

# NJ Supreme Court Clarifies Legal Standard for Retaliation Claims Under LAD

by Gary S. Young on August 5, 2013

The Supreme Court of New Jersey recently issued a key decision regarding the proofs required under the state's Law Against Discrimination (LAD). The case also addressed what is required for an award of emotional distress damages under the LAD as well as to sustain a fraud-based claim under the Conscientious Employee Protection Act (CEPA).

The case, *Battaglia v. UPS*, involved the demotion of Plaintiff Michael Battaglia. As noted by the court:

"...the allegations in the complaint can be divided into three categories. The first allegation concerned plaintiff's complaints about offensive and inappropriate sexual and gender-based comments he attributed to his supervisor...The second allegation concerned plaintiff's complaint about improper business lunch practices and the related misuse of company credit cards by other employees. The third allegation related to a letter that plaintiff sent anonymously to the corporate Human Resources manager raising those and other complaints.

Mr. Battaglia alleged that he suffered a demotion because of his complaints. UPS maintained that its employment decision was justified by plaintiff's violation of company confidentiality policies, his abusive treatment of other employees, and insubordination. Battaglia's lawsuit included retaliation claims under both the LAD and CEPA.

As to the LAD retaliation claim, the court ruled that an employee who allegedly suffers a retaliatory employment action is only required to demonstrate a "good-faith" belief that the complained-of employer conduct violates the LAD. "[W]hen an employee voices a complaint about behavior or activities in the workplace that he or she thinks are discriminatory, we do not demand ... that he or she be able to prove that there was an identifiable discriminatory impact upon someone of the requisite protected class" the court concluded.

As for the future emotional distress claims under the LAD, the court found that expert testimony would be required. "[A]lthough the humiliation, embarrassment and indignity suffered by the LAD plaintiff during the events complained of is obvious, once remedied through a verdict, any claim that those effects will endure so as to support a future award must be proven by credible, competent evidence lest that verdict be the product of speculation," Justice Helen Hoens explained.

With regard to Battaglia's CEPA claim, the court ruled that in order to succeed on a fraud-based CEPA claim, a plaintiff must reasonably believe that the complained-of

activity was occurring and was fraudulent: "That is, the statute does not protect employees whose complaints are directed to minor or trivial matters."

The decision offers both good news and bad news for New Jersey employers. While the standard for bringing a retaliation claim under the LAD may be lower, claims of future emotional distress will require expert testimony. In addition, the court clarified that CEPA is intended to combat seriously fraudulent or criminal conduct and not more trivial matters.

If you have any questions about this case or would like to discuss the legal issues involved, please contact me, Gary Young, or the Scarinci Hollenbeck attorney with whom you work.