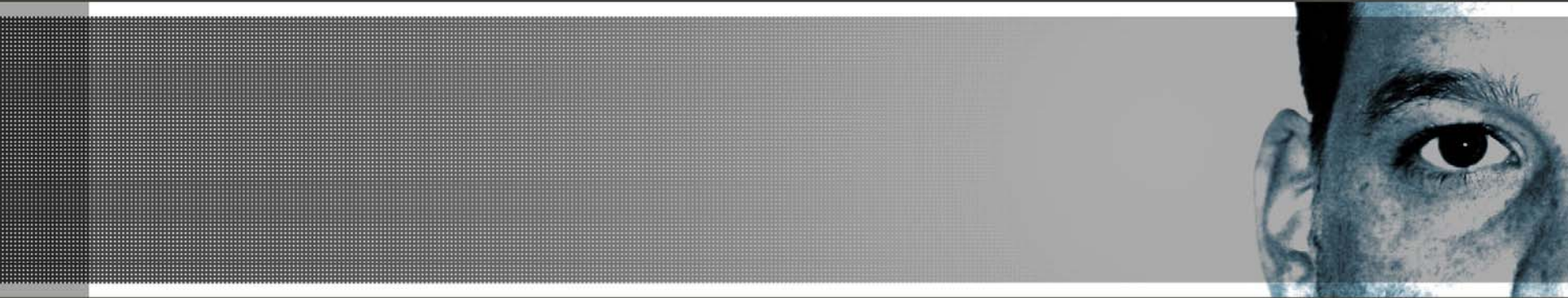


The Dirty Dozen: Rules You MUST Know

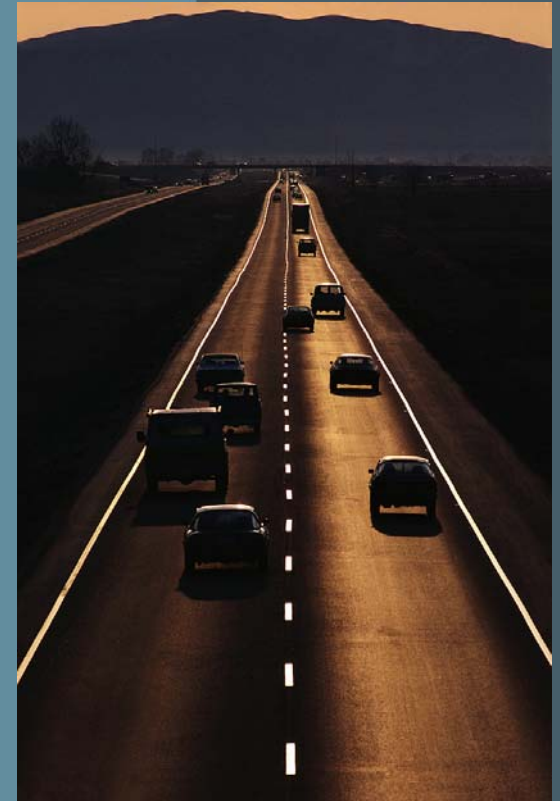


Martin Costello ❖ Russ Platzek ❖ Katrina Joseph
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Teamsters Local No. 120's Stewards Seminar
October 22, 2005

The Rules of the Road

1. Your CBA's Time Limits
2. Review of Employee Personnel Files
3. FMLA Rights
4. ADA Rights
5. Parental Time Off For School Activities
6. USERRA Rights
7. Drug/Alcohol Test Result Disclosure Restrictions
8. Use of Unemployment Decisions
9. Picket Line Stop Statute
10. Important Criminal Laws

