

## Questions for Mohrman, Kaardal & Erickson, P.A.

### General

1. Do you think you can win this case? Likelihood of winning

Answer: We wouldn't bring the case if we didn't think we could win. It is a very difficult case. The chances increase for those whose employer is a governmental entity, because they are subject to greater scrutiny, but it's a difficult case for both and wildly politically charged. The goal will be to find a way to get federal court jurisdiction because the conservative liberal split on the 8<sup>th</sup> Circuit (the appellate court who reviews the district court decision) is 17-4 conservative so we have over a 90% chance of getting a conservative panel which increases your chances of success.

2. In similar cases, how much has something like this cost in legal fees? What is the average cost?

Answer: There is no "average" cost of a case like this. It is a case of first impression in the court we are going to bring it. That being said, this will not be a case that goes to trial (which is far more expensive than a case decided by summary judgment), because this is strictly a legal issue that has an extremely compressed timeframe. The cost will definitely exceed \$50,000, and if we have to do an emergency appeal and injunction by the 8<sup>th</sup> Circuit (which is likely), it will exceed \$100,000. That is why we need at least 50 people to participate because I don't want any individual person's responsibility to exceed \$2,000 in total. Everyone's individual responsibility will only include their pro-rata share of the total participants (meaning if we have 50 people, no one's responsibility will exceed 1/50<sup>th</sup> of the total bill regardless if someone stiff us)

3. Considering the possible long term financial implications, are there any charities or not for profits that would support our cause?

Answer: Possibly, a California non-profit has already referred us potential clients, but has not offered us funding. There are wealthy conservatives whom we work with who may take an interest in your case once it is filed.

4. What does the lawsuit/injunction require of me? What information do I need to provide?

Answer :

1. Contact information- address, cell, email.
2. Employer and job description along with a copy of the communication from their employer (or hospital where you have privileges) which requires this as a requirement of continued employment, or continued hospital privileges.
3. Signed retainer
4. Check for \$1000

5. What happens if the injunction is denied? Please list out potential next steps.

Answer: Immediate appeal and request for an injunction pending appeal from the 8<sup>th</sup> Circuit.

6. Are we suing for money?

Answer:

- a. No.
- b. After termination, can we sue for money?
- c. Yes. For wrongful termination.
  - I. How would that work?
  - II. That would be a different animal and a much larger lawsuit, but the damages would be very significant in size.

7. Do you have any kind of timeline you can estimate for each stage of the process?

Answer:

- a. A complaint needs to be filed by month end, with expedited briefing of our motion for a temporary restraining order, for a decision to be rendered by October 1.
- b. We are going to ask that the decision be made at least 5 days in advance of October 1, so that we can get a request for an emergency injunction pending appeal to the 8<sup>th</sup> Circuit.

## SCOPE

8. Is this case only fighting the covid vaccine mandate?

### ANSWER:

- a. As far as I know, this is the only case in Minnesota.
  - b. Allina Health is also mandating the flu shot. Can that be included in the case?
    - It can, but I would advise against it. The reasons against the Covid shot, (e.g. non properly tested, fatal side effects, etc., don't carry as much weight as the flu shot)
    - The invasive arguments still hold weight against the mandating of the flu shot. If we win the Covid argument, we would basically win the flu shot argument by default.
9. Do we still have a case if the COVID vaccine becomes FDA approved?

### ANSWER:

- a. Yes because it's still not really vetted.
  - b. What about the flu shot? See above.
10. Can multiple companies be included in the lawsuit/injunction?

### ANSWER:

- a. Yes, and that's the plan, we are considering combining you with the teachers who are contacting us.
  - b. Which companies will be affected?
    - All the ones who are defendants.
  - c. Can there be different outcomes for different companies?
    - Possibly but not likely, but definitely between public and private employers there could be a distinction drawn by the court.
  - d. At what point is it split out?
    - Each company would receive a separate decision.
11. Would this injunction affect colleges and universities?

### ANSWER:

- a. If they are defendants.

