

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0908**

Robert Grado,
Appellant,

vs.

Integrated Office Solutions Inc.,
Respondent.

**Filed May 4, 2020
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69DU-CV-17-2262

Robert Grado, Edina, Minnesota (pro se appellant)

Gina K. Janeiro, Elizabeth S. Gerling, Jackson Lewis P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge;
and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Robert Grado challenges the summary-judgment dismissal of his claims arising out of the termination of his employment with respondent Integrated Office Solutions Inc. (IOS) after he suffered a stroke and failed to return to work. The district court dismissed Grado's claims for (1) disability discrimination, because Grado had not produced evidence sufficient to show that he was disabled; (2) failure to provide a reasonable accommodation, because there was no dispute that IOS had too few employees to be subject to a reasonable-accommodation requirement; (3) whistleblower retaliation, because Grado, as a matter of law, had not demonstrated that he engaged in protected activity; (4) breach of contract, because Grado had not produced evidence sufficient to show a breach; and (5) failure to pay wages, because Grado had not produced evidence sufficient to show he was entitled to any additional wages actually earned. We affirm.

FACTS

1. The parties

IOS is a copier, fax, and printer dealer located in Duluth. Scott and Carol Thul started IOS in May 1996. Scott Thul is the president and lead salesperson of IOS, and Carol Thul is responsible for general administrative duties.¹ The Thuls are collectively

¹Throughout the remainder of this opinion, "Thul," refers to Scott Thul, who more frequently interacted with Grado throughout the events underlying this action. When referencing Carol Thul, we include her first name for clarity.

responsible for all employment decisions at IOS, including the hiring and firing of employees. IOS is a small business that had fewer than 15 employees in 2016 and 2017.

In March 2016, Grado contacted various copier companies in the Duluth area, including IOS, about employment opportunities. Grado had experience working in a variety of sales and marketing positions, including owning his own company for 17 years. The Thuls interviewed Grado in the spring of 2016, and Grado began employment as a sales representative for IOS on May 1, 2016.

2. The compensation plan and Grado's sales performance

Prior to Grado's start date with IOS, he and Thul entered into a "Sales Representative Compensation Plan" (the compensation plan) on April 20, 2016. The compensation plan sets Grado's annual salary at \$60,000 and provides for a "3% bonus paid if Sales Rep is at 100% of budget—based on gross sales revenue." The budget specified in the plan is \$250,000 in annual sales. Grado had from May 1, 2016, to April 30, 2017, to meet this sales goal.

When Grado was hired, he and Thul were the only two salespeople at IOS. Grado's sales territory included Minnesota communities such as Duluth, Hibbing, and Grand Rapids, while Thul was responsible for sales in Northwest Wisconsin and some Minnesota communities not assigned to Grado. Thul did have some "house accounts" within Grado's territory based on his longstanding relationships with those customers. Grado was not always sure which communities or accounts were his, but relied on Thul to understand what could be counted toward his sales goal. According to Thul, Grado received credit toward his sales goal for any new customer to whom Grado personally sold office

equipment, regardless of where the customer was located. Grado also received credit toward his sales goal for sales that Grado did not personally participate in if they were located in his territory, unless the account was one of the specified house accounts. Grado and Thul met roughly once per quarter to discuss sales and Grado's progress toward the sales goal. At these meetings, the two typically reviewed a sales list. The sales lists contained customer entries for paid orders, as well as "pending" entries for orders that were not yet paid. If a customer had not yet paid for a sale, it was not included toward Grado's potential bonus.

On April 28, 2017, a few days before the end of Grado's compensation year, Grado and Thul had a meeting. At that meeting, they reviewed the final sales list for the year, which showed all four quarters of sales, and Thul informed Grado that Grado had not met the required \$250,000-gross-sales-revenue goal and was therefore ineligible for the three percent bonus. IOS's records reflected that, at that time, Grado's gross sales revenues totaled \$212,463.17.² He had pending sales totaling \$38,261. When Grado learned which customers had not paid, he began making phone calls to see if he could get the payments prior to the end of his compensation year. Grado never informed Thul of a specific customer or sale that he believed should have been included on the final sales list but was excluded.

