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## BLOGS

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# Lessons From the NFL: Thoughtful Planning To Avoid the Limelight

Another Sunday has come and gone and with it, somewhat predictably, another Vikings loss. What's remarkable about this week, however, is that the team was without its star player, Adrian Peterson. Mr. Peterson has been barred from team activities pending the resolution of his criminal indictment for child abuse. Mr. Peterson has admitted to disciplining his 4-year-old son with a wooden switch and injuring the child in the process. The Vikings organization has been widely criticized for its initial response to Adrian Peterson's indictment. The Vikings initially planned to let Mr. Peterson continue playing, but reversed its position after widespread public outrage to this initial plan.

If you follow football news at all, you know that the Peterson situation mirrors, in many respects, other football news. The NFL is currently under siege for mishandling its initial response to a domestic violence incident involving Ray Rice, a marquee player for the Baltimore Ravens. There are reports that the NFL knew of Mr. Rice's conduct for quite some time before it took responsive action. In both situations, the football organizations have been accused of turning a blind eye to egregious conduct to keep their star players in the game. The public backlash and negative reaction from sponsors have prompted the NFL and its teams to take more serious action in their later responses to the Rice and Peterson incidents.

Events like this are good times to reflect on how the rules work for employers and how to handle matters well to try to avoid the public limelight. As a general starting point, the rule in most states, including Minnesota, is at-will employment. An employer can take action against an employee for any reason, unless the reason is unlawful (i.e. because of an employee's legally protected class status or in retaliation for protected activity, like union organizing or taking protected leave). But what about *criminal* activity? On that front, employers need to exercise caution. It is generally unlawful to act based solely on an arrest rather than the conduct at issue. In addition, some states, such as Wisconsin, prohibit discrimination because of an employee's conviction record as well, unless the conduct is sufficiently job-related. Likewise, it can violate federal law to take negative action against an employee for criminal conduct unless there is a tight nexus between the conduct at issue and the individual's job duties that creates a genuine risk for an employer.

Losing fans and sponsors would likely meet these standards for the NFL. But, other employers should make sure they carefully consider the conduct at issue when determining what action should be taken in response to off-work conduct. And when it comes to matters of domestic violence, it is often the victim who is punished by employers. That's a problem too. Minnesota law flat out prohibits discrimination based on marital status, including discrimination on the basis of the identity, situation, actions or beliefs of a spouse or former spouse. In addition, Minnesota law has recently been expanded to allow victims of domestic violence, sexual assault, and stalking to use paid leave to pursue protective measures and services.

One key takeaway for all employers from the recent NFL drama: Think things through carefully, consider your business and legal risks, and try to get it right the first time around.