

When The Whistle Blows, Play Must Stop – The New Jersey Whistleblower Act

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In 1998, Linda Tripp, became one of the most famous “whistleblowers” in the United States. She was the woman who told prosecutors (and the world) about the affair between Monica Lewinsky, a Whitehouse intern, and then President Bill Clinton. In 2001, Sherron Watkins was the “whistleblower” who uncovered the questionable accounting practices at Enron before the entire company imploded.

“Whistleblowers” are those people who tell the public or someone in authority about illegal or fraudulent activities. A number of laws have been passed throughout the country to protect people who have reported the fraudulent or illegal activities. Many of these laws are derived from the federal False Claims Act, which imposes liability of individuals and companies who defraud the government.

New Jersey is home to one of the most comprehensive and far-reaching whistleblower statutes in the country. Although it is commonly referred to as the Whistleblower Act, it is formally called the Conscientious Employee Protection Act (“CEPA”).

What is CEPA?

CEPA was enacted by the legislature in 1986 to protect employees from employers who take adverse employment action or retaliate against employees as a result of employees who disclose, threaten to disclose, object to or refuse to participate in certain actions which the employee believes are unlawful or against public policy.

What Employees are Covered by CEPA?

CEPA covers private, state and local employees. Unlike many other employment statutes in New Jersey and federally, there is no minimum employee requirement. Whether you are a small business with as little as one employee or a multinational corporation, CEPA applies. The term “employee” is defined as “any individual who performs services for or under the control and direction of an employer for wages or other remuneration.” As such, CEPA applies to certain independent contractors, but generally does not apply to volunteers. A vast majority of working people and virtually all businesses in New Jersey are covered by CEPA.

When is an Employee Entitled to Protection under CEPA?

Generally, employees are protected when they disclose or threaten to disclose to a supervisor or governmental agency any conduct of an employer that the employee believes:

1. Violates the law, a regulation, or any misrepresentation toward investors, patients or retirees;
2. Is fraudulent or criminal;
3. Involves supplying information to or testifying before any public body conducting an investigation or hearing; or
4. Involving an objection by the employee to participate in any activity or practice that is fraudulent and/or violates the law or public policy.

What Action Taken by the Employer may Result in a Claim?

Any adverse or retaliatory employment action taken by the employer against the employee as a result of a disclosure by the employee may give rise to a claim by the employee. An adverse employment action includes discharge, suspension, demotion, or anything that effects the conditions of employment. Minor harassment that does not impact the conditions of employment such as position, pay and benefits does not constitute retaliation. This conduct may include office changes, materials or equipment provided to employees or general office harassment.

What can an Employer Do to Protect Against CEPA and Retaliation Claims?

If an employee reports conduct which may give rise to a CEPA claim, the company should immediately investigate the complaint. If any fraudulent or unlawful conduct is discovered, it must cease immediately and should be reported to the appropriate authority. Employees are required to give supervisors a reasonable opportunity to correct the conduct that the employee has complained of. You should also contact your attorney immediately.

Are Companies Required to Give Employees Notice of their Rights under CEPA?

Yes. All employers in the State of New Jersey are required to display and distribute on an annual basis the employees' rights and provide the name of a person in the company designated to receive complaints.

What can an Employee do if they have been aggrieved?

Employees and former employees may file a complaint in the Superior Court. Any suit must be commenced within one year. Employees are entitled to compensatory damages, reinstatement of a position or benefits, attorney's fees, punitive damages and civil fines. The costs of losing a CEPA case, not to mention the publicity, can be devastating and destroy a business.

If an employee has disclosed or threatened to disclose conduct by your company or one of the employee's of your company, you cannot ignore it. You should contact an attorney, investigate the allegations and not take any retaliatory action or what can be perceived as retaliatory action against the employee.