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IOWA DEFENSE COUNSEL ASSOCIATION

DEFENSE UPDATE

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New Child Labor Law Signals Changes for Employers, Attorneys

By Katie Ervin Carlson and Josh Hughes, Dorsey & Whitney LLP

Katie Ervin Carlson

Josh Hughes

On May 26, 2023, Governor Kim Reynolds signed Senate File 542[1], an Act relating to youth employment. For Iowa employers who employ minors, the law could be significant. Iowa employers that choose to take advantage of the new Iowa law when it takes effect on July 1, 2023, should be aware of the potential conflicts and potential legal challenges and make decisions accordingly. Attorneys advising employers should be aware of the potential of the Department of Labor ("DOL") action to enforce federal child labor standards and understand how federal and state laws differ.

TYPE OF WORK

SF 542 is a major rewrite of Iowa Code Chapter 92 (child labor). Among other items, the bill modifies the status

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WHAT'S INSIDE

IDCA President's Letter

Sam Anderson
IDCA President

Greetings.

Wow. How fast a year can pass! As we gear up for another impactful annual seminar in September, the IDCA board and committee members will complete another good year of service, and a new hopeful year of service will begin. It has been an honor for me to have had the opportunity to serve as president of the organization for this last year. Like the presidents serving before me and the presidents serving after, we hope that we can do our part in pushing forward toward continual betterment of the IDCA's ability to provide a valuable service to its members and to the defense clientele we serve. I believe that the IDCA is working hard and successfully toward this never-ending goal.

As I prepared for serving this year, I had a whole list of ideas for the organization to pursue. Some of the ideas were naturally better than others. That is where an interested board comes into play. My ideas, and the ideas of other board members, get thrown out on the table and discussed fairly and thoughtfully. With the wealth of experience and different experiences of the board members, the better ideas get the support they need and rise to the top while the lesser ideas fall by the wayside. While some wayside ideas should probably be left by the wayside, others might just be waiting there for a better time to be useful. The cool thing about ideas is that once they are shared, they are available for use when needed. One thing I feel good about this year is that I shared my ideas and other board members shared theirs, good or bad, for consideration of the board and the board dealt with them wisely. It confirms for me that the IDCA leadership is strong and that the organization remains in good hands. For those not yet involved on the board or committees of the IDCA, new ideas, *your* ideas, are not only welcome, but needed for continued growth. There, again, is another plug urging you to become involved in the organization if you are not already. Your experiences and ideas are as valuable as those of any other member of the IDCA regardless of how long you have been practicing law.

One of my goals this year was to continue the quest for the IDCA to become even more organizationally proactive in its participation with Supreme Court committees on rulemaking and with our lobbyist in the drafting of helpful legislation The IDCA is represented in the rulemaking process. The IDCA now also has a Reptile Theory task force to devise helpful tools to respond to plaintiff tactics and to help educate the courts on the evidentiary problems their tactics present. Our legislative committee has generated productive ideas for helpful legislation. From the numerous ideas put forward, some of the issues we are investigating with a goal of addressing include:

- Evidence of Medical Bills: When plaintiffs refuse to offer or claim past medical expenses, defendants may not be allowed to offer the bills on relevancy grounds even though the plaintiffs have an obligation to pay back the bills out of any recovery. This creates a fiction for the trier of fact in furtherance of a plaintiff strategy to not allow low medical bills to serve as a floor to their recovery. Plaintiffs obviously believe that the amount of medical bills is relevant in helping influence a jury's decision because they offer the bills when they are high and leave them out when low. I believe that unless there are no medical bills that have to be paid back, the medical bills are relevant to the issues the jury is ultimately deciding.

- Collateral Source Rule: We are looking into promoting the inclusion of state and federal benefits such as Medicare, Medicaid, workers compensation, and social security benefits within the exceptions to the common law collateral source rule provided by Iowa Code § 668.14.

- Offers to Confess: We are looking into options for adding teeth to the offer to confess statute to encourage settlement of claims.

- Psychological Test Materials: We will continue our attempt to get Iowa Code § 228.9 amended to allow counsel to obtain and review psychological test materials.

I am sure there are other ideas for legislation or rulemaking that you have thought about that should be addressed. We encourage you to make any proposals you have for the betterment of the defense practice and our clientele to the IDCA board members so that your ideas can be fairly and thoughtfully discussed by the board as a whole. If you are wondering who to contact about any ideas you have, the list of officers is on the iowadefensecounsel.org website under the tab labeled, "About Us".

