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Eighth Circuit Court of Appeals Strikes Down Minnesota Governor Tim Walz's Residential Eviction Moratorium & Eighth Circuit Provides Analysis of the Legal Standard for Title VII Gender Discrimination

By: Richard Sauceda

The Eighth Circuit recently decided two noteworthy decisions relating to government liability. First, in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), the court held that the owner of a residential unit stated plausible claims against Minnesota Governor Tim Walz when the landowner challenged the constitutionality of the Governor's Covid-19-related executive orders that restricted the ability of landlords to evict tenants of residential property. Second, the court in *Muldrow v. City of St. Louis Missouri*, 30 F.4th 680 (8th Cir. 2022) clarified the standards for Title VII gender discrimination when it held that a female police officer failed to establish a prima facie case of employment discrimination or retaliation when she was transferred to a unit she did not want to work at and was denied a transfer to her favored place of employment.

Heights Apartments

In 2020, in response to the COVID -19 pandemic, Minnesota Governor Tim Walz issued several executive orders that restricted residential landlords' ability to evict tenants. Under the executive orders, residential landlords could evict tenants only under specific circumstances, such as where tenants seriously endangered the safety of other residents or engaged in illicit activity on the leased premises. Landlords could not evict tenants for violating the terms of their leases or for not paying their rent. The executive orders threatened criminal sanctions on landlords who evicted tenants in violation of the orders.

In late 2020, Appellant, the owner of three residential rental properties, filed suit against Governor Walz, the Minnesota State Attorney General, and several other parties. Appellant alleged that the executive orders raised claims under 42 U.S.C. § 1983 for violating the Contract Clause of Article I of the U.S. Constitution, the Petition Clause of the First Amendment, the Takings Clause of the Fourteenth Amendment, and the Due Process Clause of the Fifth and Fourteenth Amendments. Specifically, Appellant alleged that the executive orders prevented it from "excluding tenants who breached their leases, intruded on its ability to manage its private property, and interfered indefinitely with its collection of rents." The district court dismissed all Constitutional claims against Governor Walz, finding that Appellant failed to state a claim entitling it to relief.

On appeal, the Eighth Circuit reversed the district court's judgment in part. Specifically, the Eighth Circuit found that Appellant stated plausible claims for relief against the Governor under both the Contracts Clause and the Takings Clause and remanded to the District Court to adjudicate those claims.

A. Contract Clause claim

Under the Contract Clause of the U.S. Constitution, a state cannot substantially interfere with private contractual obligations. The Eighth Circuit utilizes a two-prong test to determine whether a state has impermissibly interfered with a contract, which considers: "(1) whether the state law substantially impairs a contractual relationship, which takes into consideration the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights, and (2) whether the state law

New Managing Partner

Jardine, Logan & O'Brien is pleased to announce **Elisa M. Hatlevig** as the new managing partner. Elisa also serves as the first female managing partner in the firm's history. We are grateful to **Tom Cummings** for his eight years of service as managing partner and look forward to the future under Elisa's leadership.

is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose."

The court found that the first prong of the test was met because Appellant showed that the EOs prevented Appellant from safeguarding its rights to exclude individuals from its property. Appellant presented evidence that it was unable to exclude tenants who not only did not pay rent but engaged in behavior that materially breached the terms of their lease, such as throwing "raucous parties," "permitt[ing] unauthorized persons to live in the units," and even operating a car and boat repair shop on the property in violation of city ordinances.

The court also found that the second prong of the test was met, in that the EOs were not "appropriately and reasonably tailored." Citing the material breaches to Appellant's leases, such as one property being illegally utilized as a car and boat shop or other properties being used to throw parties, and noting that the allowance of such breaches actually undermined the Governor's efforts to combat the COVID-19 virus, the court found that the EOs were not reasonably tailored.

B. Takings claim

The court found that Appellant also pled facts plausibly giving rise to a Fifth Amendment takings claim. First, the court found that Appellant showed that the EOs plausibly gave rise to a per se physical takings claim because the EOs significantly interfered with Appellant's rights to evict tenants without compensation and "turned every lease in Minnesota into an indefinite lease." Second, the court found that Appellant plausibly alleged a non-categorical regulatory taking under the Supreme Court's three-factor test articulated in *Penn Cent. Transp. Co. v. N.Y.C.*, which considers "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." 438 U.S. 104, 124 (1978). Here, the court found that Appellant plausibly alleged that the three factors weighed in his favor. Because Appellant sufficiently pleaded that the EOs "deprived it of receiving rental income and managing its property according to the leases' terms and Minnesota law," the first two factors weighed in its favor. The court found that the third factor also weighed in Appellant's favor because Appellant sufficiently pleaded that the EOs were not as broadly beneficial to the public as legally required. Moreover, Appellant showed that the EOs improperly placed the burden of fighting homelessness on rental property owners, just a small subset of the general population. Based on the Eighth Circuit's findings in this suit, it remanded to the district court to further adjudicate the Contract Clause and Takings claims.