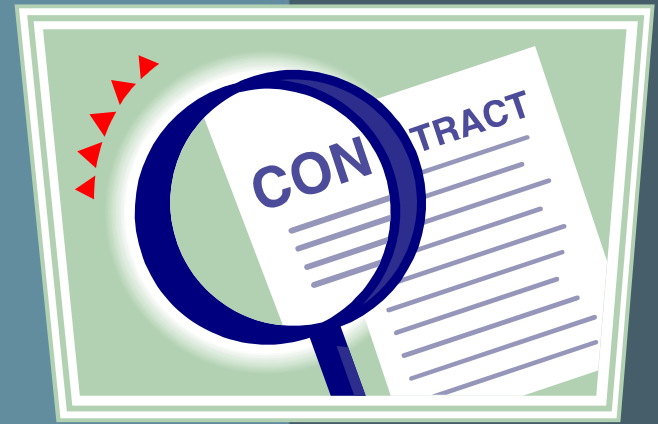


CBA Time Limits



CBA Time Limits

- Nearly all CBAs have time limits for filing and pursuing grievances.
- Failing to comply with every time limit and stage of the grievance, as described in the CBA, could result in the denial of the grievance in arbitration.



Personnel File Review



Employee's Right To Review His or Her Personnel File

- Employees have the right to inspect their personnel file, upon written request to the Employer, but not more often than once every 6 months.
- Employer must comply with the request within 7 days.
- Employer doesn't need to make file available during the employee's shift, and may require inspection take place within the Employer's presence.



Employee's Right To Review His or Her Personnel File

- Employer must provide a copy of the file to the employee after inspection, upon the employee's written request.
- If the employee disagrees with any part of the file, he or she should discuss the disputed information with the Employer. If the Employer does not agree to remove or amend the disputed information, the employee can submit a written statement, up to 5 pages in length, which must be kept with the disputed information in the file.



FMLA Rights



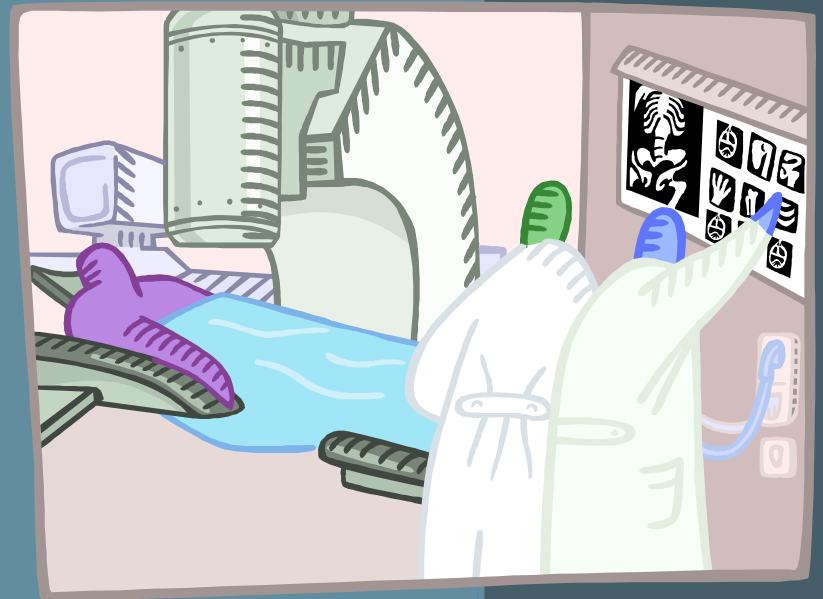
Family Medical Leave Act

- Cover workplaces with 50 or more employees.
- Protects employees who have worked for the employer for at least 12 months and 1250 hours.
- Provides employees with 12 weeks of leave for employee's own "serious health condition," for the birth/adoption of a child, or to care for a child, spouse, or parent with a serious health condition.