While you are on the website take some time to explore it. Under the "About Us" tab you will also see our list of committees and a tab at the bottom you can select to submit a request to serve on the committee. That is a wonderful avenue to put your ideas to work! While looking around the website, click on the tab labeled "Membership" and look to see the list of membership benefits. Knowing the benefits available to you as a member will help you not miss out on any of them. Navigate the website further and check out the IDCA forum, the settlement database, the jury verdict database, the Defense Update archives, the legal links, and the membership directory. Your contributions to the forum, the settlement database, and the jury database are other ways to serve the IDCA as it will add to the value these features have to you and your fellow members in the future. The membership directory is a great source to help you "phone a friend" in the legal defense world to help provide you with needed input on troubling legal issues.

I can guarantee that the more you involve yourself with the IDCA through service on boards or committees, contributing to forums and databases, sharing your ideas, and interacting with fellow members, the more you will get out of the organization. You will find it to be a big assist in your success and your satisfaction with the defense practice.

Before I close, I thank outgoing board members, Sue Hess (immediate past president), Randy Stravers (treasurer), Katie Graham (at-large rep), and Courtney Wilson (new lawyer's rep), for their service on the board. We now look forward to next year when we will present to you a new slate of volunteer leadership who will continue to advance the work of IDCA. I also thank Jessica Thornton who serves as our executive director and her fellow Amplify Association Management staff that play a big role in the operation of the IDCA, including Kelly Kipping who works with member services, Kacie Krominga who is the marketing and communications coordinator, and Amplify CFO, Steve McGinnis.

For all who have contributed to the success of this organization, thank you! For all who are continuing to contribute, thank you! For all who are just getting started and want to become involved in the organization, thank you! Finally, I give thanks again for having had the opportunity to serve on IDCA committees, the board, and this last year as president. The IDCA is a great organization, with a membership of great people, doing great work in the field of legal defense. You should be proud, as am I, to be an active part of it.

Sam Anderson

Continued from Page 1

quo by extending allowable working hours for 14 and 15-year-olds, modifying the scope of permissible occupations for certain aged children, and permitting 16 and 17-year-old employees to serve alcohol in certain establishments.

Some employers and attorneys have raised concerns that certain provisions of SF 542 conflict with federal child labor regulations found in the Fair Labor Standards Act ("FLSA"). Generally, state child labor laws may not be *less* restrictive than federal regulations, but many parts of the new Iowa law are less strict than the provisions of the FLSA. For example, the FLSA prohibits employment of 14 and 15-year-olds unless the employment is specifically listed in federal regulations[2] (e.g., bagging and carrying groceries, cashiering, or clerical work). But SF 542 modifies the list of allowable employment for 14 and 15-year-olds to include jobs that are expressly *not* listed in the federal regulations (e.g., working in industrial laundries and performing "light assembly work"). The new Iowa law also permits 14 and 15-year-olds to perform "momentary work" in a meat freezer, something expressly prohibited by the FLSA.

WORKING HOURS

Another potential conflict between the FLSA and the Iowa law involves permissible working hours for some minor employees. Federal regulations[3] strictly limit how many hours per week a 14 or 15-year-old may work, which is usually no more than 18 hours per week when school is in session, no more than three hours per day on a day when school is in session, and only between 7:00 a.m. and 7:00 p.m. on any day during the traditional school year. SF 542, on the other hand, extends school year working hours to 9:00 p.m. and summer hours to 11:00 p.m. while also allowing 14 and 15-year-olds to work up to six hours on a school day.

These apparent conflicts have already caught the attention of federal regulators. While SF 542 was pending before the Iowa Legislature, the DOL's top enforcement lawyer wrote[4] to a group of Iowa lawmakers that certain provisions of SF 542 violated the FLSA. To be sure, the Iowa and federal regulations were not perfectly aligned prior to SF 542: the prior version of Iowa Code § 92.7 permits a child under sixteen to work up to 28 hours per week when school is in session, even though federal regulations limit the child to 18 hours per week during the school year. The DOL's early involvement regarding the new child labor law, and the scope of the changes to the law, may suggest that the DOL will be closely monitoring Iowa's new child labor standards.