Muldrow

Appellant was a police officer employed within the Intelligence Division of the St. Louis Police Department in Missouri. Because she held a position with the Intelligence Division, she was granted FBI Task Force Officer (TFO) status. With her TFO status she was granted special privileges, such as accessing the FBI databases, working in plain clothes, and conducting investigations outside St. Louis city limits. She was also able to work a regular M-F schedule. She remained with the Intelligence Division until 2017, when the City of St. Louis replaced its Commander of Intelligence, who transferred 22 officers within the Department to different positions. Appellant was one of the officers who was transferred to a different position. Specifically, she was transferred to the Fifth District where she was largely responsible for administrative upkeep and supervising officers on patrol. Pursuant to the transfer, Appellant lost her TFO status. She was also unable to work a traditional Monday-Friday schedule and lost her eligibility for the FBI's annual overtime pay. Nonetheless, she retained her same salary as well as the ability to receive overtime pay.

Appellant filed a discrimination charge with the Missouri Commission on Human Rights, alleging that the City of St. Louis discriminated against her on behalf of gender when it transferred her out of the Intelligence Division. She then applied to transfer to other positions within the department, which she was not granted. Appellant Muldrow brought Title VII claims against the City of St. Louis, alleging that the City (I) engaged in gender discrimination against her, and (II) retaliated against her for filing a discrimination charge with the Missouri Commission on Human Rights. The district court dismissed Appellant's claims, and the Eighth Circuit affirmed in this opinion.

A. Gender discrimination

Under Title VII, to allege a prima facie case of employment discrimination, "the plaintiff-employee must show that she was a member of a protected class, she was qualified to perform the job,

she experienced an adverse employment action, and this treatment was different from that of similarly situated males." Here, Appellant alleged that her transfer from out of the Intelligence Division and into the Fifth District resulted in her being given work "more administrative and less prestigious than that of the Intelligence Division." She also alleged that the transfer caused her to change her work schedule; whereas she was originally able to work M-F, she now would have to work a more variable schedule. However, she conceded that her pay was the same, she was still eligible for overtime pay, she retained a supervisory role, and the transfer did not harm her future career prospects. The district court found that Appellant failed to show that she suffered an adverse employment action. On appeal, the circuit court agreed and affirmed the district court's judgment. The court stated that an employee's "mere preference for one position over the other" cannot constitute an adverse employment action. The transfer, and the denial of Appellant's subsequent transfer requests, had no effect on her pay, supervisory duties, or career potential. Further, the court found that the revocation of Appellant's TFO status upon her transfer did not constitute an adverse employment action for which the City of St. Louis could be held liable because it was the FBI who revoked her status, not the City.

B. Retaliation

The district court also found that Appellant failed to establish a claim of retaliation under Title VII. To establish such a claim, Appellant needed to show that "(1) she engaged in protected conduct, (2) she suffered a materially adverse employment act, and (3) the adverse act was causally linked to the protected conduct." The court again found that Appellant did not suffer an adverse employment action. The City's actions of transferring her to a different division or denying her subsequent transfer requests could not alone constitute adverse employment actions without a showing of material adversity, such as a decrease in pay. As the court succinctly stated, "an employer is not tethered to every whim of its employees."

Firm Updates

WELCOME JAKE AND TREVOR!

The Firm welcomes new associates

Jake W. Peden

and

Trevor S. Johnson

to the JLO Team.

Jake received his Bachelor of Business Administration from the University of Minnesota Duluth in 2013, and he developed a results-oriented mentality working in business-to-business sales prior to enrolling in law school. Jake received his Juris Doctor from the University of St. Thomas School of Law in 2018.

Trevor earned a Bachelor of Science in Criminal Justice from the University of Northwestern St. Paul in 2016 and his Juris Doctor from the University of St Thomas School of Law in 2019. Trevor brings courtroom experience and familiarity with municipal law to his representation of construction, government, and other clients.

Failure to Allege Exemption from COVID-19 Vaccination as a Reasonable Accommodation under the ADA

By: Maya Ortiz

Recently, former employees of Northfield Hospital and Clinics sued their previous employer for wrongful termination due to their non-compliance with the defendant's COVID-19 vaccination policy in the U.S. District Court of Minnesota. *Collingham et al. v. City of Northfield et al.,* No. 21-CV-2466 (PJS/JFD), 2022 WL 1558410 (D. Minn. May 17, 2022). Northfield Hospital and Clinics had implemented a policy requiring all employees to be fully vaccinated against COVID-19 on or before October 1, 2021. The policy allowed employees to request medical or religious exemptions. Each plaintiff requested medical and, or, religious exemption. All requests were denied. Plaintiffs were terminated, or forced to quit, from their positions because plaintiffs were not exempted from the policy and thereafter refused to be vaccinated.