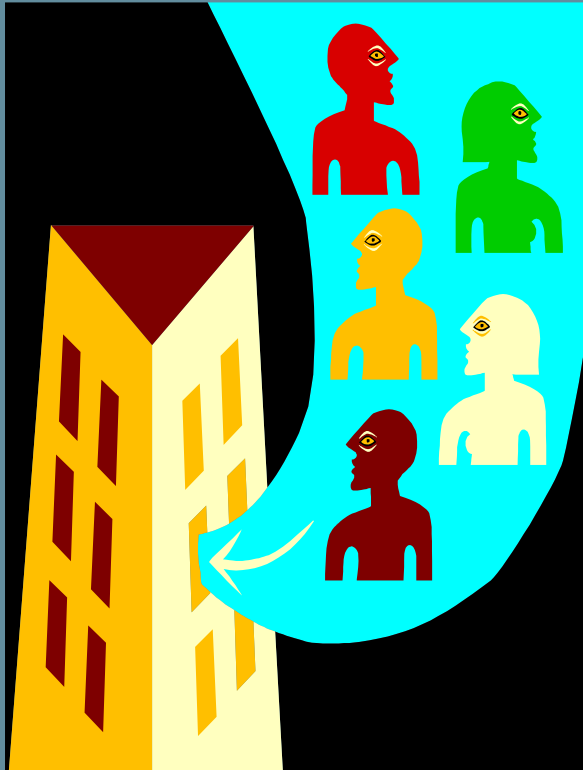


What is a “Serious Health Condition?”

1. Inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider.
2. Condition must necessitate an employee’s absence for more than 3 consecutive days.
3. “An assemblage of diagnoses,” when taken together, can constitute a serious medical condition.



Who is a “Covered Employee?”



- Employee must have worked at least 1250 hours during the 12 months immediately preceding the start of the leave.
- Work hours lost during a grievance, but later awarded by an arbitrator, do not count as hours of service.
- To the extent it purports to extend eligibility to an otherwise ineligible employee who is not immediately notified after requesting leave of his or her eligibility, DOL regulation 29 C.F.R 825.110(d) is invalid.

Who is a “Covered Employer?”

- Employer must employ 50 or more employees for 20 or more weeks in the current or preceding year.
- A union can be an employer under FMLA.
- Individuals may be employers under the FMLA.



Is FMLA Leave Paid or Unpaid?

- FMLA permits employers to provide either paid or unpaid leave.
- Employers are *not* required to provide paid leave.
- Failure to use paid sick leave prior to using FMLA leave does not deprive an employee of FMLA coverage.



Other FMLA Protections

- An employer may not discriminate or retaliate against an employee for exercising FMLA rights.
- An employer is obligated to reinstate an employee returning from FMLA leave, but only if the employee is able to perform the essential functions of his or her job.
- The FMLA requires that the employer allow intermittent leave, but not when the employee is unable to perform the essential functions of his or her job.
- An employee must provide their employer with 30 days notice when leave is foreseeable.

The FMLA and CBAs

- The FMLA states that nothing in the Act diminishes an employer's obligations under a CBA.
- An employer may, pursuant to a CBA, provide a more generous leave package to its employees.



Questions to Ask Your Member

- How long do you expect to be out? (Three or more consecutive days means this may qualify for FMLA.)
- Will you/the family member be hospitalized or treated by a physician?
- Will this absence be for a period of time, reduced work schedule or on an intermittent basis?



