

Minnesota Supreme Court clarifies requirements for state whistleblower lawsuits

by Jack Sullivan

An opinion issued by the Minnesota Supreme Court on August 9, 2017, could be the basis for more lawsuits by employees accusing employers of retaliating against them for reporting alleged wrongdoing. The case is *Friedlander v. Edwards Lifesciences, LLC, et al.*, A16-1916 (Minn. Aug. 9, 2017) ("*Friedlander*").

Based on previous court decisions, to bring a whistleblower case to court, an employee had to show "good faith" by demonstrating that the purpose of his or her report was "to expose an illegality." In 2013, the Minnesota Legislature amended the Whistleblower Act to provide a new definition of "good faith." Until *Friedlander*, it was not clear whether the "expose an illegality" requirement remained part of the law, as that mandate did not appear in the text of the 2013 Whistleblower Act.

In *Friedlander*, an employee sued his former employer in the United States District Court for the District of Minnesota under the Minnesota Whistleblower Act, claiming that his superiors had been engaged in legal violations, which the employee had reported directly to the superiors prior to his termination. The employer moved to dismiss the lawsuit, arguing that because the employee reported the allegedly wrongful conduct to people who already knew about the conduct, he had not "exposed" the allegedly illegal conduct to anyone. The success of the employer's motion therefore turned on whether the 2013 amendments eliminated the Whistleblower Act's "expose an illegality" requirement. Because no court had yet addressed that issue, the Minnesota District Court referred the question to the Minnesota Supreme Court, which ruled unanimously in favor of the employee.

In *Friedlander*, the Minnesota Supreme Court concluded that the 2013 amendments eliminated the "expose an illegality" requirement. Following *Friedlander*, a whistleblower's report is made in "good faith" if the report is "not knowingly false or made with reckless disregard of the truth."

Related People

- Jack Sullivan

Related Capabilities

- Labor & Employment
- Labor & Employment Guides

Based on *Friedlander*, employers should take care to ensure that any termination, demotion, pay cut, or other personnel action being considered for an employee who has reported actual or suspected illegal conduct is taken for legitimate business reasons, not because of the employee's report.