12. Is this case's scope limited to MN employee's/students?

ANSWER:

- a. Not if we can find Plaintiffs in other states.
- b. Does it include federal employees? If we sue facilities run by the federal government like the VA.
  - We would need VA plaintiffs.
- c. What other states are you licensed to practice?
  - We are licensed in federal court in Iowa, Wisconsin, Illinois, Michigan, Pennsylvania, Georgia, District of Columbia, Arizona, and a few others. We are licensed in Wisconsin, Iowa, and Illinois state courts.

### **Retainer Agreement/ Financial Responsibility**

13. Is there a limit to how many people can sign the retainer agreement?

ANSWER:

- a. No.

14. Can people sign the retainer agreement after the \$50,000 is met?

ANSWER:

- a. 100%

15. Is there a specific benefit to the people signing the retainer agreement?

ANSWER:

- a. Obviously, that the firm will take the case, however, that benefits even those who do not sign the retainer agreement.
- b. Is there a specific benefit to those who sign the retainer agreement?
  - I don't represent anyone who doesn't sign the retainer. We could have a situation where the employers who were smart offered an exemption to our clients to keep it from their greater employees, and you'd be hard pressed not to take that offer. Then anyone not on our list gets left in the cold. Also, the greater number of people we have the stronger the suit gets and the effects on the healthcare industry as a whole would have to be taken into account, if the number got big enough.

16. Is there a situation that you would advise someone not to sign the retainer agreement? If so, when?

ANSWER:

- a. If they were going to fold and take the vaccine.
- b. If they silently wanted to fund the case, but they would assume the risk of a settlement that would exclude them.

17. Is there a situation that you would advise someone not to sign the retainer agreement? If so, when?

ANSWER:

- a. Same as above.

18. Why/how might one person take a settlement and not the rest? Why would it be different?

ANSWER:

- a. Some employees could be so critical that the employer buckles because their skills are too valuable. Or some hospitals the amount of plaintiffs might cripple them to the point that they couldn't operate. That would be highly unlikely. I have to put that language in a retainer agreement for multiple employees. It doesn't really have a ton of application here that I can

19. If we lose the injunction, can we individually back out of responsibility at that point?

ANSWER:

- a. 100% you always can quit. Basically if we lose the preliminary injunction request at the 8<sup>th</sup> Circuit it's over anyway, unless the Supreme Court of the United States takes it (which has happened twice for us).
- b. Or are we committed to take this farther?
  - Never.
- c. What are our options for backing out after the retainer is signed?
  - You can always quit. We aren't asking for money. They would always dismiss you.

20. If there is too much financial burden, what is our recourse? If we are unable to pay our portion of the bill, what action is taken by the firm?

ANSWER:

- a. I'm not taking the case unless we have enough plaintiffs or I have assurance that I'm going to get paid. If people can't afford a few thousand dollars, they shouldn't be in this game and should take the vaccine or find another job. I have trouble envisioning a situation where anyone's liability could exceed \$4,000 and it's far more likely that it would be half that. There just isn't enough time in the day and this isn't our only case that the firm is working on.

## Employer/School

21. Is the employer doing anything illegal by making the COVID vaccine mandatory?

ANSWER:

- a. That's what our lawsuit is going to determine.

22. When my employer asks me if I am getting the vaccine, what should my response be?

ANSWER:

- a. Tell them it's protected information under HIPPA. That will stall them for a bit.

23. Can you read through Employer Questionnaire and Employee-Form-Covid-Injections attached and tell us if they sound like they would be viable options? If a viable option, should the questionnaire be given to the employer before attempting a religious or medical exemption or only if the exemption wasn't approved?

ANSWER:

- a. I cannot do any legal work on this until I'm retained.

24. If I am terminated for this reason, what should I do? Let the firm know? Any documentation I need?

ANSWER:

- a. Just the termination letter and any associated documents.
- b. Do I have to sign something from the company?
  - No, but they will probably offer you severance in exchange for a release.
- c. Should I sign anything or refuse?
  - I would refuse.
- d. What if they withhold my PTO payout or last paycheck for not signing?
  - They would never do that. It is illegal and would be suicide.

25. For students who are completing a clinical degree (EMT, etc.) and are told there are no exemptions for the vaccine mandate, what is their recourse?

