
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — RETROSPECTIVE APPLICABILITY OF ENHANCED REMEDIES UNDER IOWA CODE SECTION 70A.28 (WHISTLEBLOWER STATUTE)

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Hedlund v. State
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No. 22-0243

www.iowacourts.gov/courtcases/17566/embed/SupremeCourtOpinion

Factual and Procedural Background. Larry Hedlund was a long-time employee of the Department of Public Safety (DPS) and in 2013 was employed as a special agent with the Division of Criminal Investigation (DCI) within the DPS. On July 17, 2013, the Commissioner of the DPS terminated Mr. Hedlund's employment. In August 2013, Mr. Hedlund filed a petition in district court and alleged wrongful discharge in violation of public policy and Iowa Code section 70A.28(2) (2013) against the State and certain State officials (State). Iowa Code section 70A.28 provides certain whistleblower employment protections for state employees. In September 2014, the district court dismissed Mr. Hedlund's claim for wrongful discharge in violation of public policy and the Iowa Supreme Court (Court) dismissed Mr. Hedlund's appeal of this dismissal as untimely. *Hedlund v. State*, 875 N.W.2d 720 (Iowa 2016). In October 2017, the district court granted the defendant's motion of summary judgment on all remaining claims. On appeal, the Court reversed the dismissal of Mr. Hedlund's wrongful discharge claim under Iowa Code section 70A.28, but held that Mr. Hedlund was not entitled to a jury trial because the statute only provided equitable relief. *Hedlund v. State*, 930 N.W.2d 707 (Iowa 2019).

On July 1, 2019, after the 2019 Court decision, an amendment to Iowa Code section 70A.28 went into effect providing that an aggrieved employee was also entitled to civil damages in an amount not to exceed three times the annual wages and benefits received by the employee prior to the violation of the statute. 2019 Iowa Acts, ch. 109. Mr. Hedlund subsequently filed a motion in district court claiming that the new damages authorized under the amended statute applied retrospectively to his claim and constituted legal relief entitling him to a jury trial. The district court granted Mr. Hedlund's motion as to both claims and the State filed an interlocutory appeal from this decision.

Issues on Appeal. Whether the 2019 amendment to Iowa Code section 70A.28(2) providing for additional damages applies to Mr. Hedlund's claim for wrongful discharge?

Holding. The Court held that the 2019 amendment to Iowa Code section 70A.28(2) allowing an aggrieved employee under that statute to pursue additional civil damages did not apply to Mr. Hedlund's claim for wrongful discharge under the statute.

Analysis. The Court examined several tests in determining whether the enhanced remedy for a wrongful discharge enacted in the 2019 amendment to Iowa Code section 70A.28 applied to Mr. Hedlund's claim. The Court noted that the district court relied upon a multifactor test described in some of the Court's prior cases, which generally turns on a determination of whether the statute is remedial or substantive in nature, in determining that the statute applied. While the Court agreed with the district court that the Legislature did not expressly provide that the statutory change

should apply, the Court disagreed with the district court's determination under this test that the statutory change was remedial, and not substantive, in nature and should therefore be presumed to apply retrospectively. While the Court noted that the statutory amendment providing for an enhanced remedy might fit within a broad definition of remedial, the Court concluded that "a statute that imposes a meaningful change in the parties' positions after the conduct at issue is nonetheless 'substantive' and requires prospective treatment."

The Court further analyzed this case by examining whether the amendment to Iowa Code section 70A.28 should have retrospective application utilizing an analytical test developed in a recent Court decision, *Hrbek v. State*, 958 N.W.2d 779 (Iowa 2021). Under this revised test, a court first determines whether the statute's application is in fact retrospective. If retrospective, a court must then determine whether the statute should be applied retrospectively. Finally, if a court determines that the statute should be applied retrospectively, the court must determine whether any substantive law bars the statute's retrospective application before concluding that the statute can be applied retrospectively. Determining whether the statute is retrospective hinges on whether the act or event that the statute is meant to regulate occurred in the past or will occur in the future. Mr. Hedlund argued that the amended statute regulates a future event, the potential awarding of enhanced remedies through a jury verdict. The Court disagreed, noting that the amendment to Iowa Code section 70A.28 applies a new consequence, enhanced remedies, to a prior act of wrongful termination or retaliation. As a result, the Court concluded that the application of the statute in this case was retrospective, as Mr. Hedlund's discharge occurred prior to the enactment of the amended statute. The Court then examined whether the amended statute should be applied retrospectively in this case. The Court concluded that the statute should not be applied retrospectively, noting that the Legislature has, pursuant to Iowa Code section 4.5, expressly provided that statutes should be presumed to be prospective unless the statute expressly makes the statute retrospective. In this case, the Legislature did not make the amendment to Iowa Code section 70A.28 retrospective. Based on this analysis, the Court reversed the district court's judgment, determining that the amendment to Iowa Code section 70A.28 did not apply to Mr. Hedlund's claim.

The Court concluded by noting that the Court preferred the revised test established in *Hrbek* for determining whether a statute should be applied retrospectively. The Court commented that the revised test upholds the statutory presumption established in Iowa Code section 4.5 that statutes will not be applied retrospectively unless the Legislature expressly provides for retrospective application. Furthermore, the Court found that the revised test is consistent with the results in prior cases that utilized the multifactor test, utilized by the district court, that determined whether a statute should be applied retrospectively based on an analysis of whether the statute is remedial or procedural.

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