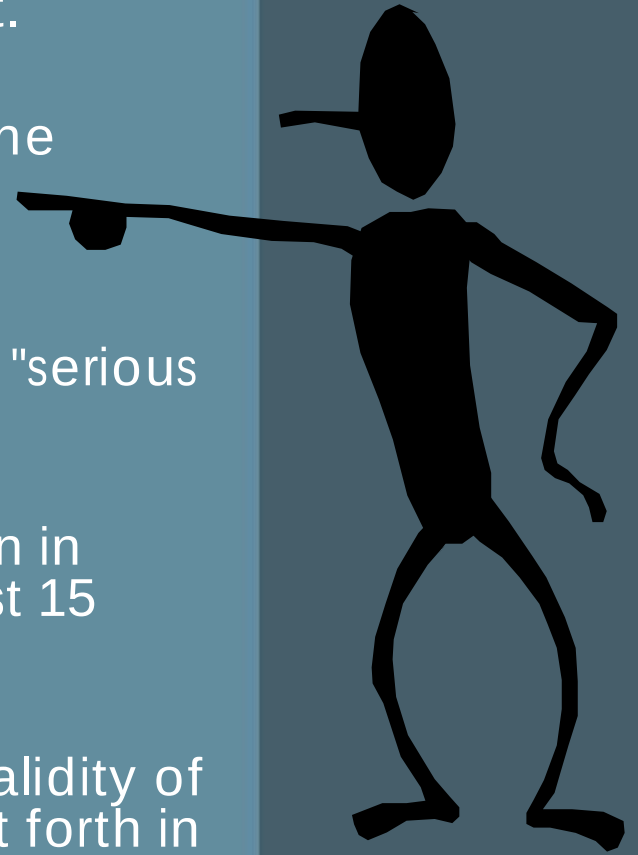
10 Common Employer FMLA Violations

1. Failure to notify the employee of FMLA rights.
2. Failure to notify the employees that leave counted towards the employee's 12-week entitlement.
3. Counting FMLA leave against the company's absentee policy for disciplinary purposes.
4. Taking disciplinary action against employee for using FMLA.
5. Failure to grant leave to provide physical care or psychological comfort to a seriously ill parent or child.



10 Common Employer FMLA Violations

6. Failure to reinstate employee to same or equivalent position, including same shift.
7. Terminating an employee during or at the conclusion of FMLA leave.
8. Failure to grant FMLA leave because of misunderstanding of what qualifies as a "serious health condition."
9. Failure to request a medical certification in writing and not giving employee at least 15 days to obtain medical certification.
10. Failure to handle questions about the validity of a medical certification by guidelines set forth in the FMLA regulations.