Defendants brought a Motion to Dismiss plaintiffs' claims for discrimination and failure to accommodate claims under the Americans with Disabilities Act ("ADA") and the Minnesota Human Rights Act ("MHRA"), civil rights claims under 42 U.S.C. § 1983, and wrongful discharge claims related to the Minnesota Refusal of Treatment Statute, Minn. Stat. § 12.39.

The Court dismissed the ADA and MHRA claims without prejudice because the plaintiffs did not allege that each of them had a qualified disability as required to state a claim under the ADA and the MHRA. The Court also found that plaintiffs did not plausibly allege that an exemption from Northfield Hospital and Clinics' vaccination policy would be a "reasonable accommodation" for each plaintiff's (unidentified) disability within the meaning of either statute.

The court also dismissed civil rights § 1983 claims with prejudice because they were premised on violations of the ADA or Title VII of the Civil Rights Act. Finally, the Court dismissed the wrongful discharge claims related to the Minnesota Refusal of Treatment Statute on three grounds. First, there is no private right of action under the Minnesota Refusal of Treatment statute. The Court found that even if there was a private right of action, the Minnesota Refusal of Treatment statute applies only during a "national security emergency or peacetime emergency," and the parties agreed that no such emergency existed at the time of the events giving rise to this action. [1]

Second, under Minnesota law, an employee may recover for wrongful discharge only if they were asked by their employer to violate the law. Here, the Amended Complaint did not allege that plaintiffs believed in good faith that, if they did get vaccinated, they could have been prosecuted for violating the law. Judge Patrick Schiltz stated such an allegation would have been preposterous because no statute or regulation *prohibited* anyone from being vaccinated against COVID-19. He noted that the reality of the circumstances is quite the contrary because "federal, state, and local governments have used every means at their disposal to *encourage* citizens to get vaccinated.

Finally, Minnesota does not recognize wrongful discharge claims based on an employee's refusal to violate a public policy. The Court held that there is only one "narrow" exception to the general at-will employment rule; where an employer "terminated an employment relationship because of the employee's refusal to violate the law". *Dukowitz v. Hannon Sec. Servs.,* 815 N.W.2d 848, 851-52 (Minn. Ct. App. 2012), aff'd, 841 N.W.2d 147 (Minn. 2014).

Therefore, even if Minnesota could be said to have a public policy against compulsory vaccination, defendants cannot be held liable for terminating plaintiffs in violation of that policy. Minn. Stat. § 12.39. [2]

The United States Supreme Court recently upheld a regulation promulgated by the Secretary of Health and Human Services that mandates vaccination for certain healthcare workers employed in facilities accepting Medicare and Medicaid funding. [3]

Please also refer to the Equal Employment Opportunity Commission (EEOC) and Minnesota Department of Health provide guidance to employers regarding COVID policies, including vaccine mandates and requests for exemptions. As this guidance is continually evolving, please see https://www.eeoc.gov/coronavirus and https://www.health.state.mn.us/diseases/coronavirus/index.html for the most up-to-date COVID guidance and consult with an employment attorney.

[1] Minn. Stat. § 12.39, subd. 1

[2] (Acknowledging individuals' "fundamental right to refuse medical treatment") Minn. Stat. § 12.39

[3] *Biden v. Missouri,* 142 S. Ct. 647, 650 (2022). In *NFIB v. Osha*, the Supreme Court stayed the enforcement of a rule – issued by the Occupational Safety and Health Administration (OSHA), that imposed a vaccine-or-test mandate for employees in companies with more than 100 workers.

Congratulations

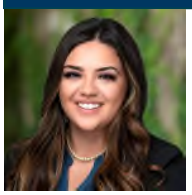
Congratulations to **Joseph E. Flynn**, **Elisa M. Hatlevig**, **Vicki A. Hruby**, **Tessa M. McEllistrem** and **Jake Peden** who were named to the 2022 list of Minnesota Super Lawyers and Rising Stars.





Super Lawyers is a Thomson Reuters business that provides a rating service of outstanding lawyers from more than 70 practice areas, who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. Rising Stars selections undergo the same selection process as Super Lawyers but recognizes attorneys who are 40 years old or younger, or have been practicing for 10 years or less. No more than 2.5% of lawyers in Minnesota are named to the Rising Stars list.

About the Authors



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About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients.

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