² IOS later recalculated Grado's sales and found and corrected two administrative oversights, resulting in a corrected amount of \$213,758.17.

Over the weekend following the April 28 meeting, Thul and Grado corresponded via text messages. Thul sent the following message to Grado: “Bobby I will take [sic] of you on your bonus. Forward orders must be paid in full. Take a breath relax we did good!” According to Thul, his intent in sending the message was to communicate that he would consider paying Grado a portion of the bonus because he had come close to reaching the sales goal. Grado replied to the message and asked if the bonus could be paid before his vacation that was scheduled to start the following Friday. Grado then came to work as usual Monday, May 1, and did not speak with Thul about the bonus.

3. Grado’s stroke and subsequent leave

On May 2, 2017, Grado texted Thul that he had suffered a stroke and was in the hospital. Thul went to visit Grado in the hospital later that day. During the visit, a treating physician came in and indicated that Grado would be able to return to work within two weeks. Thul then told Grado to take care of himself and “not to worry about work.” IOS continued to pay Grado his regular salary for about a month while Grado was away from work.

Grado was released from the hospital the day after his stroke, on May 3. He sent Thul a text message letting him know he was home and thanking him for his assistance and support, and Thul, in turn, thanked Grado for the update and wished him well. Later that day, Thul sent Grado another message that said, “No worries about work. Rest up and get healthy! Keep me posted and let me know if I can help you in anyway.”

On May 5, Thul left Grado a voicemail message containing the following:

So, um, I had a chance to talk to [Carol Thul] on bonuses, I need to get together with you on that Bobby, so you need to give me a ring and we just gotta kind of figure out what's going on. And, if you have your original comp plan, feel free to bring that along if you want. We'll get you taken care of one way or another. It just has to do with the pay periods, first and fifteenth or the 30th, I guess, and the fifteenth and kind of how we would handle that, and then kind of where things are headed from there, so, um, want you to be able to relax Bobby, I'm still really concerned about your health and your well-being. So, um, just want to make sure we get you taken care of Bobby, so give me a ring at your convenience.

Grado responded via text message the next day, saying:

Thanks for your phone message last night Scott. I will be meeting with my Dr. this Monday afternoon to determine my health, work time-lines, etc. And yes, I would like to meet with you regarding my bonus, last year's accomplishments and our year 2 plan. I will send over some notes I created and a copy of our agreement for year 1 plan. Thanks for your encouragement Scott, I'll contact you by Tuesday.

Grado then sent Thul a screenshot of some typed notes, which included notes on the April 28 year-end meeting and a list of outstanding items that included "bonus payment" and an employment letter for year two.

Grado had a doctor's appointment on May 8, 2017, to discuss his recovery and ability to return to work. The doctor he saw that day wrote a note stating that Grado would "not be able to return to work until 5/17/17." Grado never provided this information or the note to IOS or Thul. Grado then saw a different doctor on May 18, 2017, and received a letter from that doctor stating that "it is anticipated [Grado] may be able to return to work in 2-4 weeks. He will be reassessed in 2 weeks to make further determinations in this regard." Grado did not immediately provide this note to IOS or Thul either.

Throughout the month of May, Grado continued with many of his regular daily activities. At his deposition, when asked what his limitations were between May 2 and June 19 (the date when his doctor released him to return to work without restrictions), he replied, “Just healing from a stroke, being grateful it could have been worse . . . I was very fortunate.” He added that he was often tired but confirmed that he was able to walk, speak, take care of himself, engage in social activities, attend the symphony, and purchase a new car. And, on May 3, the day after his stroke, Grado’s doctor’s notes reflect that Grado demonstrated “sound mobility” and was able to walk, manage stairs, and demonstrate Jazzercise exercises. Grado came to IOS to pick up his paycheck on May 15, 2017, but otherwise did not return to the office in May.