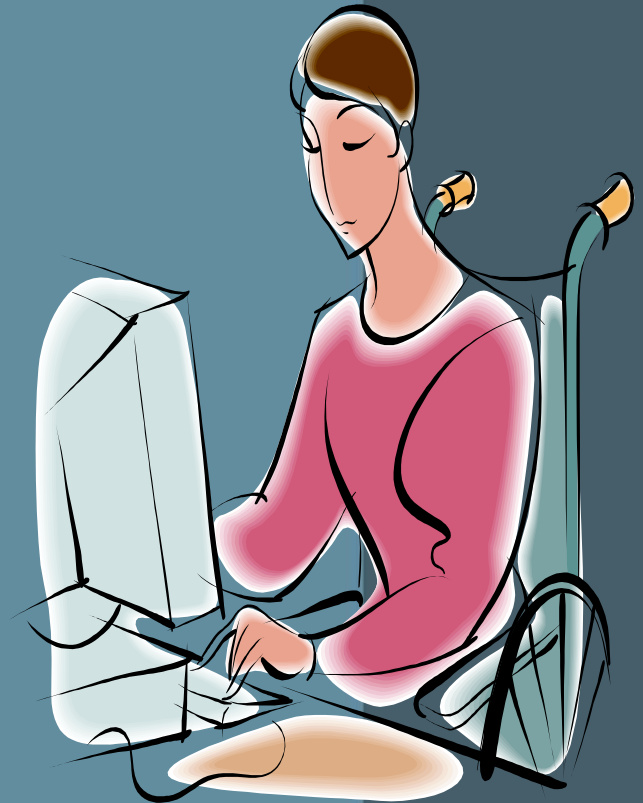


ADA Rights



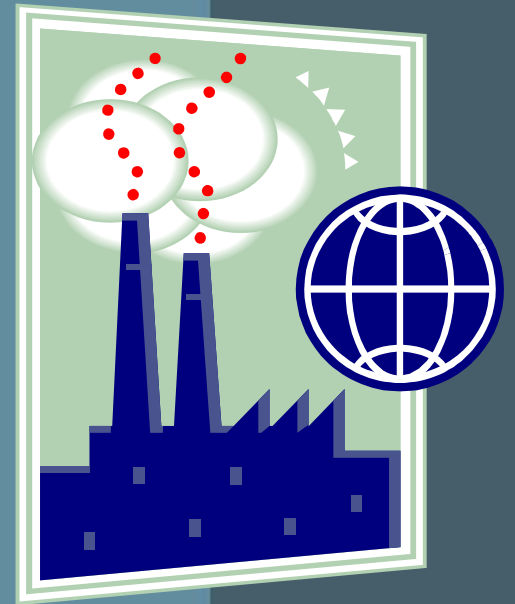
Americans With Disabilities Act

- No employer can discriminate against a qualified individual because of that individual's disability if that disability can be reasonably accommodated.
- An employer cannot discriminate when hiring or firing, training, advancing, or compensating employees.



Who is a “Covered Employer?”

- All employers with at least 15 employees.
- Includes any agent of a covered employer.
- Labor unions are included.
- An employer faces liability under respondeat superior for a supervisor's actions.



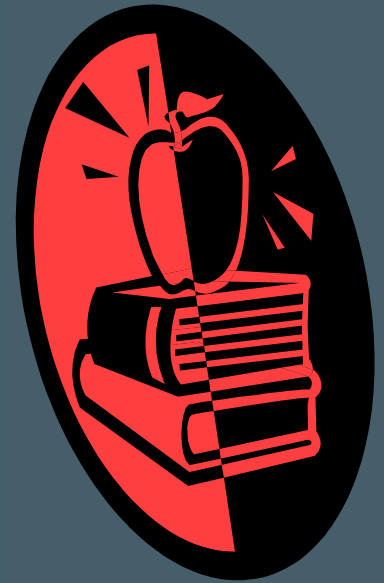
Reasonable Accommodation and Seniority Systems

- US Airways, Inc. v. Barnett, 535 U.S. 391 (2002).
 - An employer's showing that a requested accommodation conflicts with seniority rules is ordinarily sufficient to show that an accommodation is not reasonable.
 - An employee may be able to present special circumstances showing the accommodation is reasonable despite the seniority system.



Minnesota Time Off for Parents Law

- Minnesota law allows parent unpaid leave for attendance at school functions with their children.
- The law allows for up to 12 hours of leave per year, and must be used for attendance at school or other educational functions.
- Parent must give the Employer reasonable notice, if possible.



USERRA Rights



USERRA Rights

- The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects workers who join or have an obligation to serve in a branch of the military.



Reemployment Right

- A person whose leaves work because of military service is entitled to reemployment if:
 - (a) that person has given advance notice of service to their employer;
 - (b) the cumulative length of the absence (including all previous absences for service) does not exceed 5 years; and
 - (c) that person reports to, or submits an application for reemployment to, their employer.
- The 5-year limit doesn't include time on active duty because of a war or national emergency, or to provide support for an operational mission.



Right to Benefits

- Time in military service is considered “on furlough or leave of absence,” and employee is entitled to any rights and benefits not determined by seniority provided by the employer to employees who are on furlough or leave of absence.
- Upon return to work, employee has the seniority and other rights and benefits determined by seniority earned at the time of service *plus* the seniority and rights and benefits that the person would have accrued had they remained continuously employed.
- “Benefits” are any “advantage, profit, privilege, gain, status, account, or interest that accrues by reason of an employment contract or agreement,” including pension, insurance coverage and awards, bonuses, vacations, and the opportunity to select work hours or location of employment.



Notice to Employer of Intent to Return to Work

- Upon completion of service, worker must notify their employer of their intent to return to work.
- For periods of service less than 31 days, employee must report to the employer no later than the beginning of the first full work period on the first full calendar day following that person's arrival at their residence from their place of service.
- Individuals who have served more than 30 days, but less than 181 days, must submit an application for reemployment no later than 14 days after the completion of their period of service.
- Persons who have served longer than 180 days may submit an application for reemployment up to 90 days after their period of service is completed.



