

BERTELSON LAW OFFICE, P.A.

Employment Law • Minneapolis, MN

Workplace News

Employment Law Litigation and Proactive Conflict Resolution Services for the Workplace

Winter 2013

Help! I Think I Might Be Fired

At Bertelson Law Office, P.A. we receive many calls and emails from employees who believe they may be fired or that their boss wants them gone.

Repeatedly, we hear from employees that they feel they will be let go. They call after receiving a negative review or performance criticism, or after being placed on performance improvement plan (PIP), or when their job duties are being taken away or their workload is increasing to the point where it's nearly impossible to manage, or when their supervisor begins to ignore them or not invite them to meetings.

Understandably, they are upset and worried. At Bertelson Law Office we believe that despite their employer's actions, employees can take proactive steps to try and maintain their employment. One such step is responding to the employer's criticism of their job performance.

In Minnesota, an employee who receives a performance review that they believe is unfair or inaccurate, has the right to dispute it. Minnesota Statute § 181.962 provides that if an employee disputes specific information contained in their personnel file, such as a negative performance review or a

corrective action plan, they can ask that the employer agree to remove it from their file or revise it.

If an agreement cannot be reached, the employee may submit a written statement identifying the disputed information and explaining their position. The employee's statement cannot exceed five pages. The employer must then place this statement into the personnel file and a copy of the statement must be given to any person who receives a copy of the disputed performance information.

While submitting a written response does not guarantee continued employment, it may clear up misunderstandings the employer may have about the employee's performance and it shows that the employee takes the employer's concerns seriously and wishes to stay employed. Additionally, an employee's written response to criticism can be beneficial if employment litigation ensues or a future employer inquires about the individual's performance.

At Bertelson Law Office we enjoy meeting with current employees to provide proactive, practical advice regarding difficult employment situations. If you or someone you know is looking for help with a difficult employment situation, we would be happy to be of assistance. ■

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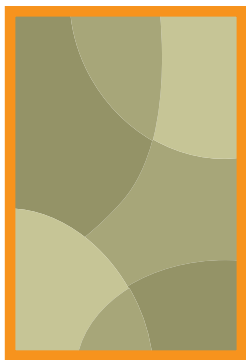
At Bertelson Law Office, P.A. we are committed to protecting employee rights. For over 20 years, Bertelson Law Office, P.A. has successfully represented hundreds of employees with all types of workplace problems and legal claims.

Beth Bertelson and Andrea Ostapowich provide individuals with strong advocacy, extensive experience, and a commitment to personal service.

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Workplace News is only a general summary of the topics discussed here and is not a substitute for legal advice.



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Bertelson Law Office Offers Mediation Services

For many, early intervention in a legal conflict protects both a client's dignity and pocketbook. As a mediator, Beth Bertelson can help parties resolve disputes, providing control and closure on a difficult situation by avoiding the time and expense of a trial. As a legal advocate practicing exclusively in employment law, Beth understands that employment conflicts can impact people physically, emotionally and financially. She also understands that for companies, unresolved disputes generally fester into costly litigation, affecting employee morale and profits.

In addition to representing individual clients in employment law matters and providing mediation services, Beth has trained businesses on employment law issues and investigated internal reports.

For over 20 years, Beth Bertelson has practiced in the area of employment law. She is a certified

Labor and Employment Law Specialist by the Minnesota State Bar Association. She has been recognized in *Law & Politics* and *Minneapolis St. Paul Magazine* as a "Super Lawyer." She is a qualified neutral under Minnesota Rule 114. She has served as a section council member of the Labor and Employment Law Section of the Minnesota State Bar Association and a board member for the Minnesota Chapter of the National Employment Lawyers Association and several other non-profit organizations. ■



I'm Looking For A New Job But I'm Worried About What My Employer Will Say About Me

Looking for a new job can be stressful enough without worrying about what an employer will say during a reference check. Yet, at the same time, employees may breathe easier if they remember that most employers generally only disclose dates of employment and position held.

