

A08-1993

STATE OF MINNESOTA
IN COURT OF APPEALS

SARAH ERDMAN,
individually and on behalf of
others similarly situated,

Plaintiffs/Respondents,

vs.

LIFE TIME FITNESS, INC.,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF

DWORKEN & BERNSTEIN CO. LPA
Patrick J. Perotti (Ohio #0005481)
Nicole T. Fiorelli (Ohio #0079204)
60 South Park Place
Painesville, OH 44877
(440) 352-3391

BUSINESS LAW CENTER, PLC
Steven E. Ness (#177301)
7825 Washington Avenue, Suite 500
Bloomington, MN 55439
(952) 943-3939

Attorneys for Respondents

DORSEY & WHITNEY LLP
Douglas R. Christensen (#192594)
Michael J. Wahoske (#113670)
Zeb-Michael Curtin (#352640)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

Attorneys for Appellant
Life Time Fitness, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

INTRODUCTION 1

ARGUMENT 2

I. The Deductions At Issue Were Made To Recover “Claimed Indebtedness,”
As Contemplated By Minnesota Statutes Section 181.79. 2

II. Minnesota Rule 5200.0211 Must Be Read In Light Of The Preexisting
Minnesota Statutes Section 181.79. 5

III. If Minnesota Rule 5200.0211 Applies, Any Remedy Thereunder Must
Be Tailored To The Actual Deductions In Late 2005. 11

CONCLUSION..... 15

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

	Page(s)
CASES	
<u>Ackley v. Kansas Dep't of Corrections,</u> 844 F. Supp. 680 (D. Kan. 1994)	4
<u>Acs v. Detroit Edison Co.,</u> 444 F.3d 763 (6th Cir. 2006).....	4
<u>Carlson v. C.H. Robinson Worldwide, Inc.,</u> 2005 U.S. Dist. LEXIS 5677 (D. Minn. Mar. 30, 2005)	4
<u>Milner v. Farmers Insurance Exchange,</u> 748 N.W.2d 608 (Minn. 2008).....	<i>passim</i>
<u>Wiebusch v. City of Champlin,</u> 2003 Minn. App. LEXIS 648 (Minn. Ct. App. May 29, 2003)	11
STATUTES & RULES	
Minn. Stat. § 177.27.....	7
Minn. Stat. § 181.79.....	<i>passim</i>
Minn. Stat. § 645.16.....	6
Minn. R. 5200.0211	<i>passim</i>
OTHER AUTHORITIES	
Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005).....	6

INTRODUCTION

Respondents try to paint a picture of Life Time Fitness (“LTF”) as a company bent on exploiting its workers. They suggest the bonus advance plan at issue in this lawsuit was adopted for a nefarious purpose: to force all employees covered by the plan to work “lots of overtime” out of a fear that they would not otherwise receive their salary payments. They claim that they were not “guaranteed” to be paid their “salaries” at any time. And they allege that, because of the mere existence of the unearned bonus repayment proviso, they were continuously “working under the threat of losing their base pay.” Resp. Brief at 16

The undisputed record evidence shows that none of the above is true, either in theory or in practice. First of all, the bonus advance plan involved bonus, not salary. It was a method to allow employees to enjoy receiving some of their bonus money “early,” before it was actually earned at year end. The amount of their annual salary was not affected. The terms of the plan make that very clear, and the record facts show that 100% of each employee’s promised annual salary was always paid out to that employee. So, with regard to salary, there was no “threat” of anything else happening, and in fact nothing else happened.

Second, under the bonus advance plan, no employee was ever shorted on money due him or her, either at year’s end or as the year went along, nor could they be. The plan provided that if a bonus payment had been advanced—*i.e.*, already received by the employee—but was not eventually earned, the Company could have the employee pay that unearned advance back. The mechanism provided was a reduction in a future

paycheck—rather than requiring the employee to make out a check of his or her own— but the employee was never short of the total amount of money due him or her at that point in the year, and was never at risk of that happening. Once again, there was no “threat,” and there was no shorting in fact.