MANDATORY SEXUAL HARASSMENT TRAINING

SF 542 also contains an amendment to Iowa's alcohol control statute to allow 16 and 17-year-olds to serve alcohol in certain situations. Previously, an employee had to be 18 years old to serve open-container alcohol in Iowa. Under the new law, 16 or 17-year-olds can serve alcohol under the following conditions:

1. The establishment is a restaurant, and the kitchen is operating,
2. the employer obtains and maintains written permission from the minor's parent or legal guardian allowing them to serve alcohol,
3. at least two employees 18 years old or older are physically present when the minor is serving alcohol,
4. **the employer requires the minor to attend sexual harassment prevention training,**
5. **the employer agrees to notify the minor's guardian *and* the Iowa Civil Rights Commission if the employer becomes aware of an incident of harassment involving the minor**, and
6. the employer notifies its dram shop insurance provider that it employs a minor prior to the minor beginning employment.

The requirements to provide mandatory sexual harassment training and to report instances of harassment to the Iowa Civil Rights Commission (ICRC) are unique among Iowa's employment laws, which typically do not require mandatory trainings or reports to government agencies.

The text of SF 542 also leaves some questions about an employer's duty to report incidents of harassment: the law provides that if a minor "reports an incident of harassment to the employer or if the employer otherwise *becomes aware of such an incident*," the employer must notify the minor's guardians and the ICRC. (Emphasis added.) Textually, the law does not limit the reporting requirement to incidents where the minor is the victim of an incident of harassment; SF 542, as written, could also be interpreted to require reporting if the minor witnesses and reports harassment or if the employer becomes aware of the minor engaging in harassing conduct. Despite the reporting requirements, the law is silent on the mechanics of how the ICRC would process a mandatory complaint by an employer.

Attorneys advising employers on potentially hiring minors to serve alcohol should understand the new reporting and training requirements. Employers should think about updating their harassment policies to reflect the mandatory reporting required under SF 542 when a minor employee reports (or otherwise is involved in) an incident of harassment. Employers should also implement age-appropriate sexual harassment training for minor employees serving alcohol that meets the statutory guidelines,

as more "traditional" sexual harassment training may not be appropriate and effective.

Attorneys in both advisory and litigation capacities should keep an eye on any potential legal challenges to SF542 and advise their clients accordingly.

1 https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=SF542

2 https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-570/subpart-C

3 https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-A/part-570/subpart-C/section-570.35 eCFR :: 29 CFR570.35 -- Hours of work and conditions of employment permitted for minors 14 and 15 years of age.

4 https://www.senate.iowa.gov/democrats/wp-content/uploads/2023/05/DOL-Child-Labor-Law-Response.pdf

New Member Profile

Benjamin J. Kenkel

Ben joined the Bradshaw Law Firm in 2019. The majority of Ben's law practice focuses on property, liability and automotive insurance coverage, insurance litigation, commercial litigation, product liability defense, and appellate litigation. In just two full years of practice, Ben has argued before the Iowa Court of Appeals and appeared on numerous appellate briefs before the Iowa Court of Appeals, the Iowa Supreme Court, and the Eighth U.S. Circuit Court of Appeals. He is originally from Des Moines, Iowa and received his bachelor's degree in Anthropology from Iowa State University in 2010. He then worked in sales and marketing for several years before returning to law school and obtaining his law degree from the Drake University Law School in 2019. Ben spends most of his time outside work hiking and enjoying the outdoors with Warren, his three-year-old Brittany Spaniel.

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Group Room Block Ends on August 14, 2023

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Click on the **Hotel** tab for the online reservation portal.

RESERVE BY PHONE
1-800-EMBASSY and ask for the IDCA Annual Meeting room rate.

ROOM RATES

$172/night plus tax. Rate includes a 2-room suite and complimentary breakfast. On-site self-parking is $18/day.

AVAILABLE CLEs

Pending 11.5 State CLE Hours, activity number TBD (includes 1.0 Ethics Hours and 1.0 Wellness Hours). CLE hours are posted to your IDCA account following the meeting and available at iowadefensecounsel.org when you log in with your user credentials.

NETWORKING EVENTS

THURSDAY EVENING RECEPTION

west end ARCHITECTURAL salvage

Thursday, September 14 | 6:00–8:00 p.m.
West End Architectural Salvage
22 9th Street, Des Moines, IA 50309
Included in full and Thursday only registration
Also open to IDCA Sponsors

IDCA SERVICE PROJECT

Iowa Mock Trial

This year's service project is a fundraiser that will benefit the Iowa Mock Trial.

