Minnesota: Disabilities (ADA)

Changes have been made to Duty to Accommodate effective July 1, 2021. Pregnancy Accommodations will be updated effective January 1, 2022 (this will now affect employers with 15 or more employees).

Disability Discrimination in Minnesota

In addition to the federal equal opportunity Minnesota employers must comply with state antidiscrimination laws, including the Minnesota Human Rights Act (MHRA). If both federal and state antidiscrimination laws apply, there may be conflicts, and the law more generous to the employee should be followed.

Minnesota employers may also be subject to local laws prohibiting disability discrimination.

The Minnesota Human Rights Act

The Minnesota Human Rights Act (the MHRA), (Minn. Stat. § 363A.01), specifically prohibits an employer from discriminating against an employee or job applicant on the basis of a disability except when based on a bona fide occupational qualification. Minnesota courts generally look to decisions under federal disability laws in interpreting some of the MHRA's disability provisions. The MHRA further prohibits an employer from engaging in any reprisal against a person who:

- Opposes a practice forbidden by the MHRA;
- Has filed a charge, testified, assisted or participated in any way in an investigation, proceeding or hearing related to a charge of discrimination; or
- Associates with a person or group of persons who are disabled.

The MHRA also prohibits unfair discrimination or reprisal by labor organizations against their members and potential members, and by employment agencies against their clients.

Covered Employers

The MHRA defines an employer as a person, including a partnership, association, corporation, state or subdivision, who has one or more employees. (Minn. Stat. § 363A.08; Minn. Stat. § 363A.03, Subd. 16). Because the scope of the MHRA is broader than that of the Americans with Disabilities Act (ADA) (i.e., the MHRA extends to persons employing one or more employees, in contrast to the ADA's coverage of employers with 15 or more employees.

Similar to the ADA, the MHRA only requires employers with 15 or more employees to reasonably accommodate the known physical or mental limitations of a qualified individual with a disability. (Minn. Stat. § 363A.08, subd. 6).

Employees

The MHRA defines an employee as an individual who is employed by an employer and who lives and works in Minnesota. Therefore, the MHRA does not apply to workers who have no connection to Minnesota, even if the employer is located in Minnesota. (Minn. Stat. § 363A.03, subd. 15).

What Is a Disability?

The MHRA defines a person with a disability under any of the following bases:

- A physical, sensory or mental impairment that materially limits one or more major life activities;
- A record of such an impairment; or
- Being regarded as having such an impairment.

(Minn. Stat. § 363A.03, subd. 12).

The MHRA further defines a qualified individual with a disability as a person with a disability who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question. (Minn. Stat. § 363A.03, subd. 36(1)).

Materially Limits

Minnesota courts have held that this materially limits standard is less demanding than the ADA's substantially limits standard. It remains to be seen whether the Minnesota courts will continue to hold that the materially limits standard is less demanding than the ADA standard in light of the lower threshold established for the substantially limits standard under the Americans with Disabilities Act Amendments Act (ADAAA), which went into effect on January 1, 2009.

Major Life Activities

Under the MHRA, major life activities include such tasks as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting and reaching. However, this list is not exclusive, and Minnesota courts have also recognized that an asymptomatic HIV-positive individual is disabled within the meaning of the MHRA because of the general "social exclusion" to which such persons are subjected as a result of their illness - a theory that federal courts interpreting the ADA have rejected. If an employer is aware that an employee has AIDS, the employer should seek advice as to the risks of infection and preventative steps that may be necessary to protect the employee and his or her co-workers.

The ADAAA creates additional categories of major life activities that have not been explicitly adopted by Minnesota courts or incorporated into the MHRA.

Mitigating Measures

In contrast to the ADAAA, the Minnesota Supreme Court examines an impairment by taking into account its corrective measures (e.g., medication or medical treatment) to

determine whether a person is disabled under the MHRA. It remains to be seen whether the Minnesota Supreme Court or the Minnesota legislature will embrace this change made by the ADAAA. However, an employer with 15 or more employees will need to follow the ADA on this point.

