FALL 2025

Gislason & Hunter, LLP

eLAW LABOR & EMPLOYMENT

Chapter 187. Minnesota Secure Choice Retirement Program.

by Cory A. Genelin

In the 2023 Legislative Session, Minnesota created Chapter 187, the Minnesota Secure Choice Retirement Program ("MN SCRP"). This was Chapter 46 of House File 782. With the many sweeping employment law changes and new regulations slammed through by the DFL trifecta, MN SCRP got little attention. But now that its implementation is (sort of) approaching, I'm fielding quite a few questions on it. Here's what you need to know.

In short, MN SCRP is a program whereby employees whose employers don't sponsor a retirement plan to participate in one.

Here are the hard details:

What is it? Essentially it's a retirement plan for Minnesotans who don't get one though their employer. Like any IRA, contributions (in an amount to be determined later) are sent to the plan to be invested (in ways to be determined later) for the employee's retirement, to be withdrawn at times to be determined later and in ways to be determined later.

Why do we know so little? Chapter 187 is remarkably brief. In fact it's incredibly brief when compared to things like MN Paid Family Leave and Earned Sick and Safe Time. Chapter 187 says a "Board" will be established to run the program. The statue then "the board must establish . . ." nearly all of the important details. As passed in 2023, the statute

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Cory A. Genelin
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Devin R. Miller

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didn't even say when the program was to begin. It had a "no earlier than [date] of January 1, 2025."

Who's covered? Employers with five or more "covered employees" that don't already offer a retirement savings plan. We don't know what a "covered employee" is (the board will decide that too) but it doesn't mean anyone under 18. In the 2025 session, the Legislature also excluded seasonal employees (those intended to work 180 days or less) from the definition of "covered employee" but then allowed these employees to opt-in (whereas other "covered employees" are in unless they opt-out.)

What do covered employers have to do? Covered employers will not have to contribute to the plan. Covered employers will simply serve as unpaid administrators for the MN SCRP. Covered employers will have to:

- Inform covered employees of the program (specific details of what must be shared with employees will be determined by the board).
- Enroll covered employees in MN SCRP, unless those employees opt out.
- Collect employee contributions from wages.
- Hold the contributions in trust.
- Remit contributions to MN SCRP in a manner to be determined later by the board. (In the 2025 session, it was clarified that these must be remitted no more than 30 days after withholding.)
- Pay civil penalties (to be determined by the board) if they fail to do any of the above.
- Pay criminal penalties if they fail to remit withheld wages to MN SCRP.

When does this start? As I said above, when passed, Chapter 187 simply didn't say when MN SCRP would start. In the 2025 session, the Legislature empowered the board to establish an enrollment window and a "phase-in schedule." That phase in schedule has not been established by the board, but according to the MN SCRA website, it is expected that the program will start enrolling the largest employers before March 30, 2026 and the smallest employers will be enrolled in "25-30 months".

Speaking of the board, the State of Minnesota currently lists three appointees and five vacancies. The board is currently advertising for the position of Executive Director.

What should employers be doing now? If you employ five or more employees, and you don't currently offer a retirement plan, you may want to begin shopping for one so that when this program hits you, you at least have the ability to compare costs and benefits of a private plan as against whatever is offered by the state. If you don't intend to offer a plan, be checking securechoice.mn.gov regularly to see exactly what the unelected board is going to require of your payroll department and when.

How AI is Changing Hiring and Raising Legal Risks for Employers

by Devin R. Miller

Artificial intelligence is rapidly transforming how businesses operate, especially in recruiting and hiring. With promises of greater efficiency, speed, and cost savings, AI-driven hiring tools are quickly gaining traction. But with these benefits come new legal challenges that employers must be mindful of.

Recent lawsuits highlight growing concerns about whether these tools unintentionally discriminate against job applicants based on protected characteristics. As AI becomes a mainstream tool used in hiring, employers must stay informed about the legal risks involved.