For more info on Iowa Mock Trial, visit their website at ***www.iowabar.org/?pg=mocktrial***

To register and view more info visit tinyurl.com/idca-annual2023

IDCA AGENDA

Thursday, September 14, 2023

7:45–8:00 AM	**Welcome and Opening Remarks**
8:00–8:45 AM	*Trial Advocacy from a Juror's Perspective* Janice Thomas, Lamson, Dugan & Murray, LLP
8:45–9:00 AM	*Case Law Update #1: Torts/Negligence* Zack Martin, Heidman Law Firm
9:00–9:45 AM	*Appellate Practice Tips* Judge Sharon Greer, Chief Judge Thomas N. Bower, and Judge Tyler J. Buller
9:45–10:00 AM	*Case Law Update #2: Employment/Civil Procedure* Bryony Whitaker, Lamson, Dugan & Murray, LLP
10:00–10:15 AM	**Networking Break with Exhibitors**
10:15–11:00 AM	*Employment Law* Mark Hudson, Shuttleworth & Ingersoll P.L.C.
11:00 AM–12:00 PM	*Combating Nuclear Verdicts* Nick Polavin, Ph.D., IMS Consulting Services
12:00–12:15 PM	**Annual Meeting, Installation of the Board of Directors & Awards Ceremony**
12:15–1:00 PM	**Networking Lunch**
1:00–2:00 PM	*Panel: Effective Motions in Limine* Jason O'Rourke, Lane & Waterman (Moderator), Judge Meghan Corbin, Judge Lars Anderson, and Judge Kellyann Lekar
2:00–2:15 PM	*Case Law Update #3: Contracts/Commercial* Reid Shepard, Betty, Neuman & McMahon, P.L.C.
2:15–2:45 PM	*Ins and Outs of the Tripartite Relationship: Perspectives from In-House Counsel and Panel Counsel* Kami Holmes, Grinnell Mutual Reinsurance Company and Mike Gibbons, Woodke & Gibbons, P.C.
2:45–3:00 PM	**Networking Break with Exhibitors**
3:00–4:00 PM	*The Future of Civil Litigation and the Defense Lawyer* Marc E. Williams, Nelson Mullins, Riley & Scarborough, LLP
4:00–5:00 PM	*Ethics* Tara van Brederode, Iowa Supreme Court Office of Professional Regulation
5:00–6:00 PM	**Free Time**
6:00–8:00 PM	**Networking Reception at West End Architectural Salvage (22 9th Street, Des Moines, IA 50309)**

Friday, September 15, 2023

8:00–9:00 AM	*Appellate Practice Pointers* Justice Thomas Waterman
9:00–9:15 AM	*DRI Update* Kami Holmes, DRI Representative for Iowa
9:15–10:15 AM	*Considerations in Responding to Time Limited Policy Limit Demands* John Trimble, Lewis Wagner, LLP
10:15–10:30 AM	**Networking Break with Exhibitors**
10:30–11:00 AM	*Legislative Updates* Brad C. Epperly, Nyemaster Goode
11:00 AM–12:00 PM	*Executive Functioning and Burnout* Erin Schneider, Drake University Law School
12:00–1:00 PM	*Iowa Civil Jury Verdict Trends & The Effect on Settlements* Jeff Boehlert, Boehlert & Brownlee, ADR and Amanda Richards, Betty, Neuman & McMahon, PLC

To register and view more info visit **tinyurl.com/idca-annual2023**

Case Law Update

By Stephanie A. Koltookian, BrownWinick Law

Stephanie A. Koltookian

UHLER V. THE GRAHAM GROUP, INC., NO. 21-0723 (IOWA 2023)

FACTS

A maintenance worker used "about a cup" of a chemical drain cleaner to clear a clogged sink on the lower level of a medical office building. After the drain cleaner was used, people on the third and fourth levels of the building complained of a rotten egg smell. The maintenance worker and his manager then took steps to increase the ventilation in the building to dissipate the fumes.

Several workers felt sick and left work for the rest of the day. The workers complained of symptoms such as nausea, headaches, chest tightness, burning sensations, severe cough, and shortness of breath. Plaintiff, a 78-year-old woman with asthma, was one of the people who experienced symptoms. She worked in a cubicle four floors above the sink treated with a chemical cleaner. Plaintiff's coworker said the odor was stronger around Plaintiff's cubicle.

