

24^{MAY}
2013

THE DOUGLASS LAW FIRM NEWSLETTER

THE EMPLOYMENT LAW SPECIALISTS



The Douglass Law Firm
We handle complex
employment litigation matters.
Email us at mjd@douglasslawfirm.com

Blowing the Whistle on Legal Activity? New Jersey Supreme Court to Consider the Reaches of CEPA's Retaliation Protection

The State Supreme Court is scheduled to hear argument on whether New Jersey's Conscientious Employee Protection Act protects employees who report non-illegal—though not necessarily savory—workplace activity.

CEPA, also known as the "Whistleblower Act," was enacted to prohibit employers from taking retaliatory action against employees who engage in certain protected activity. The statute was designed "to protect and encourage employees to report *illegal* and *unethical* workplace activities and to discourage public and private sector employers from engaging in such conduct."



Susan Kinniry, Esq., author of this article, is a frequent



Before anything else, preparation is the key to success.

Alexander Graham Bell

In Battaglia v. UPS, Plaintiff Michael Battaglia claimed that his bosses retaliated against him after he reported that managers violated company policy by misusing UPS credit cards and making offensive statements about women. He also spoke out about poor performance in the division

contributor to the Douglass Law Firm Newsletter and may be reached at: sk@douglasslawfirm.com

where he worked. After voicing these complaints Battaglia was demoted from a managerial position to supervisory one.

Among other claims, Battaglia sued UPS for retaliation under CEPA. A jury found in Battaglia's favor and initially awarded him one million dollars in compensatory damages. (This figure was significantly reduced as a result of post-trial motions.) Both sides appealed.

On appeal, UPS argued that in order to satisfy the elements of his claim, Battaglia had to show that he believed there was evidence of clear illegal activity in order to be protected by CEPA. The company maintained that Battaglia failed to establish both that he had a "reasonable belief" that there was wrongdoing in the satellite division and the causal connection between his one conversation with his immediate supervisor-in which Battaglia reported his suspicions-and his demotion, which occurred a full year later.

The Appellate Division found otherwise, focusing on causation and more or less side-stepping the issue of whether Battaglia believed there was illegal activity afoot. Quoting the 2009 case Ivan v. Middlesex, the Court reasoned, "Temporal proximity can be helpful in assessing causation under the petition clause, but it is not dispositive. When retaliatory action occurs well after protected activity the inference that protected activity was a substantial factor is more difficult to draw but it is not foreclosed." UPS appealed and the Supreme Court granted certification in February.

The Court is expected to clarify—and possibly broaden—what constitutes "protected activity" under both CEPA and the New Jersey Law Against Discrimination (LAD).

THE DOUGLASS LAW FIRM
1601 TILTON ROAD, SUITE 6
NORTHFIELD, NJ 08225
609.788.3595
[HTTP://WWW.DOUGLASSLAWFIRM.COM](http://www.douglasslawfirm.com)

1601 Tilton Rd Suite 6 | Northfield, NJ 08234 US
This email was sent to mjdouglasslaw@gmail.com. To ensure that you continue receiving our emails, please add us to your address book or safe list.

[manage](#) your preferences | [opt out](#) using TrueRemove®.

Got this as a forward? [Sign up](#) to receive our future emails.

