



Minnesota Human Rights Act Expands to include Familial Status in Employment

The Minnesota Human Rights Act: Employment Familial Status Discrimination

On May 11, 2014, Governor Mark Dayton signed the Women's Economic Security Act (WESA), which amended the prohibitions against employment discrimination in the Minnesota Human Rights Act (MHRA). Now, discrimination based on "familial status" in hiring, promotion, retention and other employment decisions is illegal in Minnesota.

Frequently Asked Questions

When did the employment protections based on familial status take effect?

The new protected class became effective on May 12, 2014.

Is prohibiting familial status discrimination new to the Minnesota Human Rights Act?

No. Prior to the adoption of the WESA law, the MHRA prohibited discrimination on the basis of familial status in housing. Discriminatory practices by owners, lessees, brokers, agents, financial institutions, and others include:

- Refusing to sell, rent, lease or otherwise deny to or withhold from any person or group of persons any real property because of familial status,
- Discrimination based on familial status in the terms, conditions or privileges of the sale, rental or lease of any real property, and
- Advertising or suggesting in rental applications, directly or indirectly, a refusal to contract with a party because of their familial status.

How is familial status defined?

Familial status is defined in the MHRA as a:

- (1) Parent, guardian or designee of a parent or guardian that lives with at least one minor or
- (2) A person who is pregnant or is in the process of securing legal custody of a minor. See, Minn. Stat. 363A.03, Subd. 18.

Do employers now need to provide affirmative benefits to employees?

Employers are not required to provide an affirmative benefit to an employee as a result of this amendment to the MHRA.

Scenarios

Becoming a Guardian

Agape, a Certified Public Accountant (CPA) at a mid-size accounting firm, mentioned to her boss that she had become the guardian of her niece and nephew and that she would need a week of leave to get them enrolled in school. Agape's boss, Paul, expressed concern that she would be unable to balance her new family responsibilities and her career. Without her input, Paul moved Agape from her lead position on several big accounts to a supporting role on several smaller accounts informing her that she "would have more time to spend time with her new family." At the end of the year, Agape was denied a bonus and pay raise. When she asked for an explanation, Paul informed her that she needs to be available to work on large accounts.

The actions taken by Paul likely constitute discrimination as he had no information before him that supported his belief that the quality of Agape's work necessitated taking her off the "big accounts" she had been previously assigned and her removal from working on those accounts resulted in financial harm to her. Employers should not presume that employees with caregiving responsibilities are unable to provide quality work.

Mother of three laid off

Maria, the mother of three school-age children, alleges that she was unlawfully terminated; her employer states that Maria was laid off consistent with a reduction in force. When the matter was investigated, the Department found that Maria's work product was neither as consistent nor of a quality similar to that of her co-workers. Maria stated that she should not have been subject to the reduction in force because she has children and the other workers do not have children.

Maria has no claim for discrimination. The actions taken by the employer in determining who to terminate through the reduction in force are based on legitimate non-discriminatory reasons. Further, the law does not require to be treated more favorably than her co-workers who don't have children.

Applicant is a divorced father with sole custody of son

An employer determines that one of the applicants, Kawhi, is the best qualified applicant but is reluctant to hire him because he is a divorced father who has sole custody of his son, who is an individual with a disability. Because the employer concludes that Kawhi's caregiving responsibilities may have a negative effect on his attendance and work performance, the employer decides to offer the position to the second best qualified candidate.

The employer should not presume that Kawhi would not be able to successfully perform the job if offered the position because he has to take care of his son with a disability. Accordingly, the actions of the employer likely are familial status discrimination. Kawhi likely has other claims against his employer.

Familial Status in Employment

Scenarios

New father misses important deadlines

After Bill, an engineer, returns from paternity leave, he begins missing important deadlines. As a result, the firm loses a big client and he is given a written warning about his performance. Two months after Bill is given the written warning and his work does not improve, the firm transfers him to another department where he would be excluded from working on high-profile large projects.

The Department will issue a no probable cause determination if it finds that male and female employees who missed deadlines on high-profile projects or failed to improve within a reasonable period time are transferred away from high-profile projects. The new law does not require employers to accept substandard work.

Pregnant woman misses three days of work

Susie, a nurse, was six-months pregnant when she missed three days of work due to a pregnancy-related illness. Susie properly notified her employer of her absence. Upon her return to work, Susie's supervisor, Jill called her into her office and told her that "As a mother, I know how difficult pregnancy can be" and that "her erratic attendance can't be tolerated." Susie reminded Jill that she had only missed three days and that her doctor had told her that she would have no complications related to her illness. Jill told Susie, "Well, now that you're in the last trimester of your pregnancy, you are going to miss a lot of work and we need someone who is dependable." Susie was subsequently placed on leave of absence and told that she could come back to work after she delivered her baby.

The actions of the employer suggest unfounded bias against Susie as she had no history of missing work and there was no evidence from Susie's treating physician that she had on-going concerns about Susie's ability to attend work.

Single Mom told she will never be promoted

Donald, a Vice-President, informs Jayne that he will never promote her to a management position because he doesn't believe that single working mothers are able to concentrate enough at work because of the demands of raising their children. Jayne tells Aaron of her conversation with Donald. Aaron tells Jayne about the new familial status law and encourages her to file a complaint against Donald. Jayne subsequently meets with the Human Resources Department to file a complaint. Donald learned of Aaron's conversation with Jayne and decides to fire him. Can Aaron bring a claim under the Human Rights Act?

Yes. Employers are prohibited from retaliating against workers who complain about unlawful discrimination, who are participants in an investigation concerning unlawful discrimination or who support their fellow employees. Because Aaron encouraged Jayne to file a complaint with the Human Resources Department and he was fired for encouraging Jayne's actions, Aaron may proceed with a retaliation claim.