

BLOGS

Archives;Discrimination;Leave;Workplace Policies

Two Minnesota Cases Provide Important Reminder of Minnesotas Marital Status Discrimination Law

In an interesting convergence of events, two Minnesota employers recently found themselves on the wrong side of Minnesota's marital status discrimination law just as Minnesota is preparing for same sex marriages to become legal on August 1, 2013. These recent cases serve as an important reminder that Minnesota law prohibits employment discrimination based on marital status, including discrimination based on the situation or identity of an employees spouse. Minnesota employers should also be mindful that, come August, both opposite sex and same sex spouses will be protected by Minnesota's marital status discrimination law.

The two recent Minnesota cases involved similar facts. In the first case, a St. Cloud based auto parts store agreed to pay over \$50,000 to settle a charge of discrimination filed with the Minnesota Department of Human Rights by a female employee who was fired after her husband went to work for a competitor. In the second case, *Aase v. Wapiti Meadows Community Technologies Services, Inc.*, No. A-12-1671 (Minn.Ct.App. May 20, 2013), the Minnesota Court of Appeals held that a terminated female employee was entitled to a trial on her claim that she was wrongly fired by her non-profit employer based on her husband accepting a seat on an advisory board along with employees of a competing entity.

In both cases, the employers argued that they had lawfully fired the employees because of violations of the employers conflict of interest policy, not because of marital status. In the St. Cloud case, the auto parts store claimed that the terminated employee had access to confidential data because of her bookkeeping duties and that her continued employment posed a conflict of interest given her husbands work for a competitor. In announcing the settlement of this case, the Minnesota Department of Human Rights rejected that defense, noting that the conflict policy was overbroad and that most of the auto parts stores employees had access to the same confidential information.

Similarly, the Minnesota Court of Appeals rejected the idea that a Minnesota employer can impute a conflict of interest to an employee based solely on the employees spouse working for a competitor. The Minnesota Court of Appeals noted that marital status is defined by the MHRA to include the identity, situation, actions or beliefs of a spouse, and, therefore, an employee cannot be terminated based solely on a spouse working for a competitor without some independent conflict of interest on the part of the employee herself. In the Aase case, the

Related People

Megan Anderson

Partner

Minneapolis

612.632.3004

megan.anderson@lathropgpm.com



employer did argue that the terminated employee had independently violated its conflict of interest policy by refusing to cooperate with the employers efforts to mitigate the potential conflict, but the Minnesota Court of Appeals held that genuine fact issues necessitated a trial.

In the wake of these recent cases and in anticipation of same sex marriages becoming lawful in Minnesota, employers should consider doing the following:

- Review their equal employment opportunity and non-discrimination policies to ensure that they list marital status as a protected class.
- Review their employment policies and practices to ensure that they do not discriminate based on marital status, meaning the identity, situation, actions, or beliefs of an employees spouse. In particular, employers should review any conflict of interest policies to ensure they are not drafted or applied to impute a conflict of interest to an employee based solely on a spouses actions.
- Employers should also review their leave of absence or time-off policies in light of Minnesotas new marriage law. Under current federal law, same sex spouses are ineligible for a leave under the federal Family and Medical Leave Act (FMLA) to care for a same sex spouse, because the FMLA currently only applies to spouses of the opposite sex. Minnesota employers should, however, look at their non-FMLA policies, such as non-FMLA medical leave, bereavement leave or military leave. If these leave policies dont already apply to same sex spouses, they need to be revised before August 1, 2013, in light of the new Minnesota law on same-sex marriage.
- Employers should also be mindful that, while the FMLA does not currently apply to same-sex spouses, this may change. For purposes of the FMLA, the term marriage is defined by the federal Defense of Marriage Act (DOMA), which defines marriage as between a man and woman. A constitutional challenge to DOMA is pending before the U.S. Supreme Court, and a decision is expected in June. If DOMA is found unconstitutional, the FMLA may apply to same sex spouses.
- Employers should also review their employee benefit and insurance plans and work with benefits counsel to determine what changes may need to be made to employee benefits in light of Minnesota's same sex marriage law. More information on this topic is available Kathi Wright's the [e-benefits alert](#) issued by the firm earlier this month.