Reductions in Force and Obligations to Aging Employees

In 2008, Minnesota began experiencing a thirty percent increase in the number of workers turning age sixty two.[i] Governor Pawlenty's un-allotment added incredible pressure on schools to cut spending. Departmental re-organizations, layoffs, and work reductions have resulted. Sometimes older employees, often the most expensive staff, are caught in the crossfire. This raises questions about the obligations owed to them by their employer.

Both the Age Discrimination in Employment Act ("ADEA") and the Minnesota Human Rights Act ("MHRA") prohibit employers from taking adverse employment actions against employees based on age.[ii] All kinds of actions can be adverse employment actions. Layoffs and discharges are clear examples of adverse employment actions. However, other decisions can be adverse employment actions. For instance, providing certain training opportunities for young staff, but not older staff, could constitute adverse actions.

You do not need proof of discriminatory statements to succeed on a claim of age discrimination. You can rely on circumstantial evidence instead.[iii] Thoroughly documenting the date, time, location, and individuals present during any questionable interaction will be beneficial to you in the long run. If you feel you are being treated unfairly, it is essential to consult with an attorney *as soon as possible*. They can advise you about your rights and any statute of limitations concerns.

In addition to prohibiting discrimination, the MHRA prohibits retaliation for engaging in certain protected conduct, such as filing a complaint of discrimination.[iv] Part of a prima facie case for retaliation is engaging in "protected" conduct. [v] If you feel you are being discriminated against, it is important to notify a supervisor or department head *as soon as possible*. If the decision-maker is the person responsible for the unfair treatment, it may be a good idea to report the behavior to his or her supervisors. It is prudent to put the notification in writing and to specify what type(s) of discrimination you feel you're experiencing (ie. age, race, etc).

Responsible employers will plan reductions with their obligations under the ADEA and the MHRA in mind. Hasty decision-making by over-burdened administrators can cost taxpayers and students in the form of liability to an aggrieved employee. Members can help employers recognize mistakes, avoid these liabilities, and avoid unnecessary costs to the public as a result.

NOTE: The article must not be relied upon for legal advice and is for entertainment purposes only. Legal advice cannot be rendered without an analysis of the facts of a particular situation. If you have questions about the application of concepts discussed in the article, you should consult your legal counsel.

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[i] State of Minnesota, "Budget Trends Study Commission: Commission Report to the Legislature." January 12, 2009. As cited in the 2010 Public Sector Labor and Employment Law CLE, Minnesota Continuing Legal Education, St. Paul, Minnesota, February 2010.

[ii] 29 U.S.C.§ 623(a)(1); Minn. Stat. § 363.03, subd. 1(2)(c)

[iii] See Mayer v. Nextel West Corp., 318 F.3d 803, 806 (8th Cir. 2003).
[iv] Minn. Stat. § 363.03, subd. 7
[v] Hubbard v. U.P.I., Inc., 330 N.W.2d 428, 444 (Minn. 1983).