4. Grado’s meeting with the Thuls on June 5

On June 2, Thul sent Grado a text message asking if the two could find a time to sit down and talk. Grado did not provide an update on his medical condition or when he might return to work but asked about days and times that would work to meet. Due to the lack of communication from Grado regarding when he might return to work, Thul sent the following text message on June 4:

I am requesting your return to work Monday June 5th. If your doctors have told you that you can’t return to work please provide that written information. I have one install in the morning but we can sit down in the afternoon and close out last year’s comp. I also have next year’s comp plan to cover as well. We will see you 8:00 a.m. Monday.

Grado replied, saying that he had not yet been cleared for work but that he would like to meet the following day at a restaurant to talk. Thul responded that, unless Grado had a

written note from a doctor stating that he could not return to work, he would like to see Grado at work at 8:00 a.m. the next day.

On Monday, June 5, Grado did not return to work but, for the first, time provided Thul with the May 18 doctor's note stating that he "may be able to return to work in 2-4 weeks." After receiving the note, Thul informed Grado that IOS could no longer continue to pay him while he was absent from work and that any additional time off would be without pay. Grado replied:

Scott, you have been telling me to take as much time off as needed and get well? Things have changed? Okay. Will you please pay me my bonus, been patiently waiting since May 1st. I would like to see your new comp plans, will stop by this afternoon.

Grado went to meet with the Thuls at the IOS office later that day. At this meeting, Grado handed his company car keys to Thul without explanation. According to Thul, he tried to give the keys back to Grado and told him that he would need them upon his return to work; Grado testified he does not recall whether Thul said this. Thul indicated to Grado that, if he would not be returning to work, IOS would accept his resignation. Grado left the meeting without saying whether he would return and headed to where his ride was waiting because he had driven his company car there to turn it in.³

5. Grado's medical clearance to return to work June 19

A few days later, on June 7, Grado sent Thul a text message informing him that he was cleared to return to work on June 19, 2017. Thul responded, "Thanks for the update.

³ Grado indicates he did this because he could no longer keep the car at his apartment.

We look forward to your return on June 19th.” Grado admits that, after June 19, he had no physical limitations resulting from the stroke.

6. Grado’s separation from employment with IOS

Grado claims that he returned to work on June 19 but did not stay longer than an hour. He admits that he did not do any work that day and that he left shortly after arriving, even though nobody told him to leave or that his employment had been terminated. Grado did not come to work on June 20. He did not make any attempt to speak with either of the Thuls. He stated in his deposition that “actions speak louder than words” and that Thul’s actions indicated to him that his employment had been terminated.

When Grado did not come to work on June 20, Thul sent him a text message asking to sit down for an exit interview and stating that he was still willing to discuss the possibility of a bonus from the previous year. Grado responded with a proposed day and time and asked what points Thul wished to cover at the exit interview. The parties later engaged in further discussions about the bonus but did not reach an agreement. In a June 28, 2017 document, Grado demanded payment of his salary through the first half of June and payment of at least a partial bonus. Thul responded that IOS had never terminated Grado’s employment and that he was not sure why Grado expected to be paid for time he had not worked in June. IOS did not pay Grado his salary for June 2017 or any portion of a bonus.

7. The lawsuit

Grado filed the complaint in this case, asserting claims for (1) disability discrimination in violation of the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.44 (2018); (2) failure to provide a reasonable accommodation in violation of

the MHRA; (3) whistleblower retaliation in violation of the Minnesota whistleblower act (MWA), Minn. Stat. §§ 181.931-.937 (2018); (4) breach of contract; and (5) failure to pay wages in violation of Minn. Stat. §§ 181.01-.1721 (2018). One month before the close of discovery, Grado moved to amend the complaint to include a sixth count for intentional infliction of emotional distress (IIED). Before the district court ruled on his motion to amend, Grado moved for summary judgment. The district court denied Grado's motion to amend the complaint. Thereafter, IOS moved for summary judgment on all five of Grado's claims. After hearing arguments on the parties' summary-judgment motions, the district court issued its order granting IOS's motion, denying Grado's motion, and dismissing the complaint with prejudice.

