

New Jersey Court: Employee Need Not Prove Constructive Discharge to Recover under Whistleblower Law

By Richard J. Cino

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The New Jersey Conscientious Employee Protection Act, long-considered one of the most broad-based whistleblower protection legislation in the United States, has been further expanded by the New Jersey Supreme Court's holding that a CEPA plaintiff may recover lost wages without proving, or even alleging, a constructive discharge. *Donelson v. DuPont Chambers Works*, 2011 N.J. LEXIS 638 (June 9, 2011).

The Facts

Plaintiff John Seddon was a 30-year veteran of DuPont Chambers Works ("DCW"), a producer of specialty chemicals. He was responsible for overseeing the safe handling of chemicals and equipment to ensure the safety of the workplace and surrounding community.

He alleged that he began to experience retaliation after he reported to DCW that he believed certain of its practices affected public safety and after he reported certain concerns to the federal Occupational Safety and Health Administration. He alleged that he was given poor performance reviews and was accused of certain timecard violations.

Seddon was given a 53-day suspension, which was paid short-term disability leave. However, he claimed he lost considerable overtime pay. As a condition of returning from suspension, Seddon agreed to be examined by health care professionals designated by the company. He was diagnosed with dysphoria, depression, and anxiety attacks. After he returned from suspension, Seddon alleged he was assigned to work 12-hour shifts, in isolation from other employees.

Due to fear and anxiety Seddon alleged he suffered at work, he pursued therapy and treatment. After taking a six-month leave of absence, Seddon never returned to DCW.

The Suit and Lower Court Decision

Seddon filed a complaint under the New Jersey Conscientious Employee Protection Act. He sought compensation for loss of earnings and other employment benefits, as well as mental anguish, humiliation, and injury to reputation.

The jury found in the plaintiff's favor and the Appellate Division reversed, determining a lost wage claim under CEPA is not cognizable unless actual or constructive discharge is proved.

Supreme Court Finds Recovery Allowed

The New Jersey Supreme Court reversed, holding constructive discharge is only one ground for recovering lost wages; possible retaliatory actions under CEPA also includes "other adverse employment action taken against an employee in the terms and conditions of employment."

The Court reasoned that it was the intent of CEPA to be interpreted in favor of the employee and to encourage employees to speak out against workplace violations. To do this, it becomes necessary to broaden the scope of CEPA's language and interpretation. CEPA is by its very nature a remedial legislation, the Court explained, and it should seek to encourage rather than thwart the efforts of dissenting employees.

Implications for Employers

CEPA's sweeping statutory language and the courts' willingness to interpret it broadly should suggest to employers that effective management practices should be exercised in evaluating employee performance as any "adverse employment action" casually related to such action may be recoverable. Employers must be cognizant of the significant implications of actions taken against employees who may attempt to connect such actions to whistleblowing activity.

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