retaliation, both before and after she was informed in April 2008 that her position would be excessed.

The district court dismissed the employee's claim as untimely. The court of appeals initially affirmed, holding that the 2-year limitations period found in Minn. Stat. § 541.07(1) started to run in April 2008, when the employee was informed that her position would be excessed and thus expired prior to June 2010. The supreme court granted review and remanded for reconsideration in light of [*Sipe v. STS Mfg., Inc.*](#), 834 N.W.2d 683 (Minn. 2013), wherein the court held that a claim for wrongful discharge under Minn. Stat. § 181.953, subd. 10 is governed by the 6-year statute of limitations period set forth in Section 541.05, subd. 1(2), not the 2-year limitations period found in Section 541.07(1).

On remand, the court of appeals applied the six-year statute of limitations and reversed the district court's dismissal of the employee's claim. The supreme court affirmed. The key issue according to the court was whether the cause of action at issue, a claim for wrongful discharge under subdivision 1(1) of the MWA, was first created at common law or is purely a creature of statute. Under *Sipe*, if first created at common law, the 2-year limitations period for "other torts resulting in personal injury" would apply, but if purely statutory, the six-year limitations period for actions "upon a liability created by statute" would apply. The court held that the employee's claim was purely statutory.

In so ruling, the court noted it had never recognized a common-law cause of action for wrongful discharge for an employee's reporting of law violations as opposed to an employee's refusal to violate the law, for which a common law cause of action existed prior to the passage of the MWA. Consequently, the employee's claim is "upon a liability created by statute," and the applicable statute of limitations is six years pursuant to Minn. Stat. § 541.05, subd. 1(2).

O'MEARA, LEER, WAGNER & KOHL, P.A.

Relationships ▪ Reliability ▪ Results

7401 Metro Boulevard | Suite 600 | Minneapolis | Minnesota | 55439-3034 | OLKWLaw.com | 952-831-6544

The court also rejected the employer's well-founded policy arguments in support of a shorter limitations period as an issue for the Legislature to consider. The court similarly refused to be swayed by the employer's argument that it is anomalous that an MWA claim under subdivision 1(1) has a 6-year limitation when a claim under subdivision 1(3) (wrongful discharge for an employee's refusal to violate the law) may have a 2-year limitation. Finally, the court rejected the employer's concerns that the court's holding could undermine the employee's right to a jury trial.

If you have any questions regarding the recent Minnesota Supreme Court decision or any other employment law related issues, please contact a member of our Employment Law Practice Group at (952) 831-6544. This letter and other court opinion updates are available in .pdf form on the News and Resources page of our Firm's website: www.olwklaw.com.

THE OLWK EMPLOYMENT LAW PRACTICE GROUP

Morgan A. Godfrey

Chris E. Celichowski

Brian M. McSherry

O'MEARA, LEER, WAGNER & KOHL, P.A.

Relationships ▪ Reliability ▪ Results

7401 Metro Boulevard | Suite 600 | Minneapolis | Minnesota | 55439-3034 | OLKWLaw.com | 952-831-6544