Two days later, Plaintiff went to a pulmonologist, who diagnosed Plaintiff with a permanent lung injury and prescribed medication. Plaintiff claimed her asthma and general pulmonary function worsened after the accident. Plaintiff's symptoms improved with time but did not fully resolve.

Plaintiff sued the building's owner and manager for negligence. Plaintiff characterized her claim as a premises liability claim on the basis that the owner did not maintain the premises and ventilate the building adequately, did not warn tenants of the danger of the fumes, and did not minimize or contain the chemical exposure.

PROCEDURAL BACKGROUND

The building owner moved for summary judgment on the basis that Plaintiff had failed to present evidence that the chemical fumes caused her injuries. The district court granted the motion for summary judgment, and the court of appeals affirmed over a dissent. The Iowa Supreme Court granted further review.

ISSUE

Did the Plaintiff offer sufficient evidence to show that the drain cleaner fumes caused her permanent lung injury to survive summary judgment?

HOLDINGS

Plaintiff's evidence was not enough to establish causation because she did not present any evidence of general causation, which is required in toxic tort cases. Although Plaintiff had characterized her cause of action as a "premises liability claim," her cause of action sounded as a toxic tort claim. Therefore, Plaintiff's claim was subject to a bifurcated causation analysis in which she was required to prove general causation (which requires proof that the substance in question was capable of causing the claimed injury) and specific causation (which requires proof that the exposure, in fact, caused the Plaintiff's injury).

Although Plaintiff had identified evidence that the drain cleaner was capable of causing injury by inhaling its vapors, that was not enough to survive summary judgment. The record did not contain any evidence showing the level of her exposure to the drain cleaner fumes and whether that level could cause her claimed permanent injuries. Although there was some evidence that other people on the floor smelled the fumes and shortly thereafter felt ill, there was no evidence that any of the people on Plaintiff's floor had anything more than "brief symptoms." The court similarly rejected that the temporal connection between the use of the drain cleaner and the onset of Plaintiff's symptoms satisfied Plaintiff's burden to prove causation.

Plaintiff needed a toxicology expert to establish that the dose of drain cleaner fumes that Plaintiff was exposed to was capable of causing her permanent lung injury to avoid summary judgment. Plaintiff's treating physicians did not fill that gap. Plaintiff could not satisfy her burden of proof through her treating physician's opinions that Plaintiff's symptoms were "consistent with" exposure to the fumes or that "even small amounts" could cause pulmonary injury. Because the Plaintiff did not produce evidence about whether the dose of drain cleaner to which she was exposed was capable of causing her claimed injury, there was too great of an "analytical gap" between the Plaintiff's evidence and the inferences that needed to be made to prove her case. Therefore, summary judgment was appropriately granted.

WHY IT MATTERS

This case is notable for two reasons. First, the court looked past how the claims were pled (negligence, premises liability) to the underlying substance of the claims (toxic tort) to identify the required elements that a Plaintiff would have to prove at trial. Second, *Uhler* reaffirms that a Plaintiff is required to establish both general and specific causation in toxic tort cases. This bifurcated causation analysis requires targeted expert testimony to establish general causation (often through a toxicologist) in addition to the expert testimony usually required to prove specific causation.

VALDEZ V. WEST DES MOINES COMMUNITY SCHOOLS, ET AL., 21-1327 (IOWA 2023)[1]

FACTS

Plaintiff Valdez worked at the West Des Moines School District as a special education teacher's associate. Valdez's work was overseen by a special education teacher, and she worked primarily with a single special needs student, C.O.

In March 2019, Jo Yochum was assigned to oversee Valdez's classroom. Desira Johnson, another special education teacher, was asked to assist Yochum. All of the associates and Ms. Yochum felt that Johnson "micro-manag[ed] the classroom." Valdez felt "particularly singled out" by Johnson. For example, Johnson (who is white) asked Valdez (who is Black) and another associate (who is biracial) a question about another student's use of the N-word. Valdez also believed that Johnson's changes to the classroom negatively impacted C.O. and that Johnson did not consult Valdez about the change.

