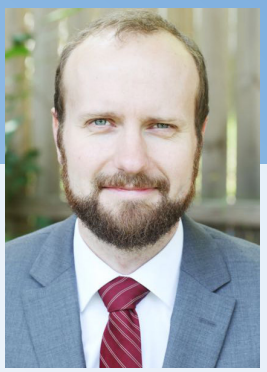
Blast *from the* Past:

An Old Cause of Action Finds New Life in Minnesota Courts

By Sheila Engelmeier & Colin Keith Thomsen



Practicing nearly 30 years, Sheila possesses extensive employment law experience. She handles the full panoply of employment litigation and counseling, from shareholder disputes and noncompetes to allegations of discrimination or employee theft. Sheila regularly trains both managers and employees, individually and collectively. As a mediator/arbitrator, Sheila works tirelessly and creatively. Colin Keith Thomsen, law clerk at Engelemeier & Umanah P.A.

Minnesota, like the rest of the country, experienced significant labor strife in the early 20th century. Strikes by Minnesota miners, farmers, teamsters, transit workers and many more filled the 1900-1920s. Employers often brought in strikebreakers to replace striking workers. For example, the 1907 Mesabe Range Strike ended only after Iron Range mining companies brought in thousands of strikebreakers, many of whom were recent immigrants unfamiliar with labor conditions in the United States. In 1916, an even more contentious strike on the Mesabe Range left three people dead.

Against this backdrop of chaos and disorder, the Minnesota legislature enacted a law, now codified at Minn. Stat. §181.64, allowing employees recruited under false pretenses to make a claim. Originally enacted in 1913, the current language passed in 1923. Although the record is sparse, it shows the 1923 amendment proponents' concern for workers lured unwittingly into working as strikebreakers.

The statute's language is, to put it mildly, convoluted. Consisting in the main of a single 149-word sentence, the law provides it is unlawful...

> for any person, partnership, company, corporation, association, or organization … to induce, influence, persuade, or engage any person to change from one place to another in this state … to work … through or by means of knowingly false representations … concerning the kind or character of such work, the compensation therefor, the sanitary conditions relating to or surrounding it, or failure to [disclose] … that there is a strike or lockout at the place of the proposed employment.

Prevailing §181.64 plaintiffs collect "all damages sustained in consequence" of the defendant's misrepresentations, as well as attorneys' fees. Although the point is not without controversy, courts have construed §181.64 as not constrained by the general rule limiting damages for a fraud claim to out-of-pocket expenses.

Despite murky language, courts have teased out these essential elements. The plaintiff must prove: (1) the employer knowingly made false representations (not representations that were made without regard to their truth or falsity); (2) he/she physically moved based on those representations (a change of employer, without a change of address, will not suffice); (3) the representations concerned one of the four categories enumerated in the statute, which are construed narrowly (e.g., one case held that "the compensation therefor" refers only to pay, and not to an offer for unpaid leave; another case held that an offer of stock options, later rescinded, may be sufficient to state a claim); and (4) she/he was actually induced by the false statements.

Despite blue collar origins, Minn. Stat. §181.64 applies well beyond manual labor. Recent cases involve several white collar workers, including a managing sales director, higher education research officer, semiconductor yield engineer and marketing director.

Vaidyanathan v. Seagate US LLC, 691 F.3d 972 (8th Cir. 2012), a high-profile §181.64 case, involved a highly-skilled engineer recruited by the defendant to contribute to a new product then under development. The plaintiff left his job, sold his house and moved his family from Texas to Minnesota. However, he soon discovered the touted new project was not ready for his involvement; he never performed any of the specialized work he was hired to do. After about a year the company ended the project, eliminated plaintiff's position and fired him. At trial, the plaintiff explained that because his particular field of engineering changes and develops very quickly, his one-year hiatus had "essentially ruined his career." The jury found in favor of Vaidyanathan, awarding $1.9 million in damages; the court later awarded attorneys' fees as well.

Although *Vaidyanathan* was remanded due to a jury instruction inconsistent with the Eighth Circuit's definition of "knowingly false" (and the case later settled), it serves as a cautionary tale to employers and their attorneys to exercise caution when making promises in the recruitment process. Employers should: (a) only make promises about the "kind or character of" or "the compensation" for work (or sanitary or labor conditions) to prospective employees when *sure* about them; (b) communicate only those statements about which the employer is certain *in writing*; and (c) memorialize in an offer letter or contract *non-reliance on any oral representations* made prior to the formal offer or contract.

On the flipside, executives and employee's counsel should consider this statute when assessing a situation involving misleading information shared during recruitment. Minn. Stat. §181.64 provides significantly better remedies than promissory estoppel, fraud or misrepresentation claims, including fee-shifting. This developing area of law is a must-watch for all savvy employment lawyers.