Duty to Accommodate

The ADA and the MHRA provisions regarding the requirement to provide reasonable accommodation only applies to employers with 15 or more employees, while the antidiscrimination and anti-retaliation provisions of the MHRA apply to any employer with one or more employees.

A reasonable accommodation may include, but is not limited to:

- Making facilities readily accessible to and usable by individuals with disabilities;
- Job restructuring;
- Modifying work schedules;
- Reassignment to a vacant position;
- Acquiring or modifying equipment or devices; and
- Providing aides on a temporary or periodic basis.

Similar to the ADA, under the MHRA, an employer is not required to accommodate an employee if the accommodation places an undue burden on the employer.

To determine the appropriate reasonable accommodation, an employer, agency or organization must initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the limitations resulting from the disability and any potential reasonable accommodations that could overcome those limitations.

(Minn. Stat. § 363A.08, subd. 6, as amended by 2021 Bill Text MN H.B. 63A (Sec. 13)).

Medical Examinations/Inquiries

Like the ADA, an employer is precluded from requesting preemployment information about disabilities or requesting or requiring a physical examination under the MHRA.

Unlike the ADA (which does not treat drug addiction as a protected disability), the MHRA considers alcoholism and drug addiction as protected disabilities, provided the condition does not prevent the individual from adequately performing his or her job or cause a direct threat to property or the safety of others. (Minn. Stat. § 363A.03, subd. 36). Therefore, an employer subject to both the MHRA and the ADA should consider whether an employee's alcoholism or drug addiction qualifies as a disability under the MHRA.

Enforcement

Complaints under the MHRA may be filed with the Minnesota Department of Human Rights (MDHR) or with the district court. Unlike Title VII, the MHRA does not require an individual to first file a complaint with the MDHR before filing a court action.

Pregnancy Accommodation

Under the MHRA, female employees affected by pregnancy, childbirth or related disabilities must be treated the same as other employees who are similar in their ability or inability to work. While the MHRA generally applies to employers with one or more employees, its reasonable accommodation requirement matches the ADA and applies only to employers with 15 or more employees. Another state law provides employer requirements for accommodating nursing and lactating employees.

Although the ADA specifically excludes a normal pregnancy from the definition of disability, some medical conditions associated with pregnancy may rise to the level of disabling. Thus, an employer with 15 or more employees must be aware that a pregnant employee may require reasonable accommodations under the ADA, up to and including a leave of absence, if she becomes disabled by her pregnancy. An employer with 50 or more employees may also designate a leave of absence for pregnancy disability under Minnesota law or as a leave of absence under the federal Family and Medical Leave Act (FMLA).

The Women's Economic Security Act requires an employer with 21 or more employees at one work site to provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if the employee requests one, with the advice of her licensed health care provider or certified doula, unless the employer demonstrates that the accommodation would impose an undue hardship on its business operations. (Minn. Stat. § 181.9414).

An employee is a person who has worked for a covered employer for:

- At least 12 months preceding the request; and
- An average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification, as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during the 12-month period immediately preceding the request.

(Minn. Stat. § 181.940).

The employee and employer must engage in an interactive process with respect to an employee's reasonable accommodation request. A reasonable accommodation may include, but is not limited to:

- A temporary transfer to a less-strenuous or less-hazardous position;
- Seating;
- Frequent restroom breaks; and

- Limits to heavy lifting.

A pregnant employee is not required to obtain the advice of her licensed health care provider or certified doula, nor may an employer claim undue hardship, for the following accommodations:

- More frequent restroom, food and water breaks;
- Seating; and
- Limits on lifting over 20 pounds.

An employer is not required to:

- Create a new or additional position in order to accommodate an employee;
- Terminate any employee;
- Transfer any other employee with greater seniority; or
- Promote any employee.

An employer may not require an employee to take a leave or accept an accommodation.

Finally, an employer is prohibited from retaliating against a pregnant employee for requesting or obtaining an accommodation under the law.

(Minn. Stat. § 181.9414).