Minnesota has addressed the information an employer may safely disclose to potential employers. Minnesota Statute § 181.976 addresses the information a private (non-governmental) employer can provide in response to a reference request that, if truthful, protects the employer from a defamation claim being maintained against them. The statute lists the following as the information that a private employer may disclose:

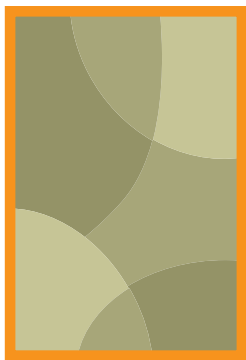
- (1) dates of employment;
- (2) compensation and wage history;
- (3) job description and duties;
- (4) training and education provided by the employer; and
- (5) acts of violence, theft, harassment, or illegal conduct documented in the personnel record that resulted in disciplinary action or resignation and the employee's written response, if any, contained in the employee's personnel record.

A private employer disclosing information contained in (5), must do so in writing and must, at the same time, send a copy to the former employee.

Upon written authorization by the employee, a private employer may also disclose: (1) written employee evaluations and the employee's written response, if any, contained in the personnel record; (2) any written warnings and actions in the five years before the date of the employee's authorization, and any employee response; and (3) the written reasons for separation from employment. If a private employer discloses any of this information, they must send a copy to the employee at the same time. ■

**According to CareerBuilder's
2012 Candidate Behavior Survey,
74% of workers are actively
searching for a new job or are
open to a new opportunity.**

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Can I Check My Personnel File?

In Minnesota, both current and former employees have a right to see their personnel file. Minnesota Statute § 181.961 provides that current

employees have the right to review their personnel file every six months. To review their file, an employee needs to submit a written request to their employer. The employer then has seven working days after receipt of the request if the personnel file is located in Minnesota (or fourteen working days after receipt if the file is located outside of Minnesota) to allow the employee the opportunity to review the file.

The employer must make the file available for the employee's review during the employer's normal hours of operation and at the employee's place

of employment or other reasonably nearby location. However, the employer does not have to make the file available during the employee's working hours.

The employer can require that the employee review the file in the employer's presence. After reviewing the file, the employee may, in writing, ask the employer for a copy of their file.

Former employees who wish to obtain a copy of their personnel file, simply need to request, in writing, a copy of their file. The employer can-

not charge a fee for the copy.

The Department of Labor enforces this statute. An employer who violates this statute, can face a fine up to \$5,000, as well as costs and attorneys fees in a civil action. ■

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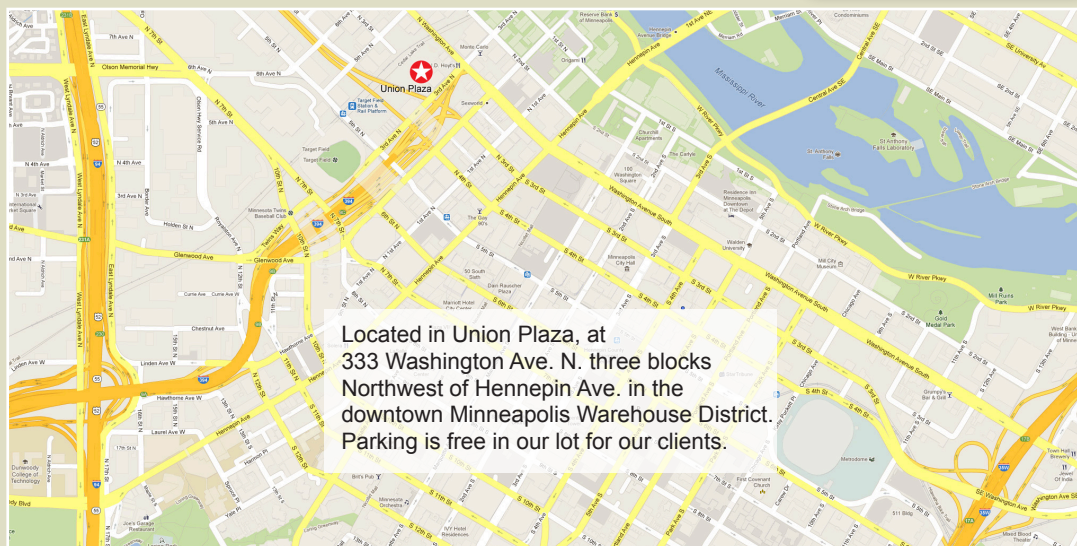
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Minnesota State Bar Association

Certified ▲ Specialist



Located in Union Plaza, at
333 Washington Ave. N. three blocks
Northwest of Hennepin Ave. in the
downtown Minneapolis Warehouse District.
Parking is free in our lot for our clients.

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