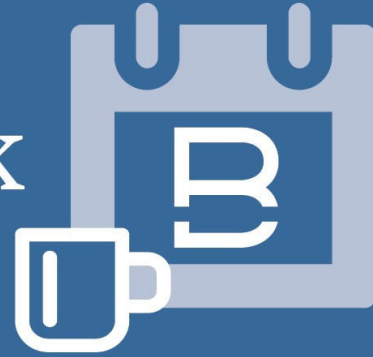


The Work Week

Bassford Remele Employment Practice Group



May 15, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Legislative and Administrative Update: Paid Family Leave Bill Inching Closer to The Governor's Desk

[Jessica L. Kometz](#)

Family and Medical Leave

Paid family and medical leave is now on the cusp of enactment in Minnesota. In past *Work Week* articles, we have presented updates on the Minnesota Paid Family and Medical Leave Act, which is widely expected to be passed into law during this current legislative session. As a reminder, the Minnesota Paid Family and Medical Leave Act gives employees the ability to take paid leave for either a serious health condition or for bonding, safety leave, or family care.

The near-final version of the Act defines bonding as “time spent by an applicant who is a biological, adoptive, or foster parent with a biological, adopted, or foster child in conjunction with the child’s birth, adoption, or placement.” Safety leave is defined as “leave from work because of domestic abuse, sexual assault, or stalking of the applicant or applicant’s family member,” so long as the leave is for specific reasons. Family care is defined as “an applicant caring for a family member with a serious health condition, caring for a family member who is a covered service member, or caring for a family member who is taking safety leave.” Importantly, the Act’s definition of who constitutes a “family member” is more expansive than its federal counterpart, the FMLA. The present version of the Act provides for a multitude of relationships that qualify as a “family member”: (1) a spouse or domestic partner; (2) a spouse’s parent; (3) a child; (4) a child’s spouse; (5) a parent; (6) a parent’s spouse; (7) a sibling; (8) a sibling’s spouse; (9) a grandparent; (10) a spouse of a grandparent; (11) a grandchild; (12) a spouse of a grandchild; and (13) an individual selected by the person who needs leave or who is the reason for another individual to need leave.

In one benefit year, an employee would be entitled to receive benefits for a serious health condition for the lesser of 12 weeks or 12 weeks minus the number of weeks that the employee has received benefits for bonding, safety leave, or family care plus eight weeks. An employee may also be entitled to receive benefits for bonding, safety leave, or family care for the lesser of 12 weeks or 12 weeks minus the number of weeks that the employee has received benefits for a serious health condition plus eight weeks in that same benefit year.

The Minnesota House of Representatives passed the paid leave bill on May 2, 2023. However, the bill was returned to the House by the Minnesota Senate on May 9, 2023 with certain amendments, including a prohibition on retaliation. At that time, both the House and Senate formed a conference committee to confer on disagreeing votes. While not yet in final form, the Minnesota Paid Family and Medical Leave Act is inching closer to Governor Walz's desk. Once enacted into law, this Act will be a significant change for most employers.

National Labor Relations Board Reverts to pre-*General Motors LLC* Standards

On May 1, 2023, the National Labor Relations Board issued a decision in *Lion Elastomers LLC II* and overruled its prior decision in *General Motors LLC*, 369 NLRB No. 127 (2020). In *General Motors*, the NLRB held that it would no longer apply setting-specific standards to determine whether employers unlawfully disciplined or discharged employees for misconduct that occurred during activity otherwise protected by the National Labor Relations Act. The Board noted that *General Motors* was a "sweeping change" that "reversed four decades of unbroken precedent." Going forward, the NLRB will utilize three setting-specific standards to determine whether employers engaged in unlawful discipline or discharge:

1. *Atlantic Steel*: This standard focuses on an employee's conduct towards management in the workplace. When utilizing this standard, the NLRB considers: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was provoked by an employer's unfair labor practice.
2. Totality of the Circumstances: This standard focuses on social media posts and cases involving conversations among employees in the workplace. As its name suggests, when utilizing this standard, the NLRB considers all the circumstances surrounding the conduct at issue.
3. *Clear Pine Mouldings*: This standard focuses on picket-line conduct. When utilizing this standard, the NLRB considers whether, under all of the circumstances, non-strikers reasonably would have been coerced or intimidated by picket-line conduct.

Employers will no longer be able to justify discipline or discharge by focusing on their own motives for taking action against an employee. This change represents a significant shift from the *Wright Line* test applied by the NLRB in *General Motors LLC*.

As always, Bassford Remele continues to be at the forefront of monitoring employment-law developments and advising our clients of the same. If you have any questions regarding the Minnesota Paid Family and Medical Leave Act or the recent NLRB decision, we are here to help!

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