Recent Legal Challenges to the Use of AI-Based Hiring Tools

One notable case gaining national attention is a case out of a federal court in California, *Mobley v. Workday*.[1] In this case, the court recently granted a motion to preliminarily certify a collective action in a lawsuit alleging age discrimination against applicants aged 40 and over.

The plaintiff, Mobley, alleged he received hundreds of rejections after applying for jobs through Workday, a widely used human resources platform that screens job applications using AI. Workday offers a platform to collect, process, and screen job applications. According to the plaintiff's allegations, Workday embeds artificial intelligence into its algorithmic decision-making tools, which led to disproportionate disqualification of older applicants.

Mobley sought preliminary certification of a nationwide collective (similar to a class action) under the Age Discrimination in Employment Act and proposed a collective defined as "All individuals aged 40 and over who, from September 24, 2020, through the present, applied for job opportunities using Workday, Inc.'s job application platform and were denied employment recommendations."

The court was tasked with determining whether Mobley had sufficiently alleged that the proposed collective of job applicants were "similarly situated." The Ninth Circuit, where this federal court sits, found that the plaintiffs had sufficiently alleged a unified policy - the use of Workday's AI tools - as the common source of the alleged discriminatory impact. This cleared the way for preliminary certification.

Preliminary certification allows the plaintiffs to notify other potentially affected individuals, giving them the opportunity to "opt-in" to the lawsuit.[2] While the court acknowledged that more work is needed to define the scope of the collective, determine notice feasibility, and finalize the notification language, the case is already being closely watched for its broader implications. A similar case was recently filed in August 2025. A lawsuit was

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[1] Mobley v. Workday, Inc., 23-CV-00770-RFL, 2025 WL 1424347 (N.D. Cal. May 16, 2025).

[2] Under the Age Discrimination in Employment Act, plaintiffs may bring a collective action on behalf of other individuals under a procedure in the Fair Labor Standards Act. This procedure allows the lead plaintiff to seek preliminary certification and send court-approved notice to individuals who may then join or "opt-in" to the litigation.

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filed in a federal court in Michigan, *Harper v. Sirius XM Radio*, where the plaintiff is alleging the company's AI-powered hiring tool discriminated against him based on his race.[3] According to the complaint, the plaintiff was rejected from roughly 150 positions he believes he was qualified for. He alleges the AI system contains embedded historical biases that resulted in discriminatory treatment. His claims include disparate treatment, disparate impact, and intentional employment discrimination.

It is important to note that these are only the plaintiff's allegations and his side of the story. The court has not made any findings on this case. Still, the case reflects a growing trend: an increase in the claims around the use of these tools.

What Does This Mean for Employers?

These decisions reflect the growing trend: of legal scrutiny that will continue to stem from the use of AI-tools in employment decisions. These cases show the potential risks employers could face associated with these technologies. Employers that use AI tools to screen job applicants, or make any other employment-related decisions, should remain aware of how AI is being used in the hiring process and decision making.

The technology and laws surrounding AI in the workplace are ever changing, and while there is no "one size fits all" answer for best handling these issues, employers can continue to implement practices to mitigate risks. Employers should retain human oversight in employment decisions, document processes including reasoning for how hiring decisions are made, and monitor hiring platforms and tools to identify any disparities in candidates. Building awareness, accountability, and clear documentation into hiring processes is a strong starting point for mitigating risk and fostering fair practices.

[3] U.S. District Court, Eastern District of Michigan (2:25-cv-12403).

U.S. Supreme Court Levels Playing Field for Reverse Discrimination Claims: Understanding the Impact of Ames v. Ohio Department of Youth Services

by Adam N. Froehlich

I. Introduction

Reverse discrimination claims—allegations that an employer discriminated against a member of a majority group—have gained popularity and notoriety in recent years. While reverse discrimination claims are nothing new, having been recognized by the United States Supreme Court under Title VII by at least 1971, they are less common than traditional discrimination claims. However, these cases require the same careful attention to documentation, uniformity, and legal standards. The U.S. Supreme Court's recent decision in *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025) reshaped the legal landscape around reverse discrimination claims, creating uniform standards for both traditional and reverse discrimination claims, signaling to employers the importance of considering all forms of discrimination in ensuring Title VII compliance and mitigating potential liability. When Title VII's disparate treatment provision[1] says it prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin, it means it prohibits employers from discriminating on the basis of any race, any color, any religion, any sex, or any national origin, regardless of the claimant belongs to a historically disadvantaged group.