This appeal follows.

D E C I S I O N

Appellate courts “review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). In doing so, we “view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Summary judgment is proper if the movant shows, by citing to particular parts of the record, including depositions, documents, affidavits, admissions, and interrogatory answers, that “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01, 56.03. “All doubts and factual

inferences must be resolved in favor of the nonmoving party.” *Wagner v. Schwegmann’s S. Town Liquor, Inc.*, 485 N.W.2d 730, 733 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). “A fact is material if its resolution will affect the outcome of a case.” *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). In opposing summary judgment, “general assertions” are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). “In order to successfully oppose summary judgment, appellant must extract *specific*, admissible facts from the voluminous record and particularize them for the [district court] judge.” *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). We apply this standard to review each of Grado’s five claims in turn.

I. The district court properly dismissed Grado’s disability-discrimination claim.

Grado claims that IOS engaged in disability discrimination in violation of the MHRA. Specifically, he alleges that IOS was motivated to terminate his employment due to his disability.

The MHRA makes it an unlawful employment practice for an employer to discharge an employee or to discriminate against a person with respect to terms or conditions of employment because of a person’s disability. Minn. Stat. § 363A.08, subd. 2; *Gee v. Minn. State Colls. & Univs.*, 700 N.W.2d 548, 552 (Minn. App. 2005). “A plaintiff may establish a *prima facie* case of discrimination either by offering direct evidence of discriminatory intent or by establishing an inference of discriminatory intent under the *McDonnell-Douglas* shifting-burden analysis.” *Gee*, 700 N.W.2d at 552 (citing *Hoover v. Norwest*

Private Mortg, Banking, 632 N.W.2d 534, 542 (Minn. 2001) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973))). Here, Grado offers no direct evidence⁴ of disability discrimination, so he must establish a prima facie case using the framework set forth by *McDonnell Douglas*. In order to do so, he must show that (1) he was disabled within the meaning of the MHRA, (2) he was qualified for the job from which he was discharged, and (3) he was replaced by a nonmember of the protected class. *Hoover*, 632 N.W.2d at 542. If the plaintiff establishes a prima facie case, “the burden of production shifts to the defendant who, in order to avoid summary judgment, must produce admissible evidence sufficient to allow a reasonable trier of fact to conclude that there was a legitimate, nondiscriminatory reason for the discharge.” *Id.* If the defendant meets this burden, the presumption of discrimination disappears and the plaintiff must show that the defendant’s reason was a pretext for discrimination. *Id.*; *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 556 (Minn. 1996).

Here, the district court granted summary judgment based on the first element in the prima facie case of discrimination, determining that Grado did not establish that he was disabled or that a genuine issue of material fact existed on the question of whether he was disabled. A person is disabled within the meaning of the MHRA if he or she: “(1) has a

⁴ Direct evidence is “evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action.” *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004) (quotation omitted); *LaMott v. Apple Valley Health Care Ctr., Inc.*, 465 N.W.2d 585, 588 (Minn. App. 1991) (“A prima facie case may be established by direct evidence of discriminatory motive, such as where an employer announces he will not consider [disabled individuals] for positions.” (quotation omitted)).

physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.” Minn. Stat. § 363A.03, subd. 12. Major life activities “are ‘those activities that are of central importance to daily life.’” *Gee*, 700 N.W.2d at 553 (quoting *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 185, 122 S. Ct. 681, 684 (2002)). These activities include “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.” *Id.* (quotation omitted).

The parties do not dispute that Grado suffered from a stroke; the question is whether he was materially limited in a major life activity at the time of his alleged discharge from employment. The district court determined that no genuine dispute of fact existed on this point, as Grado was medically cleared to return to work without restrictions on June 19, 2017, and, well before that time, was admittedly able to walk, speak, care for himself, and engage in social activities.

