

Employee Benefit ■ Plan Review

Federal Appeals Court Rejects Remote Worker's State Law Claim Based on Physical Presence: Key Takeaways for Employers

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With so many employees working remotely these days, it can be confusing to determine which state they actually work from – and which laws apply to the employment relationship. Is their home office in a different state than the corporate office they report to? Does the employee travel between locations? The U.S. Circuit Court of Appeals for the Eighth Circuit recently grappled with these questions under the Minnesota Human Rights Act (MHRA) and found that an employee who did not reside or work in Minnesota was not protected by the state law. In its decision, the court said remote work coupled with occasional business travel to Minnesota is not sufficient to be classified as working within the state under the MHRA.

Here is what employers with remote staff should know about the ruling in *Kuklenski v. Medtronic USA*, what it means for Minnesota businesses, and how it might influence policies and practices in other states.

WHAT HAPPENED?

Taking a deep dive into the definition of “employee,” a three-judge panel from the Eighth Circuit found that, to be covered by the

MHRA, an individual must be physically working within the state. Here’s what happened in this case:

- Jan Kuklenski worked for Minnesota-based Medtronic USA, Inc. from 1999 until her termination in December 2021.
- Throughout her employment, she worked remotely from California, Illinois, and Michigan, and never resided in Minnesota. Prior to the COVID-19 pandemic, Kuklenski occasionally traveled to Minnesota for work, but her last visit to the state was before February 2020.
- Following surgery, Kuklenski took a three-month medical leave and later sought an additional three-month extended leave. Medtronic declined to hold her position open beyond the initial leave and later refilled the role.
- Kuklenski’s employment was terminated when she returned from her extended leave.
- She sued Medtronic, alleging that the company refused to provide an accommodation in violation of the MHRA.
- The district court granted summary judgment for Medtronic, finding that Kuklenski did not meet the MHRA’s definition of an

“employee.” It also dismissed her claims for retaliation under the Minnesota Whistleblower Act for the same reasons.

- Kuklenski appealed and requested that the Eighth Circuit clarify the definition of “employee” under the MHRA.

HOW DID THE COURT REACH ITS DECISION?

- *Employee Defined:* The MHRA defines an employee as “an individual who is employed by an employer and who resides or works in this state.” Because Kuklenski never resided in Minnesota, she needed to show she physically worked within the state to qualify for the protection. Relying on dictionary definitions, the Eighth Circuit concluded that “works in this state” means being physically present in the state. Both the district court and the Eighth Circuit agreed that this interpretation aligns with the MHRA’s statement of public policy, which focuses on protecting “persons in this state” and “inhabitants of this state.”
- *Virtual Work Is Not a “Physical Presence”:* The court rejected Kuklenski’s argument that virtual work constituted in-state employment under the MHRA. Specifically, the court declined to adopt a contact-based approach that would consider interactions with Minnesota – such as reporting to supervisors located in the state, participating in virtual meetings, communicating with Minnesota clients, and prior periods of physical presence. The court held that these activities without current or continuous

physical presence in the state are insufficient to satisfy the “works in this state” requirement.

- *A Caveat:* Notably, the MHRA’s definition of “employee” does not exclude individuals who work both within and outside Minnesota. It does not specify a minimum amount of time an individual must work within the state to be considered an employee of the state. Importantly, it does not require the employee to be physically present in the state at the time the alleged discrimination occurred to be protected under the MHRA. So, the outcome could be different, depending on the individual employee’s circumstances. Additionally, some Minnesota statutes define “employee” differently. For example, the state’s earned safe and sick time statute defines an employee as anyone who an employer anticipates to work at least 80 hours in a year for an employer in Minnesota.

While this decision primarily impacts employers operating in Minnesota, its implications may extend beyond the state.

- *Key Takeaway:* This decision offers a strategic basis for contesting claims that fall outside the scope of the MHRA. Employers facing MHRA claims should work with legal counsel to carefully

review the employee’s residency and work location history to ensure they meet the definition of an employee and respond accordingly.

BEYOND MINNESOTA: WHAT ALL EMPLOYERS SHOULD KNOW

While this decision primarily impacts employers operating in Minnesota, its implications may extend beyond the state. Although each state has its own laws, which may vary in the details, many states and government agencies rely on similar definitions of “employee” and protected characteristics. Thus, employers nationwide should consider taking the following steps:

- Create clear and consistent remote and hybrid work policies.
- Periodically ask employees to review and update their contact information. Make sure employees know how to update their address, phone number, and other important information whenever they have a change. It is also a good idea to send periodic reminders to all employees so these important updates do not slip through the cracks.
- Develop a multistate compliance strategy. Remote and hybrid work arrangement raise new questions for employers on which laws apply to which employees. Work with legal counsel to assess risks in the modern workplace and create a compliance plan. 🌟

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