

Charter School Boards & Staff In-Service

Minnesota Employment Law

MN Statute 181

Module No. 10

**Age Discrimination,
Protected Personnel
Information &
Employee
Indemnification**

MN Statute 181 Section 970-981

Minnesota's Chartered Public Schools are subject to MN Statute 181 – Minnesota Employment Law.

This Series of In-Service Modules are designed to provide "bite-size" lessons for charter school boards and staff members.

181.970 EMPLOYEE INDEMNIFICATION.

Subdivision 1. Indemnification required.

An employer shall defend and indemnify its employee for civil damages, penalties, or fines claimed or levied against the employee, provided that the employee:

- (1) was acting in the performance of the duties of the employee's position;
- (2) was not guilty of intentional misconduct, willful neglect of the duties of the employee's position, or bad faith; and
- (3) has not been indemnified by another person for the same damages, penalties, or fines.

Subdivision 2. Exception

Subdivision 1 does not apply to:

- (1) employees of the state or a municipality governed by section [3.736](#) or [466.07](#);
- (2) employees who are subject to a contract or other agreement governing indemnification rights;
- (3) employees and employers who are governed by indemnification provisions under section [302A.521](#), [317A.521](#), [322B.699](#), or [322C.0408](#), or similar laws of this state or another state specifically governing indemnification of employees of business or nonprofit corporations, limited liability companies, or other legal entities; or
- (4) indemnification rights for a particular liability specifically governed by other law.

181.974 GENETIC TESTING IN EMPLOYMENT

Subdivision 1. Definitions

For the purposes of this section, the following terms have the meanings given them in this subdivision.

- (a) "Genetic test" means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of genetic test when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. Administration of metabolic tests by an employer or employment agency that are not intended to reveal the presence of a mutation does not violate this section, regardless of the results of the tests. Test results revealing a mutation are, however, subject to this section.
- (b) "Employer" means any person having one or more employees in Minnesota, and includes the state and any political subdivisions of the state.
- (c) "Employee" means a person who performs services for hire in Minnesota for an employer, but does not include independent contractors.
- (d) "Protected genetic information" means:
 - (1) information about a person's genetic test; or
 - (2) information about a genetic test of a blood relative of a person.

Subdivision. 2 Use of protected genetic information prohibited

(a) No employer or employment agency shall directly or indirectly:

- (1) administer a genetic test or request, require, or collect protected genetic information regarding a person as a condition of employment; or
- (2) affect the terms or conditions of employment or terminate the employment of any person based on protected genetic information.

(b) No person shall provide or interpret for any employer or employment agency protected genetic information on a current or prospective employee.

Subdivision 3. Penalties.

Any person aggrieved by a violation of this section may bring a civil action, in which the court may award:

- (1) up to three times the actual damages suffered due to the violation;
- (2) punitive damages;
- (3) reasonable costs and attorney fees; and
- (4) injunctive or other equitable relief as the court may deem appropriate.

81.980 ACCESS TO EMPLOYEE ASSISTANCE RECORDS.

Subdivision 1: Definitions

- (a) For the purpose of this section, the following terms have the meanings given to them in this subdivision.
- (b) "Employee assistance services" means services paid for or provided by an employer and offered to employees or their family members on a voluntary basis. The services are designed to assist in the identification and resolution of productivity problems associated with personal concerns. Services include, but are not limited to, assessment; assistance; counseling or referral assistance with medical or mental health problems; alcohol or drug use; or emotional, marital, familial, financial, legal, or other personal problems.
- (c) "Employer" means a person or entity located or doing business in the state and having one or more employees, but does not include a government entity that is subject to chapter 13.
- (d) "Employee assistance provider" means an employer, or a person acting on behalf of an employer, who is providing employee assistance services.
- (e) "Employee assistance records" means the records created, collected, or maintained by an employee assistance provider that relate to participation by an employee or an employee's family member in employee assistance services.