On appeal, Grado does not point to any specific evidence in the record that shows that he was materially limited in any major life activity. Rather, he reiterates that he suffered from a stroke and analogizes himself to a car that has been in accident and will now be “judged accordingly.” This analogy could potentially be construed as argument that, even if he was not actually disabled, IOS regarded him as disabled and discharged him on that basis. IOS notes this in its appellate brief and argues that, to the extent Grado now asserts that he had a “record of” an impairment or was “regarded as” having such an impairment, see Minn. Stat. § 363A.03, subd. 12, Grado did not raise that argument in the district court. And a party cannot raise a new issue on appeal, “[n]or may a party obtain

review by raising the same general issue litigated below but under a different theory.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see Crowley v. Meyer*, 897 N.W.2d 288, 293 (Minn. 2017).

IOS is correct that Grado did not argue in the district court that he was disabled within the meaning of the MHRA because he “ha[d] a record of [a physical, sensory, or mental impairment which materially limits one or more major life activities]; or [was] regarded as having such an impairment.” Minn. Stat. § 363A.03, subd. 12. Even if he had raised that argument, though, he points to no specific, record evidence to support his claim. To survive summary judgment, he must “extract *specific*, admissible facts from the voluminous record and particularize them.” *Kletschka*, 417 N.W.2d at 754. And, as to actual impairment, by his own admission, Grado had no physical limitations resulting from the stroke after June 19. There is no dispute that, even if Grado was “terminated” from employment with IOS, any alleged termination did not occur until on or after June 19. We therefore hold that the district court properly dismissed Grado’s claim for disability discrimination because Grado did not produce evidence showing that he was disabled within the meaning of the MHRA.

II. The district court properly dismissed Grado’s claim for failure to provide a reasonable accommodation.

Grado’s second claim is that IOS failed to provide him with a reasonable accommodation in violation of the MHRA. Minn. Stat. § 363A.08, subd. 6, provides: “Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer with a number of part-time or full-time employees . . . equal to or

greater than 15 effective July 1, 1994, . . . not to make reasonable accommodation to the known disability of a qualified disabled person or job applicant,” unless an exception applies.

The district court dismissed Grado’s reasonable-accommodation claim because it determined that there was no dispute that during the entirety of Grado’s employment with IOS, IOS never employed 15 or more employees. The reasonable-accommodation requirement in Minn. Stat. § 363A.08, subd. 6, accordingly does not apply to IOS. On appeal, Grado does not point to any evidence in the record that shows IOS ever had 15 or more employees. He merely states that Thul “made promises” to him, without elaborating.

The record contains copies of IOS’s W-3s submitted to the IRS for the years 2016 and 2017. These tax forms indicate that IOS employed 12 people in 2016 and 11 people in 2017. Grado offers nothing to contest these numbers. We accordingly hold that the district court properly dismissed Grado’s claim for failure to provide a reasonable accommodation on the basis that IOS was not subject to the reasonable-accommodation requirement of the MHRA.⁵

III. The district court properly dismissed Grado’s whistleblower-retaliation claim.

Grado’s third claim is for whistleblower retaliation in violation of the MWA. Specifically, his complaint alleges that he reported to IOS what he reasonably and in good faith believed to be a breach of contract and failure to pay wages.

⁵ We note that, even if IOS were subject to the MHRA’s reasonable-accommodation requirement, this claim would still fail because, for the reasons described in section I, Grado did not produce sufficient evidence to show that he was disabled within the meaning of the MHRA.

The MWA prohibits employers from discharging or otherwise penalizing an employee because the employee “in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official.” Minn. Stat. § 181.932, subd. 1. “Good faith” is statutorily defined to mean “conduct that does not violate section 181.932, subdivision 3.” Minn. Stat. § 181.931, subd. 4. Section 181.932, subdivision 3, specifies that an employee is not protected for making “statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.” Minn. Stat. § 181.932, subd. 3. In order to establish a prima facie case of retaliatory discharge under the MWA, a plaintiff must show that (1) he engaged in statutorily protected conduct, (2) he suffered an adverse employment action by the employer, and (3) a causal connection exists between the protected conduct and the adverse employment action. *Gee*, 700 N.W.2d at 555. The “protected activity” contemplated under the statute is the employee’s act of making a good-faith report of the alleged violation of law. *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 226-27 (Minn. 2010).