Reemployment Positions

- Service under 91 days: the position in which the person would have been employed if their employment had not been interrupted because of service.
- Service over 90 days: the position in which the person would have employed if their employment had not been interrupted because of service, or a position of like seniority, status, and pay.
- If a person isn't qualified to perform the duties of the position after the employer's reasonable efforts to qualify that person, he or she may be placed in the position held on the date their military service commenced.
- If 2+ people are entitled to reemployment and are both eligible for placement in the same position, the person who left the position first shall have the primary right to reemployment in that position. The other person shall be reemployed and placed in a position with similar status and pay with full seniority.

Use of Drug/ Alcohol Test Results



Test Disclosures

- A lab may only disclose to the employer the presence or absence of drugs or alcohol in a sample tested.
- Test results and other information acquired in the testing process are, with respect to private sector employees and job applicants, confidential information, and, with respect to public sector employees and applicants, private data on individuals, and may not be disclosed without the written consent of the employee or applicant tested.
- A positive test result may be: (1) used in an arbitration, administrative hearing, or judicial proceeding, provided the information is relevant; (2) disclosed to a federal agency as required under federal law, or in accordance with a federal government contract; and (3) disclosed to a substance abuse treatment facility for the purpose of evaluation or treatment of the employee.
- Positive test results may not be used as evidence in a criminal action against the employee or applicant tested.



Use of Unemployment Decisions

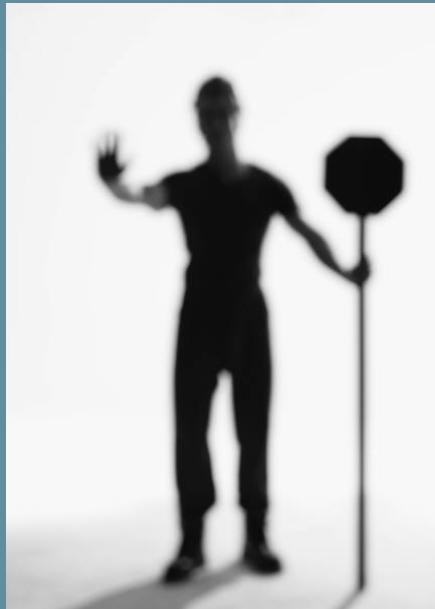


Unemployment Hearings & Arbitrations



- Minn. Stat. § 268.105, subd. 5a.
- Factual findings, decisions, and orders issued by unemployment law judges are inadmissible as evidence in any separate action (including labor arbitrations), regardless of whether the action involves the same or related parties or involves the same facts.

Picket Line Stop Statute



Picket Line Stop Statute



- Minnesota Statute § 179.121.
- Any person who operates a motor vehicle which is entering or leaving a place of business or employment where there is a clear notice that a labor dispute is in progress, and who fails to bring the vehicle to a full stop at the entrance to or exit from that place, or who fails to exercise caution in entering or leaving that place, is guilty of a misdemeanor.

Important Criminal Laws

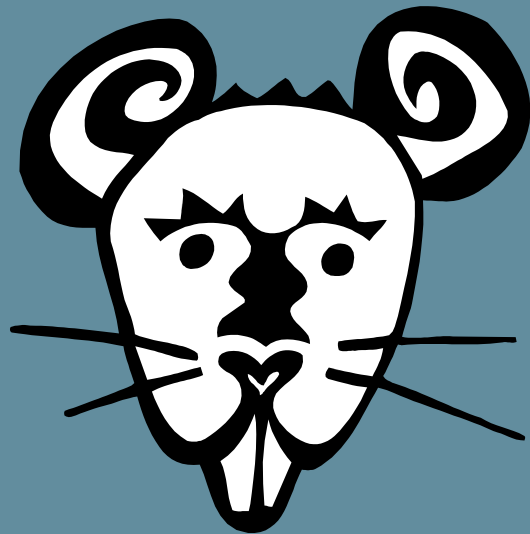


Harassment/Stalking

- Minn. Stat. §609.749.
- It is a gross misdemeanor to engage in intentional conduct that the actor knows or has reason to know would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated; and that actually causes this reaction on the part of the victim.
- Includes following or pursuing the victim.
- Exception for union strikes and ambulatory picketing.

