



BROWN & BLUE REVIEW

Spring 2025

The latest news concerning Nebraska's law enforcement officers provided by the Brown & Blue lawyers at Keating O'Gara

INSIDE:

Legal Principles -- Learn about the principle of third-party liability and how it may financially impact officers injured or killed on duty.

Legal Update -- LB 608 would extend recruitment and retention benefits to corrections and juvenile detention officers; Barnes v. Felix will be decided in the Summer of 2025

Recent Victories in Nebraska — Hear about how we've successfully defended employee's jobs in recent cases.



Legal Principles

By Joel Nelson, Partner, Keating O'Gara law firm

Third-Party Liability and Line-of-Duty Injuries.

You may have heard it said that worker's compensation benefits are the "exclusive" remedy for any employee injured (or killed) on the job. To some extent that is true. Worker's compensation benefits are the exclusive remedy an employee has against their employer, even when a fellow employee negligently caused the injury. But that principle does not prevent an employee from seeking damages from the third-party who caused the injury.

For example, if a private citizen negligently injures a police officer in a car accident while the police officer is on duty, the officer's exclusive remedy against his employer is through the Worker's Compensation Act (as well as any applicable line-of-duty injury pension benefits). But the injured officer may also make a third-party liability claim against the citizen who injured the officer in the accident. This can result in the officer obtaining both worker's compensation benefits and an additional sum from the third party (or their insurer). The employer and work comp carrier have a right of subrogation (reimbursement) in the third-party recovery to the extent work comp medical or disability benefits have been paid.

The third-party liability principle may allow recovery against a third party for a variety of on-duty injuries, including dog bites. So, if you or a co-worker are injured on duty due to the actions (or culpable inactions) of a third party, it is important to investigate whether you have a viable claim against that third party for damages in addition to any applicable worker's compensation benefits you may recover from your employer.

Legal Update

By Tom McCarty, Partner, Keating O'Gara law firm

LB608, introduced by Lincoln Senator Eliot Bostar, would expand benefits under the First Responder Recruitment and Retention Act to state and county correctional officers and county juvenile detention officers. Generally, if passed, LB 608 would grant these public employees and their dependent children a 100% resident tuition waiver, for up to five years, to attend any state university if they meet certain conditions, including residency requirements, maintaining satisfactory employment, and pursuing a degree related to law enforcement. On April 23, 2025, this bill went before the Legislature for General File debate, which is the first round of consideration by the full Legislature. Note the Legislature is currently operating under a looming multi-million-dollar budget shortfall, so there is a concern that economic bills like LB608 may be more difficult to pass this year. If you are so inclined, feel free to reach out to your local Senator to voice your support for this important bill.

Barnes v. Felix, an important use-of-force case is currently pending before the U.S. Supreme Court and will be decided this summer. Barnes addresses how Graham v. Connor's "reasonableness" test should be applied. Some courts (including the 8th Circuit, which governs Nebraska) consider only the totality of what the officer knew/perceived at the time force was used (the "moment of threat" doctrine). Other courts additionally consider whether any recklessness on the part of the officer created the need for the force; if so, those courts deem the subsequent force "unreasonable." The ramifications of the Court's upcoming decision, which will likely be released in June of 2025, are significant.



Tom McCarty, Partner, Keating O'Gara



Tindra Norris, Associate, Keating O'Gara



Courtney Faller, Associate, Keating O'Gara



Erik Fern, Associate, Keating O'Gara

Recent Victories

By Gary Young, Partner, Keating O'Gara law firm

The Brown and Blue legal team at Keating O'Gara has been busy successfully defending the jobs of our labor clients. Below are a few cases we have been working on.

In March 2025, labor attorney Erik Fern obtained the reinstatement of an employee who had been terminated for alleged excessive force. Through the grievance process, the decisionmaker concluded the employee had, in fact, not employed in excessive force.

Earlier this month, labor attorney Tom McCarty worked to successfully reinstate an employee who had been terminated for alleged excessive force. The parties completed one day of a two-day arbitration hearing. After the first day, the employer voluntarily withdrew the employee's termination, reinstated him, and agreed to compensate the employee with backpay.

In February 2025, our associate Tindra Norris, obtained an arbitration award reinstating an employee who was terminated after he allegedly made unprofessional comments to a coworker. The arbitrator found the termination was not progressive and the employer failed to establish certain alleged violations against the employee.

In January 2025, our associate Courtney Faller, obtained an arbitration award reinstating an employee who was terminated after allegedly making unprofessional comments to a coworker. The arbitrator found the employer failed to follow progressive discipline and ordered the employer to reinstate the employee with backpay.

In October 2024, labor attorney Tom McCarty obtained an arbitration award reversing a longtime Sergeant's demotion for his alleged failure to report coworkers for making unprofessional comments. The arbitrator found the employer failed to follow progressive discipline and demotion was not consistent with how the employer had disciplined other employees. The employee received full backpay to compensate him for the period of his demotion.

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