

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

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ACTING ADMINISTRATIVE
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[Questions may be directed to
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MEMORANDUM

TO: Hon. Edwin H. Stern, Presiding Judge for Administration of the
Appellate Division
Assignment Judges
Hon. Joseph C. Small, Presiding Judge, Tax Court
AOC Directors and Assistant Directors
Trial Court Administrators
Clerks of Court

FROM: Glenn A. Grant, J.A.D., Acting Administrative Director

SUBJECT: Judiciary Policy on the Conscientious Employee Protection Act
(CEPA)

DATE: September 25, 2009

CEPA Overview

This memorandum sets forth the Judiciary's policy on handling employee reporting of allegedly illegal or fraudulent activity by any persons or group of persons acting directly or indirectly on behalf of or in the interest of the Judiciary with the Judiciary's consent, as well as employee retaliation complaints under the Conscientious Employee Protection Act (CEPA) N.J.S.A. 34:19-1 et seq. CEPA, which is also known as New Jersey's whistleblower law, encourages employees to report illegal or fraudulent workplace activities, policies or practices. CEPA prohibits an employer from taking retaliatory action against an employee when the employee does any of the following:

- a. discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes:

- (1) is in violation of a law, rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to any...employee, former employee, retiree or pensioner of the employer or any governmental entity...or
 - (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any ...employee, former employee, retiree or pensioner of the employer or any governmental entity;
- b. provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation involving deception of, or misrepresentation to, any...employee, former employee, retiree or pensioner of the employer or any governmental entity...or
- c. objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
- (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to any...employee, former employee, retiree or pensioner of the employer or any governmental entity...;
 - (2) is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any...employee, former employee, retiree or pensioner of the employer or any governmental entity; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

Definitions

An **employer** includes all branches of State government or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and its counties and municipalities, any other political subdivision of the State, school district, special district, any authority, commission or board, or any other agency or instrumentality. The Judiciary meets CEPA's definition of an employer as it is a branch of State government. An **employee** covered under CEPA is any individual who performs services for and under the control and direction of an employer for wages or

other remuneration. Since judges perform services for and under the control and direction of the Judiciary for wages they are considered employees for the purposes of CEPA. An **independent contractor** may also qualify as an employee under CEPA depending on the nature of the contract with the Judiciary. A **supervisor** is any individual with an employer's organization who has the authority to:

- a. direct and control the work performance of the affected employee;
- b. take corrective action regarding the violation of the law, rule or regulation of which the employee complains;
- c. or who has been designated by the employer as the contact person on the annual notice it must display and distribute to employees regarding their protections and rights under CEPA.

Retaliatory action taken by an employer includes the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in his or her terms and conditions of employment.

Notification Requirements

An employee is protected against retaliation, provided that the employee meets two conditions:

- 1) the employee brings the activity, policy or practice in violation of a law, rule or regulation to the attention of his or her supervisor or the Administrative Director by written notice; and
- 2) the employee gives the Judiciary a reasonable opportunity to correct the activity, policy or practice.

If an employee orally informs his or her supervisor or the Administrative Director of an activity, policy or practice in violation of a law, rule or regulation, the supervisor or the Administrative Director should instruct the employee to provide written notice to the Administrative Director, whose name, address and telephone number appear on the attached CEPA rights notice. A supervisor may accept the employee's written notice addressed to the Administrative Director and transmit it internally to the Administrative Director.

As indicated above, an employee's disclosure must ordinarily be in writing in order to receive CEPA's protection against retaliatory action. However, there are two situations where oral disclosure is acceptable and written disclosure is not required. Oral disclosure is permitted where:

- 1) the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors **or**

2) the employee reasonably fears physical harm as a result of providing written disclosure and the situation is an emergency. An emergency situation is one in which written notification is not possible.

Disclosure of Illegal Employer Activity & Retaliation Complaint Procedure and Investigation

A. Disclosure of illegal activity, policy or practice of employer

To ensure proper handling of an employee disclosure of an illegal or fraudulent activity, policy or practice, the employee's disclosure must be in writing. The disclosure should be addressed to the Administrative Director. Employees should also provide a copy of the written notification of the disclosure to the employee's supervisor. If the notification meets the criteria under CEPA, the Administrative Director will direct that the disclosure be investigated. Corrective action will be taken if the results of the investigation reveal that illegal or fraudulent activity, as defined by CEPA, occurred. CEPA does not entitle the employee making the disclosure to be informed of the results of the investigation.

B. Complaints of retaliation for taking protected actions under CEPA

Retaliation for reporting an illegal or fraudulent activity, policy or practice of an employer is prohibited by CEPA. Employees who believe they have been retaliated against should notify the Administrative Director. Although CEPA does not require an employee to report a complaint of retaliation in writing, it is recommended that employees do so to ensure proper handling of a retaliation investigation. Claims of retaliation for taking actions protected under CEPA will be promptly investigated under the direction of the Administrative Director.

