

BLOGS

Contracts & Agreements; Employment Law Updates; Unemployment

New Minnesota Unemployment Provision Takes Effect, But What Effect Will That Be?

A new provision of the Minnesota unemployment statute became effective July 1. Enacted by the 2012 legislature, the new language could have an impact on Minnesota employers and employees, but just what that effect might be is not — to be charitable — entirely clear.

It is not unusual for an employer to enter into an agreement with the departing employee under which the employee releases potential claims against the employer. To make such an agreement enforceable in a court of law, the employer must provide the departing employee something of value that, without the agreement, the employee would not get. One such valuable item, which is often requested by the departing employees (and their representatives) and granted by employers, is the employer's promise not to oppose any claim for unemployment benefits that the employee might make.

The new statutory provision may alter the law in Minnesota with respect to agreeing to such requests. Specifically, the amendment adds a subdivision, 1a., to Section 268.192, which reads:

Subd. 1a. **Agreements not allowed.** An employer may not make an agreement that in exchange for the employer agreeing not to contest the payment of unemployment benefits, including agreeing not to provide information to the department, an employee will:

- (1) quit the employment;
- (2) take a leave of absence;
- (3) leave the employment temporarily or permanently;
- (4) withdraw a grievance or appeal of a termination.

An agreement that violates this subdivision has no effect under this chapter.

It's hard to predict what the effect of this amendment will be, or even to understand the intent of the new language.

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There are several situations in which an agreement not to contest unemployment might come up. The employer might wish to induce a problem employee to leave voluntarily, but a voluntary departure reported to the Department of Employment and Economic Development (DEED) usually prevents the employee from being eligible to receive unemployment benefits. The employee doesn't want an involuntary termination to show up in the employer's personnel records, but also doesn't want a voluntary departure reported to DEED. If no one tells DEED the departure was voluntary, the thinking goes, then both of the employee's goals are met and the employer's only cost is the cost associated with paying its share of unemployment benefits.

Perhaps it's that kind of deal that this amendment seeks to eliminate. The legislative thinking may have been that agreements of this type cause people who really don't qualify to be paid unemployment benefits.

Or maybe not. The new provision amends existing [Section 268.192](#) of the Minnesota Statutes, a section entirely focused on preventing employers from obtaining waivers or other agreements from employees that would *interfere* with employees' receipt of unemployment benefits. Perhaps the amendment, like the rest of the section, is concerned with protecting unemployment benefits instead of limiting them. If so, it might apply to circumstances where the employer seeks to avoid being accountable for benefits.

It remains to be seen how DEED will handle issues that might arise over this new provision, and how the courts will interpret the new statutory language. Some employers and employees may now be wary of agreements that touch the subject of unemployment benefits, regardless of how mutually beneficial they might be. Others might well conclude that such agreements are still viable. We should all keep an eye out for further guidance.