ANSWER:

- a. To sue. That's it.

26. Should we record any conversations we have with our management/HR regarding the mandate?

ANSWER:

- a. No need. They are legally insignificant. This is not a factual case, it's a legal one.
- b. Should we notify them we are recording?
  - Don't do it.

### **Correspondence with Others**

27. Is there anything we should say or not say on or off FB that would hurt or benefit our case?

ANSWER:

- a. We have a private, hidden, by invite only group on Facebook. Keep the posts to soliciting other members. Keep the content bland. They are going to try to make you seem nuts.

28. Is there any information we can gather that would be beneficial to this case?

ANSWER:

- a. Studies on negative side effects, studies on the rate of breakthrough on vaccinated people to show that the distinction between vaccinated and unvaccinated is silly in terms of ability to communicate to others. Anyone can communicate delta, even vaccinated people like me.

29. Penny Wheeler CEO of Allina is married to a MN Supreme Court Justice Margaret Chutich. This IS an obvious conflict of interest and she will have to recuse herself when this comes "across her desk"

ANSWER:

- a. Our goal is to go to federal court. Our chances are better there. Even if we did go to state court, she would have to recuse herself from any decision. That's standard policy. It happens all the time. You have judges who's spouses are partners in big law firms and they have to recuse themselves from all of their cases.
- b. I think the political leanings of the majority of the justices are a bigger concern than their desire to not anger a coworker. Her republican colleagues vote against her all the time

## UPDATES ON 8-16-21

30. Do I file a religious exemption?

ANSWER:

- a. This is not a substitute for a religious exemption. We would recommend filing those too if they apply to you. This will be to invalidate the mandate if your exemption is denied. We may include a claim that would invalidate an employer's ability to deny the exemption too.

31. There are other law firms that are pursuing this suit also, isn't it better if we all come together with power in numbers?

ANSWER:

- a. Truth. Power is in numbers. However, there are MANY of us and in that our voices will be heard. Feeling strongly about the historical record of MKE and their ability as the SOLE FIRM in MPLS dedicated to government and corporate litigation. WE have the BEST group!

32. What if the MNA - MN board of nursing mandates it? Will this suit supersede that?

ANSWER:

- a. This suit would demonstrate that vaccine mandates are unlawful in Minnesota, it would be difficult for them to require something that is unlawful

33. Can an employer KEEP unemployment / vacation from us if they terminate us?

ANSWER:

- a. They can certainly try, but they risk big exposure on an unpaid wages lawsuit if they do it to a lot of people. They will spend more defending these suits than they earn by not paying them. As to unemployment, that would have to be contested in the courts also, but I have a hard time that a unilateral altering of an employment contract could be legitimate grounds for willful misconduct... I think it is a bluff, but it may have to be tested in the Courts.

34. Do we have 50 retained? I have been telling people that 50 was your launching point but 100 is better, 250 is great and 1000 would be ideal....let go recruit!!! Insight on that?

ANSWER:

- a. We are over 50, so that means we are moving forward. That is not a limit, that was a requirement. We want as many plaintiffs as we can get to strengthen our position



35. People are reaching out to me to verify that you have received their retainers. Is there some way for you to communicate with each of us to let us know you received and are processing

ANSWER:

- a. We are doing our best to match up the retainers with the list. A list of who has paid will be sent out soon

36. Asking about deadlines....WHAT is the LATEST date that people can turn in their retainers....is it BEFORE Oct 1st? Is it before you file to halt the mandate....?

ANSWER:

- a. There is no longer a deadline, but people are going to want to join before we file. If a decision is made without them, they could be out of luck. This is not a class action. The decision will only directly affect the plaintiffs. It will have ancillary benefits for others, but only direct benefits for the members of the suit

37. If the lawsuit extends beyond Oct 1st (which it will)...do you anticipate that those who have been retained will be able to continue to work until it is settled?

ANSWER:

- a. If we do not get an injunction prior to October, they can terminate you. We are hoping that our pleadings are persuasive enough that they will be concerned about wrongful termination suits and will hold off until it is resolved