THE ARCHDIOCESE OF SAINT PAUL AND MINNEAPOLIS

SCHOOL LAW DAY

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LEGAL POTPOURRI

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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.

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I. Recent Developments in Unemployment Compensation Law

A. New Statute

The general rule is that employees who lose their job through no fault of their own are likely entitled to unemployment compensation benefits. But employees who resign or who are terminated for "misconduct," as defined by the unemployment statute, are not entitled to unemployment benefits. The Department of Employment and Economic Development (DEED) determines, initially, whether an employee is entitled to unemployment benefits.

A new statute, which took effect on July 1, 2012, is meant to prohibit employers and employees from manipulating the unemployment process. Under the new statute, an employer may not agree not to contest payment of benefits or agree not to provide information to DEED.

Minn. Stat. § 268.192, subd. 1a (2012)

Subd. 1a. Agreements not allowed.
An employer may not make an agreement that in exchange for the employer agreeing not to contest the payment of unemployment benefits, including agreeing not to provide information to the department, an employee will:
(1) quit the employment;
(2) take a leave of absence;
(3) leave the employment temporarily or permanently; or
(4) withdraw a grievance or appeal of a termination.
An agreement that violates this subdivision has no effect under this chapter.

Takeaway:

- Do not make promises to the employee about the unemployment benefits process or determination.
- This is a new statute, and it is not clear how courts will interpret it.
- The statute is potentially unclear.
- Exercise care in drafting separation agreements, especially in light of the last mandate in the subdivision which voids agreements that violate the subdivision.

B. Recent Written Warning Cases

Employers are generally urged to document employee disciplinary problems and misconduct with written warnings to the employee. This summer the Minnesota Court of Appeals issued several decisions regarding written warnings and unemployment compensation benefits. In these cases, the employees quit or were terminated after refusing to sign the written warning, and the court ruled that the employee was not eligible for unemployment benefits.

- *Schmeling v. Cornerstone Contracting, Inc.*, No. A11-1588, 2012 WL 1970106 (Minn. Ct. App. June 4, 2012). Employee refused to sign a written warning, stating that he disagreed with the allegations contained therein. The employer terminated him, believing that his unwillingness to sign indicated he "would not change his behavior." The court of appeals ruled that the employee was ineligible for benefits because he was discharged for employment misconduct. The court observed that the warning at issue did not require the employee to admit the prior conduct, but just to acknowledge (1) that he has been warned in the past not to engage in certain conduct, and (2) engaging in four specific behaviors in the future "will be grounds for immediate dismissal." The request to sign was reasonable, and the refusal to sign was employment misconduct.

- *McKibben v. Arvig Enterprises*, No. A11-1678, 2012 WL 236882 (Minn. Ct. App. June 25, 2012). Employee who chose to quit employment, rather than sign final written warning, was not eligible for benefits. The warning relayed concerns about work performance, requests for schedule changes, unauthorized overtime, excessive talking, criticism of other works, and refusal to perform a safety audit. The employee claimed she did not believe the allegations in the warning and therefore could not sign the document. Instead, she chose to quit. She applied for unemployment benefits, but was denied. On appeal, the court of appeals agreed that she was ineligible for benefits, because receiving a warning is not a good reason to quit caused by the employer.

- *Stephens v. A Marketing Resource, LLC*, No. A11-2036, 2012 WL 2505914 (Minn. Ct. App. July 2, 2012). Employee refused to sign a written document with a warning which stated, "going forward if you have any sales put into the system that are considered false or you are found to be giving discounted rates to [a] customer without the customer saying they were cancelling their subscription, your employment with AMR will be terminated." The employer told the employee he was required to sign the document, but the employee refused, stating that he denied the allegations. His employment was terminated, and he applied for unemployment benefits. He was found ineligible and appealed to the Minnesota Court of

Appeals. On appeal, the employee argued that he refused to sign the document because of how it was presented to him and because the allegations were untrue. But the signature was required only to reflect that he acknowledged having read the document and agreed to follow the policies or face termination. The court of appeals ruled that his refusal to sign, under these circumstances, was employment misconduct. The court explained that it is generally a reasonable policy to require a signature to acknowledge receipt of a warning and that refusal to abide by reasonable policies amounts to employee misconduct that disqualifies the employee from receiving unemployment benefits.