There has never been a claim by Respondents that they were somehow entitled to keep any bonus that they did not earn, or that they in fact earned the bonus advances that are at issue. Once clear that they were unearned, these advances became debts subject to being paid back, unless the Company chose not to collect them. The sole issue in this case is the mechanism for the payback, and the appropriate remedy if that mechanism in any particular case did not comport with the law. As LTF’s opening brief has shown and this reply brief will further make clear, that issue is governed by Minnesota Statutes section 181.79, which covers the mechanism for recovery of any “claimed indebtedness” from an employee, and not Minnesota Rule 5200.0211, which covers salaries and does not purport to cover either bonuses or recovery of claimed indebtedness.

ARGUMENT

I. The Deductions At Issue Were Made To Recover “Claimed Indebtedness,” As Contemplated By Minnesota Statutes Section 181.79.

As explained in LTF’s opening brief, section 181.79 generally contemplates that employers may legally make paycheck deductions for certain enumerated categories of items, including for “lost or stolen property, damage to property, or to recover any other claimed indebtedness running from employee to employer.” Minn. Stat. § 181.79, Subd.

1. If, however, an employer fails to obtain written authorization within a particular

window—prior to the deduction but after the indebtedness has arisen—an employee whose paycheck was actually reduced for such a deduction can bring a claim and recover double the amount of such deductions. Id. at Subd. 2.

The District Court, at Respondents' insistence, misconstrued the statute as requiring the written authorization before the statute could apply at all, even to supply the remedy for having failed to obtain the written authorization. That was error, because the plain language of the statute requires only that the indebtedness be "claimed," not "acknowledged."

Respondents do not contest LTF's explanation of the District Court's error and do not even try to defend their earlier argument adopted by the District Court. Instead, they try unilaterally to expand the District Court's order. Contrary to Respondents' representation, the District Court did *not* find that section 181.79 "has no bearing on the question here" because Respondents alleged overtime claims under Rule 5200.0211. Resp. Brief at 9 fn.3, 10. Rather, the District Court entirely sidestepped the issue of the interaction between section 181.79 and Rule 5200.0211 by erroneously concluding that the deductions to recover overpaid bonus advances were not made to recover "claimed indebtedness" because the written authorization was not obtained, as noted above.

Respondents' only other argument pertaining to the first certified question is that the deductions at issue here are "of a different quality" than those contemplated by section 181.79. Resp. Brief at 9. But their conclusory contentions that the deductions "were made because [Respondents] could not maintain bonus numbers" and are nothing like loans or promissory notes, see id., are belied by the actual record facts. First of all,

the record shows that, under the plain terms of the plans, deductions could only be made because an employee had been advanced more bonus than he or she actually earned. To the extent Respondents focus on the connection between bonus *advances* and business performance, this is a red herring: the reason for the *deductions* was to recover overpaid *bonus* advances owed by employees back to LTF. The deductions were not made because Respondents' performance regarding their salaries was in any way deficient. There was nothing in the plans authorizing deductions if, for example, an employee only worked four days during a week or performed poor work. Cf. Carlson v. C.H. Robinson Worldwide, Inc., 2005 U.S. Dist. LEXIS 5677 (D. Minn. Mar. 30, 2005) (plaintiffs challenged policy under which deductions from salary occurred for unpaid disciplinary suspensions and absences from work); Acs v. Detroit Edison Co., 444 F.3d 763 (6th Cir. 2006) (plaintiffs alleged salaries were impermissibly reduced based on hours worked); Ackley v. Kansas Dep't of Corrections, 844 F. Supp. 680 (D. Kan. 1994) (plaintiffs challenged policy whereby employees' salaries could be reduced for less than satisfactory performance according to a current performance evaluation).¹

The deductions at issue are precisely akin to loans and promissory notes, and were made to recover "claimed indebtedness" in every sense of the term. The bonus plans

¹ As is clear from its text, the administrative rule Respondents contend provides them a remedy pertains only to deductions from *salaries*, and only then prohibits those "based on productivity or weather." Rule 5200.0211 does not concern itself with bonuses, which can, of course, be dependent on productivity or any other criteria. Although bonus advances under the plan properly depended on employees' performance, or "productivity," but only in a very attenuated way, see Appellant's Brief at 7 fn.4, the plan "guaranteed" Respondents that they would receive 100% of their promised salary no matter what.