Concealing Identity in Public

- Minn. Stat. § 609.735



- A person whose identity is concealed by the person in a public place by means of a robe, mask, or other disguise, unless based on religious beliefs, or incidental to amusement, entertainment, protection from weather, or medical treatment, is guilty of a misdemeanor.

Definitions of Critical Public Service Facility, Utility, and Pipeline

- Critical Public Service Facility:

Railroad yards and stations, bus stations, airports, and other mass transit facilities; oil refineries; storage areas or facilities for hazardous materials, substances, or wastes; and bridges.

- Pipeline:

An above-ground pipeline and any equipment, facility, or building located in this state that is used to transport natural or synthetic gas, crude petroleum or petroleum fuels or oils or their derivatives, or hazardous liquids to or within a distribution, refining, manufacturing, or storage facility that is located inside or outside of this state.

- Utility:

Any organization defined by law as a utility; any telecommunications carrier or telephone company; any local utility or enterprise formed for the purpose of providing electrical or gas heating and power, telephone, water, sewage, wastewater, or other related utility service, which is owned, controlled, or regulated by a governmental unit.

Damage to Property of Critical Public Service Facilities, Utilities, and Pipelines

- Minnesota Statute § 609.594

- It is a felony to:

Cause damage to the physical property of a critical public service facility, utility, or pipeline with the intent to significantly disrupt the operation of or the provision of services by the facility, utility, or pipeline and without the consent of one authorized to give consent.



Trespass on Critical Public Service Facility, Utility, or Pipeline

- Minnesota Statute § 609.6055.
- It is a gross misdemeanor offense if a person enters or is found upon property containing a CPSF, utility, or pipeline, without claim of right or consent if:
 - 1) The person refuses to depart from the property upon demand;
 - 2) Within the past 6 months the person was told to leave the property and not return; OR
 - 3) The property is posted with no-trespassing signs pursuant to statute.
- For purposes of this section, a CPSF also includes non-public portions of bridges, but does not include railroad tracks extending beyond the facility. A pipeline does not include service lines. A utility does not include the property above buried service lines, or below suspended service lines.

Fleeing a Police Officer



- Whoever by means of a motor vehicle flees or attempts to flee a peace officer, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony.
- Whoever attempts to evade or elude, by running, hiding, or any other means, a peace officer to avoid arrest, detention, investigation, or to conceal or destroy potential evidence related to a crime, is guilty of a misdemeanor.

Assault on a Police Officer



- Minn. Stat. 609.2231
- Gross Misdemeanor to physically assault a police officer.
- Felony to inflict demonstrable bodily harm upon a police officer, or to intentionally throw or otherwise transfer bodily fluids at or onto an officer.
- No Spitting Allowed!

Firearms Disqualification: State Law



- Persons convicted of domestic assault, violation of an order for protection, or harassment/stalking, may be prohibited from possession of a pistol for three years from the date of conviction.
- A person convicted of an offense involving the use of a firearm may, at the discretion of the court, be ordered not to possess a firearm for three years up to life.

Firearms Disqualification: Federal Law

- Federal law prohibits any person subject to an order for protection from possessing a firearm.
- It also prohibits anyone who has been convicted of a misdemeanor crime of domestic assault from possessing a firearm.



Firearms Forfeiture



- If the offender owns or possesses a firearm, and used the firearm in any way in commission of domestic assault, violation of an order for protection, or harassment/ stalking, the firearm is subject to forfeiture to the state.