- *Schneeweiss v. Schwan's Consumer Brands, Inc.*, No. A11-1709, 2012 WL 2505815 (Minn. Ct. App. July 2, 2012). Employee was discharged after refusing to sign a written warning to acknowledge its receipt, despite being warned that a refusal to sign could result in discharge. The court of appeals agreed that he was ineligible because he was discharged for employment misconduct. The court noted that the requirement that the employee sign the warning was reasonable and did not impose an unreasonable burden on the employee. The court also noted that the employee had the option of submitting a written response if he did not agree with the warning.

- *Wilson v. Best Buy Warehousing Logistics, Inc.*, No. A12-0038, 2012 WL 3262985 (Minn. Ct. App. Aug. 6, 2012). The employee was ineligible for benefits because she was discharged for employment misconduct after being tardy or absent in violation of the employer's attendance policy. On appeal, the employee claimed that she did not know that she was violating the policy, but the record included a warning signed by the employee that notified her of violations and indicated that further violations could result in discharge.

In light of these cases, employers should consider whether they currently require written warnings to be acknowledged by the employee. These cases demonstrate that such a policy is certainly reasonable, even though employees frequently balk at the requirement. Moreover, a signed acknowledgment of receipt demonstrates that the employee received the written warning and can be used to demonstrate notice of violations.

Employers are encouraged to require all written warnings to be acknowledged by the employee. An acknowledgment statement can easily be attached to each written warning.

Sample Acknowledgment Language:

By signing below, I acknowledge that I have received and reviewed this document. I understand that my refusal to acknowledge receipt of this document is grounds for disciplinary action, up to and including immediate termination.

The acknowledgment should not require the employee to agree with or verify the claims in the written warning. The acknowledgment should also inform the employee of the consequence for refusing to sign. An employee who disputes information in a warning should be permitted to submit a written response to the warning; that response is limited to five written pages. *See* Minn. Stat. § 181.962 (2012).

A written policy regarding this issue is probably not necessary, but the acknowledgement should be uniformly required.

II. Electronic Signatures

The use of electronic signatures is becoming increasingly common. They are used in various settings, including recreational activities, medical records and prescriptions, real estate, credit reporting, attorney CLE reporting, and student loans. The level of security and authentication needed depends upon the particular transaction.

This is a developing area of the law. Existing Minnesota law permits the use of electronic signatures. *See* Minn. Stat. § 325L.07 (2012) (record or signature *may not* be denied legal effect or enforceability solely because it is in electronic form). Federal law similarly permits the use of electronic signatures. 15 U.S.C. § 7001(a) (a contract relating to a transaction in interstate commerce may not be denied legal effect solely because an electronic signature or electronic record was used in its formation).

Electronic signatures can streamline processes at parishes and schools. Electronic signatures could be used for contracts, tuition agreements, acknowledgments for receipt of handbooks and policies, and permission slips.

Tips for using Electronic Signatures:

- Identify a trustworthy vendor for electronic-signature transactions.
- Consider the costs and benefits of electronic signatures.
- Consider your target audience (i.e., the typical signatory). Do they have sufficient access to and familiarity with technology such that they will be able to use the electronic signatures?
- The signatory must agree to sign electronically.
- For additional security, require that the signature be authenticated with a PIN or password that is distributed directly to the signatory. Require the signatory to agree not to disclose the PIN or password to anyone else.
- Ensure that once electronically signed, the document cannot be altered.
- Ensure that electronically signed documents are preserved in accordance with records retention policies. Have a process in place ahead of time, and identify who is responsible for maintaining the records.
- Continue to follow other best practices used before electronic signatures. Courts will likely apply existing tradition rules of contract formation to contracts signed electronically.