(contracts) clearly informed employees that they were being advanced this bonus and might have to repay it in the event they did not actually earn it. Simply put, where an employee accepts and holds money with the understanding that he or she may be required to repay that money to the payor/employer, there can be no serious question that, when the employer does require it to be paid back, this is “claimed indebtedness running from employee to employer.”² Accordingly, this Court should reverse the District Court’s ruling as to certified question one.

II. Minnesota Rule 5200.0211 Must Be Read In Light Of The Preexisting Minnesota Statutes Section 181.79.

Respondents contend that the simple fact they chose to pursue a claim under Rule 5200.0211, and not section 181.79, means that section 181.79 is entirely irrelevant to whether LTF’s bonus plans complied with Minnesota law. That is incorrect for several reasons.

First of all, Respondents’ contention that section 181.79 is “an unrelated statute” and is “completely separate from the overtime laws” misses the point in a major way. Section 181.79 and Rule 5200.0211 are *not* “entirely separate” provisions (Resp. Brief at 10); both address Minnesota employers’ ability to make deductions from the pay of their employees, and together they form the heart of Minnesota’s law regarding paycheck deductions. Section 181.79, for its part, allows employers to make deductions for certain

² Respondents’ suggestion, raised in a footnote, that the federal court in related litigation between the parties under federal law somehow examined this issue is incorrect. Federal law contains no provision similar to section 181.79 (*i.e.*, there is no federal statute allowing employers to make deductions to recover “claimed indebtedness”), and thus there was no occasion for the federal court to examine the issue.

enumerated categories of items.³ Rule 5200.0211, on the other hand, makes clear that certain deductions are prohibited from exempt employees' *salaries*, those being deductions "based on productivity or weather." See Minnesota Dep't of Labor & Industry, "A guide to Minnesota's Overtime Laws" (2005) (A. 233). Although they "do" different things, they are clearly part of a whole.

This is important because Milner v. Farmers Insurance Exchange, 748 N.W.2d 608 (Minn. 2008), recently made clear that Minnesota courts must read provisions of Minnesota wage-and-hour law in light of the comprehensive legislative scheme, rather than in isolation. Here, this means that Rule 5200.0211 must be construed in light of section 181.79, which had existed for nine years at the time the Rule was enacted. Cf. Minn. Stat. § 645.16 (legislative intent may be ascertained by considering, among other things, "the former law, if any, including other laws upon the same or similar subjects").

Respondents' cursory attempts to evade Milner fail. In Milner, the Supreme Court looked to the Minnesota Wage Payment Act ("MWPA") when analyzing the plaintiffs' claims under the MFLSA. Although the two provisions were housed in different chapters (the MWPA in Chapter 181 and the MFLSA in Chapter 177), Milner noted that they were

³ Contrary to Respondents' contention, section 181.79 does not "protect all employees" "from unauthorized deductions to their pay." Resp. Brief at 11. By its plain terms, the statute *allows* employers to make pay deductions for certain enumerated categories, provides a rule for making those deductions, and provides a specific remedy in the event that rule is not complied with.

related because both pertain to “employment and wages” and are enforced by the Commissioner of Labor & Industry. 748 N.W.2d at 617.⁴

Here, section 181.79 (also housed in Chapter 181) and Rule 5200.0211 (interpreting a provision of Chapter 177) are likewise related. Although Respondents contend the provisions “address different wrongs,” they both clearly address “employment and wages” (specifically, what deductions an employer may make from its employees’ paychecks) and are enforced by the Commissioner of Labor & Industry. Minn. Stat. § 177.27, Subd. 4. As in Milner, these provisions form “a comprehensive statutory scheme for [paycheck deductions] in Minnesota and should be interpreted in light of each other.” 748 N.W.2d at 617.