Valdez filed a complaint with human resources. In her complaint, she explained that Johnson had announced she was "taking over the classroom" and that Valdez felt harassed, singled out, and felt physically ill about going to work. While the investigation was ongoing, Valdez continued to contact HR to explain that she felt "discriminated against" and that work was "tense and hostile." The HR investigation concluded that Valdez's complaints were unfounded, which was conveyed to Valdez on May 28.

The same day, Valdez's attorney emailed the superintendent, alleging that Valdez was being subjected to a hostile work environment based on her race and was being retaliated against based on her complaints to HR. The District responded on June 25 and offered to work with Valdez to reassign her to another supervisor or building in the District. Valdez resigned the next day.

PROCEDURAL BACKGROUND

Valdez sued the District and Johnson, asserting ICRA claims for race-based discrimination, hostile work environment, unequal pay, and retaliatory constructive discharge, along with a common law claim of wrongful discharge in violation of public policy. By the time of trial in April 2021, the claims had narrowed to a hostile work environment, retaliatory constructive discharge under the ICRA, and common law wrongful discharge. At the close of evidence, the district court granted Johnson's motion for a directed verdict, and the jury returned a verdict in the District's favor on all counts.

ISSUE

Did Plaintiff establish that Johnson could be individually liable under the ICRA?

HOLDING

Johnson could not be individually liable under the ICRA on a supervisor-liability theory because there was no evidence that Johnson exercised supervisory control over Valdez. Johnson may have "taken over" the classroom, but there was no evidence that Johnson had any supervisory authority over Valdez. Yochum was serving as the special education teacher at all relevant times. Further, Plaintiff had not presented any evidence that Johnson had the ability to hire, fire, or take other tangible employment actions over Valdez.

Plaintiff also could not establish individual liability based on her hostile-environment-based ICRA claims. The Court began by discussing the *Rumsey v. Woodgrain Millwork, Inc.*, 962 N.W.2d 9 (Iowa 2021) case. *Rumsey* addressed the "any person" language that forms the basis for individual liability under the ICRA. *Rumsey* focuses the individual liability inquiry on the defendant's authority or control over the challenged employment action.

The Court emphasized that the ICRA does "not expressly include a hostile-work-environment provision." Instead, a hostile-work-environment claim under the ICRA has been recognized on the basis of the "otherwise discriminate language" in Iowa Code section 216.6(1) and following Title VII case law. Under the ICRA, there are two ways to prove a hostile work environment claim against an employer: through its own direct negligence or through vicarious liability for a supervisor's actions. Both theories focus on allowing harassment to continue to the point of creating an abusive working environment, not on the fact of harassment itself.

Based on this analysis, the court held that "[n]onsupervisory employees cannot 'effectuate' a hostile work environment because they are not responsible for creating or maintaining the working environment and lack the authority to correct or prevent an abusive environment." A hostile work environment claim is intended to impose liability on employers who are aware of the hostile actions of their employees but do nothing. There is no similar rationale to impose liability for a hostile work environment if there is no evidence that the employer was aware

of the offending behavior and given the opportunity to correct it. Therefore, the district court did not err in granting the directed verdict on the individual hostile-work-environment claims.

Likewise, Valdez could not state a claim for wrongful discharge in violation of public policy against Johnson. A wrongful discharge tort claim places limits on the employer's discretion to discharge an at-will employee based on clearly defined and well-recognized public policies. Because the claim is an exception to the employment-at-will doctrine, it is narrowly construed. Iowa precedent had recognized individual liability for this tort when the individual defendant was an "officer[] of a corporation who authorized or directed the discharge of an employee for reasons that contravene public policy." But the Iowa Supreme Court had never recognized the claim against a "mere supervisor who was not the employer's alter ego," and Johnson had far less authority because she did not have discharge authority over Valdez. Thus, the district court did not err in directing a verdict in Johnson's favor.

WHY IT MATTERS

This case provides a good analysis of the limits of imposing individual liability under the ICRA and for wrongful discharge tort claims. For supervisory liability claims and hostile work environment claims, the plaintiff is required to prove that the individual defendant had the authority to hire, fire, or take other adverse employment action over the plaintiff. Wrongful discharge claims likewise turn on the individual defendant's authority in the workplace and may require proof that the individual defendant is more than "a mere supervisor who was not the employer's alter ego."

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1 This summary does not address all issues in *Valdez*. The *Valdez* decision also addressed a *Batson* challenge and several evidentiary issues.

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IDCA Annual Meeting

September 14–15, 2023

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