The district court determined that, as a matter of law, Grado did not engage in a protected activity under the MWA. Grado alleges that he engaged in protected activity both by (1) demanding a bonus that he was entitled to under the compensation agreement and (2) demanding that he be paid wages during his leave of absence in June. These arguments are addressed in turn.

Compensation plan and bonus

Grado does not, in his appellate brief, reference a specific instance where he made a good-faith report of a violation of law to IOS. In his summary-judgment brief submitted to the district court, he asserted that he objected to IOS's failure to make a "bonus payment in a timely manner" and says that IOS terminated him "no more than 15 days after he made these objections." This suggests that he is referring to the text message that he sent Thul on June 6, 2017, in response to Thul's message stating that IOS could no longer provide Grado with paid leave. This message states: "Will you please pay me my bonus, been patiently waiting since May 1st. I would like to see your new comp plans, will stop by this afternoon."

This message does not demand payment as owed to Grado *under the law*. By the time Grado made this request, he knew that he was not entitled to a bonus under the terms of the compensation agreement. Thul told him this at the April 28 meeting, and Grado's conduct of calling customers to see if he could collect payments prior to the end of his compensation year confirms he understood that he had not met the gross-sales-revenue requirement in the compensation plan. Instead, Grado claims he was entitled to a bonus pursuant to "promises" that Thul made after the April 28 meeting. Based on his deposition testimony, Grado appears to rely on two communications to support the alleged promise: (1) Thul's text message following the April 28 meeting, stating: "Bobby I will take [sic] of you on your bonus. Forward orders must be paid in full. Take a breath relax we did good!"; and (2) Thul's May 5 voicemail stating that he had spoken with Carol Thul about bonuses, wanted to meet with Grado, and would "get [Grado] taken care of one way or another."

When viewed in context, neither of the above communications contain a definite promise to pay a bonus but instead reflect Thul's willingness to negotiate a partial bonus payment with Grado. Nothing in the record suggests that Thul and Grado ever reached specific terms regarding a partial bonus payment prior to Grado's separation from employment with IOS. As the district court determined, there was no offer, acceptance, or consideration necessary to form a contract. *See Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008) (listing the elements of a contract), *review denied* (Minn. Jan. 20, 2009). Thus, when Grado asked Thul to "please pay [him] [his] bonus" on June 6, 2017, he was not reporting an alleged violation of law, as the two had not reached an agreement about a bonus.

Medical leave

Grado also asserts that IOS promised to pay his salary during his medical leave and then breached that agreement in June 2017. Again, he does not point to a specific instance where he engaged in statutorily protected conduct in his appellate brief, but his summary-judgment brief filed in the district court implies that he believes he objected to IOS's failure to provide him with paid medical leave (1) via text message on June 5, 2017, and (2) via text message on June 15, 2017.

The district court determined that Grado's whistleblower-retaliation claim failed as a matter of law as to medical leave because the undisputed evidence showed that Thul never agreed to provide Grado with indefinite, paid medical leave. It concluded that, although Thul told Grado to take care of himself and not to worry about work, these general statements did not obligate IOS to provide Grado indefinite paid time off, but rather

“offer[ed] [Grado] the opportunity to recover from a significant medical event without worrying about the security of his job.” IOS then paid Grado for a portion of his leave before notifying him, after about a month, that any additional time off would be unpaid.

Grado does not rely on any state or federal law to assert entitlement to paid leave but rather relies on “promises” by Thul. But an offer or promise of employment on particular terms “must be definite in form and must be communicated to the offeree.” *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 626 (Minn. 1983). And even “[w]hen a contract is for an *indefinite* duration, the duration is not set, and a corollary is that either party may then terminate it at any time for any reason.” *Id.* at 628. On June 5, 2017, Thul clearly informed Grado that, although he could continue to take unpaid leave, IOS would no longer pay him while on leave. Thereafter, even if Grado requested additional paid leave, he clearly had no legal entitlement to it. The district court appropriately determined that there is no genuine issue of material fact as to whether Grado engaged in statutorily protected conduct by requesting continued paid medical leave.