II. The Ames Case.

Marlean Ames, a heterosexual woman, was hired by the Ohio Department of Youth Services to serve as an executive secretary, before being promoted to program administrator.[2] In 2019, Ames "applied for a newly created management position in the agency's Office of Quality Improvement."[3] Ames was interviewed the position, but the agency hired a lesbian woman to fill the role instead.[4] Soon after, Ames was demoted back to her secretary position, resulting in a significant pay cut.[5] Ames' program administrator role was filled by a gay man.[6] Ames filed a Title VII claim against the agency, asserting that the agency prioritized diversity to her detriment, promoting less-qualified LGBTQ employees and demoting her because she was straight.

For decades, many federal courts, including in the Eighth Circuit, have required majority-group plaintiffs to show "background circumstances" indicating that an employer was atypical or especially likely to discriminate against the majority,[7] or imposed other barriers to majority-group Title VII claimants.[8] This meant reverse discrimination claims faced extra barriers at the outset of a case, differing from the standard applied to traditional Title VII claims. In *Ames*, the district court and the Sixth Circuit Court of Appeals applied the "background circumstances" test

[1] 42 U.S.C. § 2000e-2(a)
[2] *Ames*, 605 U.S. at 306.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *See, e.g., Murray v. Thistledown Racing Club, Inc.*, 770 F.2d 63, 67 (6th Cir. 1985); *Mudrich v. Wal-Mart Stores, Inc.*, 955 F.Supp.2d 1001, 1024 (D. Minn. 2013); *Bishopp v. District of Columbia*, 788 F.2d 781, 786 (D.C. Cir. 1986).
[8] *Iadimarco v. Runyon*, 190 F.3d 151, 158–161 (3rd Cir. 1999) (collecting cases)

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to Ames' claim, and found that Ames did not show "background circumstances to support the suspicion that the [agency] is that unusual employer who discriminates against the majority."[9] The Court of Appeals explained that the background circumstances test is typically satisfied by showing that "a member of the relevant minority group . . . made the employment decision at issue" or by showing a statistical "pattern of discrimination . . . against members of the majority group."[10]

In a unanimous decision, the Supreme Court rejected the background circumstances test, ruling that Title VII makes no distinction between classic discrimination and reverse discrimination. Title VII's disparate treatment provision, the Court said, "draws no distinctions between majority-group plaintiffs and minority-group plaintiffs."[11] The Court pointed to other cases demonstrating that Title VII establishes "the same protections for every 'individual'—without regard to that individual's membership in a minority or majority group . . ." including *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971), where the Court said that "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed" and *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), where the Court held that Title VII prohibits discrimination against white plaintiffs "upon the same standards" that would apply to racial minority groups.[12] The Court concluded that Title VII does not impose a heightened standard on majority-group plaintiffs.[13] Consequently, all parties—majority or minority group members—now proceed under the same evidentiary framework in court, and are reviewed with the same legal rigor.

III. Analyzing Discrimination Cases After Ames: Uniform Application of the McDonnell Douglas Burden-Shifting Framework.

Before *Ames*, employers and courts where the background circumstances test was applied often viewed "reverse discrimination" with a presumption that it was less probable or more difficult to prove. In light of *Ames*, it is important that all forms of discrimination, no matter whom the discrimination is alleged by, are analyzed and considered equally, using the standard and hopefully familiar *McDonnell Douglas* burden-shifting framework.[14] Under *McDonnell Douglas*, a claimant under Title VII must establish "'a prima facie case' by producing enough evidence to support an interference of discriminatory motive."[15] This is often a simple hurdle to clear, requiring an employee to present "evidence that she applied for an available position for which she was qualified, but was rejected under circumstances which give rise to an inference of unlawful discrimination."[16] *Ames* makes it clear that this showing is all that is required in every case. Once the plaintiff presents the prima facie case, the burden shifts to the employer "to articulate some legitimate, nondiscriminatory reason for the employee's rejection" and if the employer does so, the employee has the opportunity to show that the justification was merely pretext for discrimination.[17]