When Rule 5200.0211 is properly read in light of section 181.79, it is clear that Respondents’ proffered interpretation of “guaranteed” fails. Stated simply, Minnesota employers who make pay deductions contemplated by a statute should not be found to nonetheless unwittingly violate an administrative rule and be exposed to massive, unanticipated liability in no way reflective of the actual alleged harm. But this is precisely what Respondents’ unprecedented and unsupported reading, adopted by the District Court, does.

⁴ Respondents are incorrect to the extent that they suggest that Milner is inapplicable because the provision at issue here is not ambiguous. Here, the Court has to determine what “guaranteed” means as used in Rule 5200.0211. Because section 181.79 exists, “guaranteed” cannot mean something that would negate the use of section 181.79 as to salaried-exempt employees, as Respondents’ absolutist reading would require.

Respondents claim that Rule 5200.0211 is absolute: if there is *any possibility*, however remote, that an individual's paycheck *could* be reduced, for any reason whatsoever, then his or her pay is "conditional" and he or she is not "guaranteed a predetermined wage for each workweek," and thus is not an exempt employee. LTF submits that the term of art "guaranteed" must be read in light of section 181.79, and must be read to permit the deductions contemplated by the statute. This is the only fair result and the only one that makes sense of the general rules that a statute trumps an administrative rule and specific provisions trump the general. Appellant's Brief at 22-23. Section 181.79 provides a specific remedy for the precise types of deductions at issue in this lawsuit, and Respondents' remedy lies only thereunder. They should not be permitted to seek a remedy of retroactive "overtime" under the administrative rule.

Contrary to Respondents' alleged parade of horrors, adopting LTF's position would *not* "eliminate the authority expressly provided to" the Minnesota Department of Labor & Industry and would *not* "render the salary test completely meaningless." Resp. Brief at 11. Reading the administrative rule in light of the existing statute would, however, uphold the Minnesota legislature's chosen scheme for resolving disputed paycheck deductions by making clear that the remedy for certain deductions—including those to recover any "claimed indebtedness running from employee to employer"—allegedly made without prior authorization in violation of section 181.79 would be that provided in section 181.79. The "salary" test in Rule 5200.0211 could still do its job of protecting Minnesota's salaried employees from deductions not otherwise contemplated by law. Employees could still pursue overtime claims under Rule 5200.0211 for virtually

any type of deduction not contemplated by section 181.79 (so long as such deductions are based on “productivity or weather”).

Moreover, even if this Court could decline to follow Milner and instead construed Rule 5200.0211’s “guaranteed” without regard to section 181.79’s explicit approval of certain deductions, Respondents’ absolutist interpretation still must fail because it contradicts the Minnesota Department of Labor & Industry’s guidance that the “salary” rule prohibits only deductions “based on productivity or weather.” As noted above, the deductions at issue were made to recover overpaid bonus advances, and *not* because of “productivity or weather.” Accordingly, the deductions comported with Minnesota law.

Going even further, even if Respondents’ absolutist reading were correct (which it clearly is not), the record facts do not support the District Court’s conclusion that LTF violated Rule 5200.0211. Respondents’ *salary* payments were never “conditional”; by contract, they were *guaranteed*. As noted above, the mechanism adopted in LTF’s bonus plan ensured, both in theory and in practice, that each and every employee received 100% of his or her promised annual salary, and not just at year end—they were never behind in the amount of money received as the year went along.⁵ There was no “threat” of any variation in salary. It was only the *bonus advances* that were in any sense “conditional” (in the sense that they were advanced with the understanding they may have to be repaid if not actually earned) and this cannot conceivably violate the “salary” test, which has

⁵ In a practical, money-in-the-pocket sense, the advanced bonus was essentially converted into already prepaid salary for the paychecks in question.

nothing to do with the payment of bonuses. This, too, independently entitles LTF to summary judgment as to liability.