Genetic Testing

Employers of any size are prohibited from administering a genetic test or requesting, requiring or collecting genetic information regarding an individual as a condition of employment. The law further prohibits an employer from terminating or otherwise affecting the terms and conditions of employment of any person based on protected genetic information. An employer may not circumvent the prohibitions of this statute by using another person or entity to provide or interpret the genetic information on a current or prospective employee. (Minn. Stat. § 181.974)

Medical Marijuana

Minnesota permits the use of medical cannabis by registered patients with a qualifying medical condition. Qualifying medical condition means a diagnosis of any of the following conditions:

- Cancer, if the underlying condition or treatment produces one or more of the following:
    - Severe or chronic pain;
    - Nausea or severe vomiting; or

    - Cachexia or severe wasting;
- Glaucoma;
- HIV or AIDS;
- Tourette's syndrome;
- Amyotrophic lateral sclerosis;
- Seizures, including those characteristic of epilepsy;
- Severe and persistent muscle spasms, including those characteristic of multiple sclerosis;
- Crohn's disease;
- Terminal illness, with a probable life expectancy of under one year, if the illness or its treatment produces one or more of the following:
    - Severe or chronic pain;
    - Nausea or severe vomiting; or
    - Cachexia or severe wasting;
- Intractable pain;
- Post-traumatic stress disorder;
- Autism;
- Obstructive sleep apnea; or
- Any other medical condition or its treatment approved by the commissioner.

(Minn. Stat. § 152.22, subd. 14).

However, while registered patients may legally use medical cannabis, the law does not permit:

- Undertaking any task while under the influence of medical cannabis that would constitute negligence or professional malpractice;
- Vaporizing medical cannabis in a place of employment; and
- Operating, navigating or physically controlling a motor vehicle, etc., or working on transportation of property, equipment or facilities while under the influence of medical cannabis.

(Minn. Stat. § 152.23).

A Minnesota employer may not discriminate against a person in hiring, termination or any term or condition of employment, or otherwise penalize a person, if the

discrimination is based upon the person's status as a patient enrolled in a state registry program or a patient's positive drug test for cannabis components or metabolites. A registered patient may provide verification of his or her enrollment in the qualifying patient registry as part of his or her explanation for a failed drug test. However, an employer may take disciplinary action if the employee used, possessed or was impaired by medical cannabis on the employer's premises or during work hours. (Minn. Stat. § 152.32).

An employer may still prohibit the use of marijuana during work hours and may discipline employees for being under the influence during work hours. In addition, the law permits an employer that has federal contracts or is otherwise required under federal regulations to maintain a drug-free workplace to take action even if such action is based upon the person's status as a qualifying patient. (Minn. Stat. § 152.32).

Under federal law, the ADA does protect individuals who are former or recovering drug addicts from discrimination by employers. It also specifically permits an employer to take an adverse action (e.g., termination, discipline) against employees on the basis of current illegal drug use. Therefore, an individual who currently abuses an illegal drug like marijuana is not considered to be an individual with a disability under the ADA.

The federal Drug-Free Workplace Act of 1988 requires covered employers to publish policies supporting a drug-free workplace and to report and discipline employees who engage in drug-related crimes occurring in the workplace. An employer that fails to comply may risk its eligibility to compete for federal contracts. Thus far, courts have upheld an employer's right to enforce a drug-free workplace even if an employee is using marijuana for medical purposes.

A Minnesota employer should:

- Exercise caution in dealing with employees who are registered medical cannabis users under state law and ensure that employees are afforded reasonable accommodations where necessary due to the employee's underlying medical condition that gave rise to the need to use medical cannabis;
- Review its drug testing policies and reasonable accommodation policies and train supervisors to understand whether an employee is impaired. Supervisors and HR should also be trained on how to handle disciplining an employee who tests positive (e.g., providing the employee a reasonable opportunity to contest the discipline);
- Address the use of medical cannabis within the written policy on substance abuse. For example, if an employer treats medical cannabis just as it treats other illegal drug use, a published policy advising employees and applicants of that fact will help individuals who may be considering the use of medical cannabis to make an educated decision about how that use may affect their employment; and
- Be cautious when implementing workplace policies that deal with the use of legally prescribed medication, generally, including legally prescribed medical cannabis. The ADA does not permit blanket prohibitions against on-the-job use of

prescription medications in general. Thus, while drug testing policies may include legally prescribed drugs, an employer may not have a zero-tolerance policy that permits adverse action (e.g., termination, demotion) against any employee who tests positive for prescription medication. Instead, following a positive test, the employer should ask if the employee is taking any prescribed drugs that would explain the positive result.

