

## Whistleblower Claims against School District Barred by the Statute of Limitations, Despite Alleged Employer Misrepresentations

The Minnesota Court of Appeals recently upheld a district court's dismissal of a whistleblower and discrimination lawsuit based on the running of the statute of limitations, despite an allegation that the employer made misrepresentations inducing the claimant to wait to file her lawsuit. In that case, entitled *Ford v. Minneapolis Public Schools*, an employee brought an action alleging discriminatory acts under the whistleblower statute against her employer, the Minneapolis Public Schools. The employee claimed that the employer's decision to eliminate her position after she reported financial improprieties and budget discrepancies was discriminatory and retaliatory.

The employee was notified that her position was being eliminated about two months before her last day of employment. The employee filed a lawsuit more than two years after she was notified her position was being eliminated, but before the two-year anniversary of her last date of employment. The employee attempted to argue that the statute of limitations should not start until her last date of employment. She further argued that the two-year statute of limitations on her whistleblower claim should have been tolled because, after she received her notice, she had reported her claim for discrimination and whistleblower to the director (also an attorney) of diversity and equal opportunity at her employer, who allegedly told the employee she would preserve the employee's civil rights and would guide her through the complaint process. The employee never heard anything further from the director, and after more than a year, realized the director was not going to assist in the complaint process. Notwithstanding this realization, the employee still failed to file her lawsuit for another year.

The court determined that the two-year statute of limitations began to run when the employee received notice of the elimination of her position, and thus, dismissed the employee's whistleblower claim on the basis that the statute of limitations expired and that the alleged misrepresentation did not toll the statute of limitations. The Minnesota Court of Appeals upheld the decision. Pursuant to Minnesota law, the statute of limitations for an employment discrimination claim begins on the date the employee was notified that his/her employment was ending. In the *Ford* case, the Minnesota Court of Appeals endorsed the same rule for whistleblower claims. The court also concluded that the alleged representation of the employer's director, even if true, did not toll the employee's statute of limitations. The court explained that the employee admitted that she realized she could no longer rely upon the representation one year before the statute of limitations ran – yet she still failed to timely file her lawsuit.

**The takeaway is twofold.** First, the case confirms the statute of limitations in Minnesota whistleblower claims begins to run at the notice of termination to the employee. Whether it is a layoff or a termination, employers can reasonably rely on the date of their notice to the employee that the employee's position is ending as the starting time for the statute of limitations. This will give employers more security and protection from untimely and delayed lawsuits. Second, the case is a reminder that representations by employers can resurface. Although the employer in the *Ford* case escaped potentially significant legal ramifications due to its employee's alleged representations, employers are cautioned to carefully handle complaints, refrain from making promises they cannot guarantee, and properly document conversations with employees to avoid disputes in the future. Even if a complaint is without merit, the employer's due diligence will serve it well in the case of unforeseen events in the future.

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