

# BERTELSON LAW OFFICE, P.A.

Employment Law • Minneapolis, MN

Workplace News

Employment Law Litigation and Proactive Conflict Resolution Services for the Workplace

December 2015

## BEST of the BEST

Top 50:  
2014 Women  
Minnesota  
Super Lawyers  
Top List

## My Employer Is Giving Me The Choice of Being Fired or Resigning, What Should I Do?

**W**hen you are given the choice of resigning or being fired, you need to ask yourself, “What’s in it for me if I voluntarily resign?” In general, resigning from a job makes you ineligible for unemployment benefits. This loss can be significant. In Minnesota, unemployment benefits can be up to 26 weeks and depending on your salary, a maximum of \$658 a week.

While resigning allows you to tell future employers you chose to leave, they will note that you left without having a new job lined up and will ask you why.

Resigning from your employment makes it more

difficult to bring a legal claim of discrimination or harassment or retaliation against the employer. This is because these laws require there to be an adverse action by the employer. Examples of adverse employment actions are terminations, demotions, etc. By resigning, you face a difficult battle trying to argue that the employer constructively discharged you (i.e. the employer forced you to resign by making the work environment so intolerable a reasonable person would not be able to stay working there). This is a high legal standard to meet.

*Resigning from your employment makes it more difficult to bring a legal claim of discrimination or harassment or retaliation against the employer.*

We have offered legal advice to many employees facing this scenario. Feel free to contact us at 612-278-9832. ■

## Can I Get Unemployment Benefits If I Receive Severance Pay?

**Y**es, but your unemployment benefits may be delayed.

In a recent published opinion from the Minnesota Court of Appeals, *Menyweather v. Dept. of Employment and Economic Development*, File No. 33318420-3 (Minn. Ct. App. Dec. 7, 2015), the Court affirmed the language of Minn. Stat. 268.085, subd. 3(b):

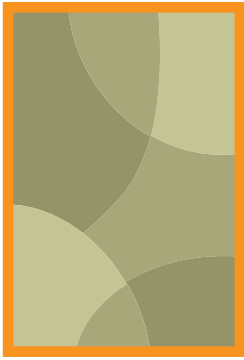
Payments under this paragraph are applied to the period immediately following the later of the date of separation from employment or the date the appli-

cant first becomes aware that the employer will be making a payment. The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this paragraph.

That is, once you become aware that you will be receiving severance pay from your employer you will be temporarily ineligible to receive unemployment benefits if the amount of the severance pay you will be getting exceeds the weekly amount of unemployment benefits.

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

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In this case, Menyweather's employer offered him six weeks of severance pay on the date it terminated his employment. This was conditioned on him signing a separation agreement and release of his employment law claims. Menyweather accepted the offer and signed the separation agreement and release that day. A month and a half later, Menyweather received from his former employer, the lump sum payment equivalent to six weeks pay. While he was waiting to receive the severance money, Menyweather had applied for unemployment benefits and had been receiving benefits.

The Court found that pursuant to the statute, Menyweather "became aware that the employer [would] be making a payment" of severance benefits on the date he

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signed the separation agreement. Therefore, he was not eligible for benefits as of that date for a period of six weeks (the amount of his severance) and was required to pay back to the unemployment office the overpayment of benefits it had made to him.

**Takeaway:** If you applied for unemployment benefits, you must then inform the unemployment office that you will be receiving severance pay from your employer (and the amount) on the date you sign the separation agreement. You should also contact an attorney to determine that "severance" is the appropriate characterization in light of the circumstances of your case.

For more information, see Beth Bertelson's Super-Lawyer profile page. ■

## Bertelson Law Office Offers Mediation Services

**F**or 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 25 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.

Contact Beth Bertelson at 612-278-9832 if you are interested in having her serve as a mediator. ■



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