Implementation of Policy

Every Judiciary unit must post in work areas a written notice in English and Spanish of the protections, obligations, rights and procedures under CEPA. **The CEPA rights notice is attached and should be posted wherever notices to employees are customarily placed.** A written or electronic CEPA rights notice will be distributed annually to all employees by the AOC.

It is essential that Judiciary staff follow these procedures to ensure proper handling of CEPA disclosures and complaints of retaliation. Failure to protect the rights of employees under CEPA may expose the Judiciary to substantial legal and financial liability.

CEPA provides that an aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction. CEPA does not diminish

the rights, privileges, or remedies of any employee under any other federal or State law or regulation or under any collective bargaining agreement or employment contract.

However, institution of a civil action is deemed a waiver of an employee's rights and remedies available under any other State law, rule or regulation, contract, collective bargaining agreement or under the common law.

Questions concerning CEPA or this memorandum may be directed to Special Assistant Francis W. Hoeber at (609) 984-4557.

G.A.G.

c: Chief Justice Stuart Rabner
Hon. Patrick de Almeida, Presiding Judge Designate, Tax Court
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Conscientious Employee Protection Act

“Whistleblower Act”

Employer retaliatory action; protected employee actions; employee responsibilities

1. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
 - a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
 - b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
 - c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (2) is fraudulent or criminal; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.
2. The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergency in nature.

CONTACT INFORMATION

The Judiciary has designated the following contact person to receive written notifications, pursuant to paragraph 2 above (N.J.S.A. 34:19-4):

Administrative Director, Administrative Office of the Courts
25 Market Street, 7th Floor, Trenton, New Jersey 08625
609-984-4557 or 609-984-0275

This notice must be conspicuously displayed.

Once each year, every Judiciary unit must distribute notice of this law to all employees.

La Ley de protección al empleado consciente

“Ley de protección del denunciante”

Acciones de represalia del empleador; protección de las acciones del empleado; responsabilidades del empleado

1. La ley de New Jersey prohíbe que los empleadores tomen medidas de represalia contra todo empleado que haga lo siguiente:
 - a. Divulgue o amenace con divulgar, ya sea a un supervisor o a una agencia pública toda actividad, directriz o norma del empleador o de cualquier otro empleador con el que exista una relación de negocios y que el empleado tiene motivos fundados para pensar que violan alguna ley o regla o reglamento emitido bajo la ley, o en el caso de un trabajador licenciado o certificado de la salud y que tiene motivos fundados para pensar que se trata de una manera inadecuada de atención al paciente;
 - b. Facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la violación de alguna ley, regla o reglamento emitido bajo la ley por el empleador o algún otro empleador con el que exista una relación de negocios; o en el caso de un trabajador licenciado o certificado de la salud que facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la calidad de la atención al paciente; u
 - c. Ofrece información concerniente al engaño o la tergiversación con accionistas, inversionistas, pacientes, clients, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - d. Ofrece información con respecto a toda actividad que se pueda percibir como delictiva o fraudulenta, toda directiva o práctica engañosa o de tergiversación que el empleado tenga motivos fundados para pensar que pudieran estafar a accionistas, inversionistas, pacientes, clientes, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - e. Se opone o se niega a participar en alguna actividad, directriz o práctica que el empleado tiene motivos fundados para pensar que:
 - (1) viola alguna ley, o regla o reglamento emitido bajo la ley o en el caso de un empleado licenciado o certificado de la salud que tiene motivos fundados para pensar que constituya atención inadecuada al paciente;
 - (2) es fraudulenta o delictiva; o
 - (3) es incompatible con algún mandato establecido por las directrices públicas relacionadas con la salud pública, la seguridad o el bienestar o la protección del medio ambiente. Artículo 34:19-3 de las Leyes comentadas de New Jersey de protección del empleado consciente. (N.J.S.A., por sus siglas en inglés).
2. No se puede acoger a la protección contra la represalia, cuando se hace una divulgación a un organismo público, a no ser que el empleado le informe al empleador de tal actividad, política o norma a través de un aviso por escrito y le haya dado al empleador una oportunidad razonable para corregir tal actividad, política o norma. Sin embargo, no es necesaria la divulgación en los casos en que el empleado tenga indicios razonables para creer que un supervisor o más de un supervisor del empleador tienen conocimiento de tal actividad, política o norma o en los casos en los que empleado teme que tal divulgación pueda traer como consecuencia daños físicos a su persona siempre y cuando la naturaleza de la situación sea la de una situación de emergencia.

INFORMACIÓN de CONTACTO

El Poder Judicial ha designado la siguiente persona para recibir notificaciones de acuerdo al párrafo 2, de la ley (N.J.S.A. 34:19-4):

Administrative Director, Administrative Office of the Courts
25 Market Street, 7th Floor, Trenton, New Jersey 08625
609-984-4557 or 609-984-0275

Este aviso se debe exponer a la vista de todos.

Una vez por año, cada unidad del Poder Judicial debe distribuir el aviso de esta ley a todos los empleados.