IV. The district court properly dismissed Grado’s claim for breach of contract.

Grado’s fourth claim is that IOS breached the compensation plan when it failed to pay him a three percent bonus.

In order to succeed on a breach-of-contract claim, a plaintiff must show “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). IOS argues that the undisputed facts show that Grado did not perform all of the conditions

precedent under the plan. The district court agreed with IOS, determining that Grado cannot show that he reached the sales goal specified in the compensation plan.

To be eligible for the 3% bonus, the compensation plan required that Grado be “at 100% of budget—based on gross sales revenue.” The budget specified in the plan was \$250,000 in annual sales. On April 28, 2017, Thul informed Grado that his gross sales revenue for the year totaled \$212,463.17, and that his pending sales totaled \$38,261. Grado has claimed at various points in this litigation that his “numbers show . . . \$282,897.98,” but he appears to concede that these calculations are not based on “money in the door by the end of [his sales] year.”⁶ Grado never produced evidence during discovery of any clients or accounts that IOS did not include toward his sales goal that he thought should have been included. On appeal, he states that a specific client in Duluth should have been credited to him. This is in direct contradiction to his deposition testimony, though, where he stated that that client is a house account.⁷

In opposing summary judgment, “general assertions” are not enough to create a genuine issue of material fact, *Nicollet Restoration, Inc.*, 533 N.W.2d at 848, and the opponent “must extract *specific*, admissible facts from the voluminous record and

⁶ Grado does not appear to specifically argue that “gross sales revenue” in the compensation plan is ambiguous. Rather, he has tried to show throughout this litigation that he had gross sales revenue in excess of \$250,000.

⁷ Grado also asserted in his summary-judgment brief that there were two accounts that he believed should have counted toward his sales goal. As IOS explains in its appellate brief, though, the undisputed evidence suggests that those accounts were Thul’s, and that, even if both were credited to Grado, his total gross sales revenue still would have been below \$250,000.

particularize them for the [district court] judge.” *Kletschka*, 417 N.W.2d at 754. Here, Grado has not done so in regards to whether IOS incorrectly calculated his gross sales revenue. The district court thus properly determined that Grado did not produce evidence sufficient to prove that he met the conditions precedent to collect a bonus under the contract.

V. The district court properly dismissed Grado’s claim for failure to pay wages.

Grado’s fifth and final claim⁸ is for failure to pay wages in violation of Minn. Stat. §§ 181.01-.1721. He alleges that IOS violated the statute by failing to pay him “all wages and other compensation due immediately upon the end of his employment—including wages IOS agreed to pay him during Grado’s medical leave.”

Minn. Stat. § 181.13(a) states:

When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee’s regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater. If the employee’s earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece or by commissions, the employer is in default.

⁸ In his appellate brief, Grado also references an IIED claim, but, as explained above, the district court denied his request to amend the complaint to add that claim. Grado does not challenge the district court’s denial of his motion to amend, so the IIED claim is not properly before this court.

This statute “is a timing statute, mandating not *what* an employer must pay a discharged employee, but *when* an employer must pay a discharged employee.” *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 125 (Minn. 2007). It does not create a “substantive right” to pay that the former employee was not otherwise entitled to under the law or terms of employment. *Id.* As to paid time off for medical leave, “[n]o statute or case law in Minnesota mandates the terms on which paid time off must be offered, or that it be offered at all.” *Id.* at 126. And “wages actually earned” are “defined by the employment contract between the employer and the employee.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 837 (Minn. 2012) (quotation omitted).

As set forth above, Grado has not shown that he was entitled to a bonus under the compensation plan or that he was entitled to paid medical leave through the month of June 2017. Accordingly, the district court properly determined that, because the compensation plan did not provide for a partial bonus, and because there was no contract between IOS and Grado for paid medical leave, Grado’s failure-to-pay-wages claim fails as a matter of law.

Affirmed.