

WISCONSIN

WISCONSIN EMPLOYMENT LITIGATION UPDATE

**LINDNER
&
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ATTORNEYS AT LAW

Lindner & Marsack, S.C. handles Employment Practice Liability Insurance claims and Worker's Compensation defense matters in addition to other employment litigation, labor relations claims and litigation, collective bargaining and workplace injury defense matters. As may be evident from Wisconsin's statutory reference to "Worker's Compensation," an intentional choice to focus on each worker," instead of the more common "Workers' Compensation," Wisconsin is different. We work within those differences each day and navigate between Wisconsin, local and federal law every day.

The attorneys at Lindner & Marsack, S.C. are known for getting results through negotiation and multi-layered defense strategies targeted toward improving future settlement opportunities. When those resolution efforts are not successful, we deliver defense judgments. These case highlights just one example of a difficult case in which we achieved an excellent result. The defense of these cases was led by experienced Lindner & Marsack, S.C. attorneys Daniel Finerty, Oyvind Wistrom and Laurie Petersen. Here is a sampling of cases recently handled:

- A former employee filed suit against the former employer, a day care provider. The former employee alleged she had been subject to ongoing harassment, discrimination and retaliation during employment and constructively discharged on her last day of work following her verbal resignation several weeks earlier. Finerty secured dismissal of the entire investigation because Wisconsin's 300-day statute of limitations began to run on the date the employee resigned, which resulted in the untimeliness of the constructive discharge claim. While the employee's claim was timely-filed as to events on the last two

days of work, the employee was unable to allege any act of harassment, discrimination or retaliation on those days. The dismissal was subsequently affirmed by an administrative law judge and, while an additional layer of administrative review is pending, a positive result is anticipated.

- After an officer threatened physical violence against one of his fellow officers, the department placed the officer on temporary paid administrative leave and ordered him to undergo a fitness-for-duty evaluation. Convinced his supervisors took this course of action because they knew that the officer had a history of Post-Traumatic Stress Disorder (PTSD), instead of because his conduct violated the department's Workplace Violence Policy and implicated public safety, the officer sued the department alleging it discriminated against him due to his disability; however, Wistrom secured dismissal of the officer's suit because there was no evidence that the leave and the fitness-for-duty evaluation were ordered due to supervisors' knowledge of the PTSD or that the supervisors knew about the PTSD, a result affirmed on appeal. *Kurtzhals v. Cty. of Dunn*, 2019 U.S. Dist. LEXIS 164796 (W.D. Wis. 2019) aff'd by *Kurtzhals v. Cty. of Dunn*, 969 F.3d 725 (7th Cir. 2020).
- A Wisconsin-based executive downsized due to the pandemic filed claims against the UK-based parent company client alleging age discrimination and seeking allegedly unpaid wages of over \$30,000. After investigation handled by Finerty, an Initial Determination of No Probable Cause to believe any age discrimination occurred was issued, which was not appealed by the executive to hearing. In addition, the wage claim was dismissed because the executive was not

an “employee” protected by the Wisconsin Wage Claim and Collection Act. Following dismissals, no further litigation has been filed in state or federal court.

- After a technology services firm client parted ways with a contractor employee, the employee filed suit in a tribal court against the client and a co-defendant. After learning of the suit, Finerty obtained an official copy of the lawsuit and, after it was improperly served by mail, moved to dismiss the lawsuit due to lack of subject matter jurisdiction and lack of personal jurisdiction. The tribal court granted the motion to dismiss and, while a petition for appeal has been filed, the result is unlikely to change. *Carter v. Genesis 10 et al.*, Case No. CV 22-140 (Cherokee Nation Dist. Ct. May 2, 2022) (review pending).
- After the same client was sued in federal district court by a former contractor employee, alleging the client failed to provide reasonable accommodation and discriminated due to a disability, Petersen sought dismissal of the plaintiff’s claims against the client and a co-defendant due to the plaintiff’s

refusal “to meaningfully participate in the discovery process” by failing to respond to requests for production of documents and interrogatories. Further, the court found the plaintiff’s violations were willful by contrasting the excuses plaintiff provided with the competence and persistence shown in filings with the court. *Rudolph v. Genesis 10 et al.*, No. CV-19-05273-PHX-MHB (D. Ariz. Aug. 30, 2021).

To discuss what Lindner & Marsack, S.C. can do for you, please contact Daniel Finerty at

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Nothing contained herein is stated on behalf of any Lindner & Marsack, S.C. clients or carrier partners nor should it be construed as an opinion of counsel regarding current or future positions that may be taken in the pending matter. Lindner & Marsack, S.C. should be contacted regarding any specific factual or legal issue arising in Wisconsin.



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