[9] *Ames*, 605 U.S. at 307 (citation modified).
[10] *Id.* (citation modified).
[11] *Id.* at 309.
[12] *Id.* at 310.
[13] *Id.* at 313.
[14] In a concurring opinion, Justice Thomas, joined by Justice Gorsuch, criticized the use of the *McDonnell Douglas* framework, particularly at the summary judgment stage, but it remains the standard, at least for now. *Id.* at 320–26.
[15] *Id.* at 308.
[16] *Id.* at 309 (citation modified).
[17] *Id.* (citation modified).

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Ames does not add to or change the *McDonnell Douglas* framework as it is generally understood. *Ames* merely takes away an additional hurdle added for members of a majority group who claimed discrimination. Under *Ames*, the *McDonnell Douglas* burden shifting framework is applied uniformly and equally to all claims of discrimination.

IV. Reverse Discrimination Under the Minnesota Human Rights Act.

Minnesota Courts analyze employment discrimination claims under the MHRA using the *McDonnell Douglas* burden-shifting framework.[18] While some Minnesota state courts have applied the background circumstances test to reverse discrimination claims under the MHRA,[19] the MHRA's provisions preventing discrimination have long been seen as neutral, preventing discrimination against both majority and minority groups.[20] Like Title VII, the MHRA's prohibition on employment discrimination provides inclusive protections, and does not distinguish between majority and minority groups.[21] Accordingly, Minnesota courts are unlikely to apply the background circumstances test moving forward, consistent with most prior state court decisions, the MHRA's neutral language, and Minnesota's adoption of the *McDonnell Douglas* burden-shifting framework, as that framework is now applied under *Ames*.

V. Key Takeaways and Best Practices.

DEI: The *Ames* decision comes at a time when diversity, equity, and inclusion (DEI) programs are under increasing scrutiny, in part based on reverse-discrimination type claims.[22] *Ames* emphasizes the need to ensure fair opportunities to all groups. As DEI programs are reworked and reconsidered, it is important to keep *Ames* and the level playing field for all forms of discrimination in mind. Employers must consider not only minority groups, but also majority groups, to ensure that decisions are not made based on race, color, religion, sex, or national origin in any way.

Policies: When reviewing anti-discrimination and anti-harassment policies, ensure the policies use neutral language, highlighting protection for all employees. Any language which suggests that majority-group complaints are less credible or harder to pursue should be removed.

Training: Update HR and management training to reflect the *Ames* standard. Persons tasked with investigating discrimination complaints and enforcing anti-discrimination policies should be instructed that all discrimination claims—regardless of the claimant's group status—should receive the same treatment and documentation, and be analyzed under the same standard.

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[18] *Sigurdson v. Isanti County*, 386 N.W.2d 715, 719–20 (Minn. 1986).
[19] *See, e.g., Anderson v. Fairview Health Services, Inc.*, No. A07-1481, 2008 WL 3289269, at *4 (Minn. App. Aug. 12, 2008);
[20] *See, e.g., Ridler v. Olivia Public School System No. 653*, 432 N.W.2d 777, 781 (Minn. App. 1988) ("[U]nder the MHRA, gender based employment decisions are prohibited regardless whether the victim is male or female.");
[21] Minn. Stat. § 363A.08.

[22] *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2003) (asserting that race-based college admission programs discriminate against groups with greater representation); *What You Should Know About DEI-Related Discrimination at Work*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work.

LOCATIONS

MANKATO OFFICE
111 South 2nd Street, Suite 500
Mankato, MN 56001
507–387–1115

NEW ULM OFFICE
2700 South Broadway
New Ulm, MN 56073
507–354–3111

gislason.com