A Minnesota employer may institute a policy against employees using or being under the influence of marijuana in the workplace. In addition, an employer may implement drug-free workplace policies and may require employees to disclose prescription drugs that may adversely affect judgment, coordination or the ability to perform job duties. If an employee discloses that he or she uses a prescription drug, the employer should first request medical certification regarding the effect of the medication on the employee's ability to safely perform his or her essential job functions. The employer should then engage in the interactive process to determine whether a reasonable accommodation would enable the individual to remain employed.

Service Animals

For public accommodation purposes, Minnesota protects the rights of persons who are blind, deaf or have a physical or sensory disability to be accompanied by a service animal. Minnesota has adopted the ADA's definition of service animal. (Minn. Stat. § 363A.19(c)). The service dog must be capable of being identified as from a recognized school for training seeing eye, hearing ear, service or guide dogs. (Minn. Stat. § 256C.02).

Emotional Support Animals

Minnesota laws do not address emotional support animals in the workplace or in places of public accommodation.

Service Animal Trainers

Service animal trainers receive similar protections as those provided to an individual with a disability in places of public accommodation. (Minn. Stat. § 256C.02).

State Contractors

Each state contractor and each state agency must include a specific nondiscrimination clause and affirmative action clause relating to individuals with disabilities in every contract. If a contract is modified, renewed or extended and such clauses are not in the original contract, they must be added. (Minn. Admin. 5000.3550).

Local Requirements

Minneapolis Disability Discrimination

Minneapolis's Civil Rights Ordinance prohibits discrimination in employment on the basis of disability, among other protected characteristics.

An employer includes any person within the City of Minneapolis who hires or employs any employee, and any person, wherever located, who hires or employs any employee whose services are to be partially or wholly performed in Minneapolis.

It is an unlawful discriminatory practice for an employer with 15 or more permanent full-time employees to fail to make reasonable accommodation to the known disability of a qualified person with a disability, unless it can demonstrate that the accommodation would impose an undue hardship on it.

(Minneapolis, Minnesota Code of Ordinances Sec. 139.20; Minneapolis, Minnesota Code of Ordinances Sec. 139.30; Minneapolis, Minnesota Code of Ordinances Sec. 139.40).

St. Paul Disability Discrimination

St. Paul's Human Rights Ordinance prohibits discrimination in employment on the basis of disability, among other protected characteristics.

An employer includes all persons, firms or corporations, wherever located, that employ one or more employees within the City of St. Paul, or who solicit individuals within the city to apply for employment within the city or elsewhere. An employer also includes a person, firm or corporation that hires temporary employees through an employment service.

It is unlawful for an employer with 15 or more permanent full-time employees to fail to make reasonable accommodation to the known disability of a qualified disabled person, job applicant or a pregnant employee or job applicant who presents written documentation from her health provider that she is unable to safely continue to perform her usual job duties, unless the employer can demonstrate that the accommodation would impose an undue hardship on the business.

(St. Paul, Minnesota Code of Ordinances Sec. 183.02; St. Paul, Minnesota Code of Ordinances Sec. 183.03).

Future Developments

Pregnancy Accommodation Amendments

Effective January 1, 2022, Minn. Stat. § 181.9414 is repealed and the state's pregnancy accommodation requirements are incorporated into state law regarding nursing and lactation accommodations (Minn. Stat. § 181.939).

The pregnancy accommodation requirements are further amended to:

- Apply to employers with 15 or more employees (from 21 or more), and
- Remove the length-of-service and hours-worked requirements for employee eligibility.

(2021 Bill Text MN S.B. 9A (Article 3)).