Finally, although it may not be material to the Court's resolution of this appeal, LTF wishes to rebut Respondents' counsel's bald hypothesis that "this case has no impact on any other Minnesota employers." Resp. Brief at 13. The legal questions presented are not limited to the facts or parties of this appeal, but rather have far-reaching implications. Respondents contend that any pay policy or practice which comports with section 181.79 may nevertheless violate Minnesota's overtime rules and subject employers to massive unanticipated liability. Many other Minnesota employers have policies or practices providing for paycheck deductions to recover for "lost or stolen property," "damage to property," or "claimed indebtedness" such as a tuition reimbursement program. If the District Court's decision is allowed to stand, Minnesota employers will be prohibited from adopting such policies as to their exempt employees or will face massive potential liability for retroactive "overtime" pay. In fact, many employers have had such policies in effect for some time and could face significant potential liability for existing policies as well.

Although it is impossible to predict with precision what would happen if this Court were to adopt Respondents' unsupported, absolutist interpretation of Rule 5200.0211, it certainly would occasion a sea-change in Minnesota employment law and

probably would result in increased litigation, in addition to significantly affecting the pay practices of employers throughout the state.⁶

III. If Minnesota Rule 5200.0211 Applies, Any Remedy Thereunder Must Be Tailored To The Actual Deductions In Late 2005.

The District Court did not grapple with the issue of what is the proper remedy under Rule 5200.0211, but simply adopted the Respondents' theory that their salaries were "conditional" at all times, and therefore they were entitled to retroactive "overtime" pay for all workweeks during the class period. For the reasons detailed in LTF's opening brief, the District Court erred because this expansive loss-of-exemption remedy finds no support in and is contrary to Minnesota law.

Respondents fundamentally misunderstand and/or mischaracterize LTF's arguments regarding the proper remedy under Rule 5200.0211, if it is found to apply. First of all, LTF does *not* contend that section 181.79 provides a remedy for an alleged

⁶ Perhaps because Respondents' interpretation has not been adopted by any other court, it appears that there has been only one Minnesota appellate decision even citing Rule 5200.0211 during the twenty-two years since the rule's promulgation in 1986. That unreported decision, Wiebusch v. City of Champlin, 2003 Minn. App. LEXIS 648 (Minn. Ct. App. May 29, 2003), did not involve any of the issues presented in this case and is inapposite. The issue in Wiebusch was whether an employer that had communicated to an employee that he was paid at an hourly rate and that had openly acknowledged that the employee's pay would have varied based on the number of hours he worked truly intended to pay the employee a salary, rather than an hourly wage. Several documents and other evidence suggested that the City actually treated Wiebusch as hourly-paid even though he was classified as salaried. Id. at *2-3. The City's representatives also testified that if Wiebusch "worked less than 80 hours and had no sick, vacation, or comp[ensatory] time to make up the difference, he would be paid less." Id. at *6. This, the court determined, was "a true indicia of an hourly-wage employee," and thus created an issue of material fact as to whether Wiebusch "was a true salaried employee." Id. at *6-7. There was no real analysis of Rule 5200.0211.

violation of Rule 5200.0211. Rather, LTF submits that section 181.79, subdivision 2, evidences the Minnesota legislature's intention that remedies for allegedly improper pay deductions should be narrowly tailored to the actual deductions themselves.

Rule 5200.0211 does not itself expressly provide a remedy for alleged violations. Because that administrative rule and section 181.79 together form Minnesota's legislative scheme regarding pay deductions, section 181.79 should inform construction of Rule 5200.0211, as Milner requires. That especially is the case here, where the allegedly improper deductions were made to recover "claimed indebtedness." Consistent with section 181.79, any remedy here under Rule 5200.0211 must be limited to loss of exemption for the eight workweeks subsumed within the four pay periods during which some individuals had actual pay deductions taken. This approach also would be consistent with Rule 5200.0211's focus on "each workweek," which confirms that the Rule does not adopt the all-or-nothing approach advocated by Respondents and adopted by the District Court.

Second, LTF does *not* suggest that this Court should apply federal law and does *not* suggest "that it is somehow improper for Minnesota law to provide greater protection to its employees than federal law." Resp. Brief at 17. Rather, because there are no Minnesota authorities addressing the issue, LTF submits that this Court should look to federal law for guidance in fashioning a remedy, and should similarly limit the effect of allegedly improper deductions to the time period of the actual deductions. See Appellant's Brief at 25-26 fn.15.

