

Two-Year Statute of Limitations for Wrongful Termination Claims Under Minnesota's Drug and Alcohol Testing in the Workplace Act

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In September of 2012, the Minnesota Court of Appeals held in *Sipe v. STS Manufacturing, Inc. et al.*, No. A11-2082 (Minn. Ct. App. Sept. 25, 2012), that a wrongful termination claim under the Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA) is an intentional tort and must be....

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Factual Background and Procedure

In this case, the plaintiff, Terrance Sipe (Sipe), was jointly employed by STS Manufacturing, Inc. (STS) and its staffing agency, Labor Ready/True Blue (Labor Ready). In April of 2008, Labor Ready required Sipe to submit to a drug test and he complied. Approximately, three days later, Sipe was informed that he had failed his drug test and was told to leave the premises immediately. In May of 2011 (nearly three years later), Sipe alleged that STS and Labor Ready violated various DATWA procedures and wrongfully terminated him under the statute. STS and Labor Ready moved to dismiss Sipe's complaint, arguing that a two-year statute of limitations applied to his DATWA claims under Minnesota Statute § 541.07(1) because wrongfully terminating Sipe was an intentional tort, subject to the two-year limitation period. Sipe countered by arguing that the six-year statute of limitations applied to his DATWA claims under Minnesota Statute § 541.05, subdivision 1(2). The district court dismissed Sipe's claims and granted STS and Labor Ready's motion to dismiss by concluding that a two-year statute of limitations applied. Sipe appealed, and on September 25, 2012, the Minnesota Court of Appeals affirmed the district court's decision. On October 25, 2012, Sipe petitioned the Minnesota Supreme Court for further review. The Minnesota Supreme Court has not yet issued a decision regarding Sipe's petition.

Legal Standard

Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA): Under DATWA, an employer may not discharge an employee for whom a positive test result was the first such result for the employee on a drug or alcohol test requested by the employer unless the following two conditions apply. First, the employer gave the employee an opportunity to participate in either a drug or alcohol counseling or rehabilitation program. And second, the employee either refused to participate in the counseling or rehabilitation program or failed to successfully complete the program. Minn. Stat. § 181.953, subdivision 10(b).

Two-Year Statute of Limitations: A two-year statute of limitations applies to actions for “libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury.” Minn. Stat. § 541.07(1).

Six-Year Statute of Limitations: A six-year statute of limitation applies to “a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided [under another section of the statute].” Minn. Stat. § 541.05, subdivision 1(2).

The Minnesota Court of Appeals’ Decision

The Minnesota Court of Appeals—on a question of first impression—had to decide whether the district court was correct in applying a two-year statute of limitations to DATWA actions under Minnesota Statute § 541.07(1), rather than a six-year statute of limitations under Minnesota Statute § 541.05, subdivision 1(2).

The court analyzed whether Sipe’s DATWA action constituted an “other tort resulting in personal injury” under section 541.07(1). The court observed that the necessary characteristics for torts that fell within the “other tort resulting in personal injury” provision included: 1) it was a tort, 2) it was an intentional or strict liability tort, and 3) it resulted in personal injury.

First, the court determined that Sipe’s DATWA wrongful termination claim was indeed a tort because “tort principles” could be applied to at-will employment relationships when “the employee [could] demonstrate that the employer contravened some clear mandate of public policy either recognized judicially or legislatively.” Here, the public policy was “providing a level of minimum mandated protection for employees affected by random drug testing.”

Second, the court followed *Larson v. New Richland Care Center*, 538 N.W.2d 915 (Minn. Ct. App. 1995) where it determined that an employer’s wrongful discharge of an employee was an “intentional tort.” As a result, a DATWA wrongful termination claim constituted an intentional tort.

Finally, the court further relied on the ruling in *Larson*, where it had determined that wrongful discharge was a personal wrong that met the personal injury requirements. Accordingly, the court concluded that a

wrongful termination violation under DATWA constituted a personal injury. Therefore, the court held that the two-year statute of limitations applied to a DATWA wrongful termination claim.

Practical Impact for Employers

The Minnesota Court of Appeals' ruling provides clear guidance to employers on the applicable statutory limitation for DATWA claims. The court has narrowed an employer's exposure to liability for DATWA actions to a two-year time frame. The Minnesota Supreme Court, however, may have the final say as Sipe's lawyers have petitioned the court to review the court of appeals' decision. If the Minnesota Supreme Court reviews the case, a decision may be expected some time in 2013.

Categorizing a DATWA violation as an intentional tort may present a concern to employers for punitive damages exposure. However, this ruling does not necessarily mean that a plaintiff would be more successful in seeking punitive damages. The plaintiff must make a *prima facie* showing to obtain punitive damages, which are recoverable under Minnesota's punitive damages law "only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others." Plaintiffs will still find this to be a difficult hurdle to clear.

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