Employee assistance records do not include:

- (1) written or recorded comments or data of a personal nature about a person other than the employee, if disclosure of the information would constitute an intrusion upon that person's privacy;
- (2) written or recorded comments or data kept by the employee's supervisor or an executive, administrative, or professional employee, provided the written comments or data are kept in the sole possession of the author of the record;
- (3) information that is not discoverable in a worker's compensation, grievance arbitration, administrative, judicial, or quasi-judicial proceeding; or
- (4) any portion of a written, recorded, or transcribed statement by a third party about the recipient of employee assistance services that discloses the identity of the third party by name, inference, or otherwise.

Subdivision 2: Access

Upon written request of a person who has received employee assistance services, or a parent or legal guardian of the person if the person is a minor, an employee assistance provider shall provide the requesting person with an opportunity to review and obtain copies of the person's employee assistance records or the pertinent portion of the records specified by the person. An employee assistance provider shall comply with a request under this subdivision no later than seven working days after receipt of the request if the records are located in this state, or 14 working days after receipt of the request if the records are located outside this state. An employee assistance provider may not charge a fee for a copy of the record.

Subdivision 3: Relation to personnel file

Employee assistance records must be maintained separate from personnel records and must not become part of an employee's personnel file.

Subdivision 4: Other rights preserved

The rights and obligations created by this section are in addition to rights or obligations created under a contract or other law governing access to records.

Subdivision 5: Disclosure

No portion of employee assistance records, or participation in employee assistance services, may be disclosed to a third person, including the employer or its representative, without the prior written authorization of the person receiving services, or the person's legal representative. This subdivision does not prohibit disclosure:

- (1) pursuant to state or federal law or judicial order;
- (2) required in the normal course of providing the requested services; or
- (3) if necessary to prevent physical harm or the commission of a crime.

Subdivision 6: Remedies

In addition to other remedies provided by law, the recipient of employee assistance services may bring a civil action to compel compliance with this section and to recover actual damages, plus costs and reasonable attorney fees.

181.981 EMPLOYMENT OF INDIVIDUAL WITH CRIMINAL HISTORY; LIMITATION ON ADMISSIBILITY OF EVIDENCE.**Subdivision 1: Limitation on admissibility of criminal history**

Information regarding a criminal history record of an employee or former employee may not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee, if:

- (1) the duties of the position of employment did not expose others to a greater degree of risk than that created by the employee or former employee interacting with the public outside of the duties of the position or that might be created by being employed in general;
- (2) before the occurrence of the act giving rise to the civil action, a court order sealed any record of the criminal case or the employee or former employee received a pardon;
- (3) the record is of an arrest or charge that did not result in a criminal conviction; or
- (4) the action is based solely upon the employer's compliance with section [364.021](#).

Subdivision 2: Relation to other law

This section does not supersede a statutory requirement to conduct a criminal history background investigation or consider criminal history records in hiring for particular types of employment.

181.985 WORKPLACE COMMUNICATIONS.

Subdivision 1: Definition

For the purposes of this section, "communication" means any printed or electronic document, letter, brochure, flyer, advertisement, e-mail, text message, or similar means pertaining to union business or labor organizing as provided under state law.

Subdivision 2: Collective bargaining agreements

Chapter 179A shall not prohibit a collective bargaining agreement from including provisions related to workplace communications.

Questions for Discussion with Boards and School Staff

1. When does a charter school as an employer need to indemnify an employee?
2. What are employee assistance services?
3. What are employee assistance records?
4. Who has the right to access employee assistance records?
5. What are the limitations on the use of an employee's criminal history information?
6. What are the exceptions to the use of criminal history records in hiring?

RECOMMENDED ACTIONS

✓ Board has a policy on when and how criminal history information affects hiring employees and individuals volunteering at the school.

✓ School has determined what employee assistance services that it makes available to employees.

✓ Board has adopted a policy to protect the employees seeking employee assistance services and their records.

✓ Board has a policy on when and how criminal history information affects hiring employees and individuals volunteering at the school.