As explained in LTF's opening brief, to uphold the District Court's decision would be to provide a windfall to Respondents, who were, by contract, always guaranteed to receive 100% of their promised annual salary, always did in fact receive it, and always did in fact receive the money due them on time as the year went along.

Respondents contend that loss of exemption should apply to all weeks during the class period because "deductions occurred multiple times to multiples members of the Plaintiff class" and they were "always [] working under the threat of losing their base pay." Resp. Brief at 5, 16. The facts do not support such a finding. For one thing, as shown above, their "base pay" was never at risk, either in theory or in practice. Moreover, although the Company's plans contained the written repayment proviso from January 1, 2004 through March 3, 2006 (A. 138, 186-87), the only time LTF actually chose to exercise its right to recover this indebtedness was across four consecutive pay periods in November and December 2005 (A. 196-97).⁷ For 10 of the 12 Respondents affected, the amounts were recovered out of one or two of their paychecks; the other two had three paychecks reduced to recover overpaid bonus advances. (Id.)

As a practical matter, despite these reductions, every one of the 12 affected managerial employees received 100% of his or her promised 2005 yearly salary (as they had every other year). (A. 138.) In fact, even after the limited deductions, some of the

⁷ These were not the only pay periods in which LTF could have recovered bonus overpayments. The Company affirmatively decided to allow employees to keep bonus advances they did not earn and not to make deductions to recover advances prior to November 9, 2005. (A. 176-77.) Respondents' contention "it was a definite" that deductions would occur if employees had been advanced more bonus than they had actually earned (Resp. Brief at 5) thus is contrary to the record evidence.

affected employees ended up keeping bonus they did not earn under the terms of the plan. Appellant's Brief at 9 (citing A. 202, 206, 214-31). The record also shows that of the 126 managerial employees in the entire class of Respondents, 114 (90% of them) had no bonus overpayment reductions made and received 100% of their usual paychecks for each of the 100 weeks in the putative class period. (A. 196-97.) Overall, no paychecks were reduced for anyone in at least 94 of the 100 weeks in the class period, including the first 82 weeks of the putative class prior to the first deductions. (Id.)

The record also makes clear that Respondents were not "always [] working under the threat of losing their base pay" and did not honestly believe their pay was "always conditional" because of the mere existence of the written repayment proviso. As noted above, the plain terms of the plans *guaranteed* Respondents they would receive all of their promised base pay no matter what, and the facts confirm they did indeed receive 100% of their promised annual salary throughout the entire class period. There was no "threat" or risk that Respondents could ever "los[e] their base pay." Additionally, the Company's bonus plans applied to employees from club-level department managers (such as Named Plaintiff Erdman) up through and including LTF's corporate officers and senior executives (all of whom are putative members of the class action certified by the District Court). This means the very employees who created and administered the bonus plans were covered by them, and undercuts Respondents' cries of "fear" and being "threatened." Further, Respondents' own discovery responses confirm that their work hours did not change after the plans became effective, and were not impacted by the plans. See, e.g., A. 65.

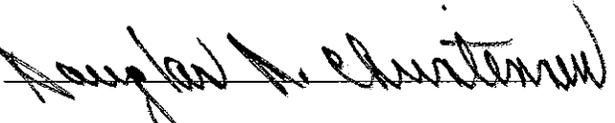
These facts do not support the District Court's legal conclusion that the salaries of all 126 employees were somehow "always at risk for reduction" for all 100 weeks of the class period.

CONCLUSION

For the reasons set forth above, and in LTF's opening brief, this Court should reverse the District Court's unprecedented and unsupported reading of Minnesota's wage-and-hour laws and enter summary judgment in favor of LTF.

Dated: February 9, 2009

DORSEY & WHITNEY LLP

By 

Douglas R. Christensen (#192594)
Michael J. Wahoske (#113670)
Zeb-Michael Curtin (#352640)
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600

Attorneys for Appellant
Life Time Fitness, Inc.