

COA Opinion: WPA is the exclusive remedy for an employee terminated in retaliation for participating in an investigation or inquiry, which includes an administrative search

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In [*Anzaldua v. Neogen Corp.*](#), No. 296978, the court held that the Whistleblowers' Protection Act ("WPA") provides the exclusive remedy for an employee terminated due to her participation in an administrative inspection of a boiler. Consequently, the 90-day limitations period in the WPA applied to bar the employee's claim, despite her attempt to frame her claim as arising under common-law public policy.

The employee was terminated after she granted a State Department of Labor deputy boiler inspector access to inspect an unregistered boiler at her place of employment. More than 90 days after her termination, the employee brought a claim for retaliatory discharge in violation of public policy against her employer. The trial court granted summary judgment for the employer on the grounds that the employee's claim was untimely under the WPA's 90 day limitation period. The employee denied that she was engaged in a protected activity under the WPA, and argued that accordingly the WPA's 90-day limitation did not apply to bar her claim.

The WPA provides that an employer shall not retaliate against an employee because the employee "is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body." MCL 15.362. The Court of Appeals examined the dictionary definitions of "investigate" and "inquiry," and found that "inquiry" for the purpose of the WPA includes an administrative search such as the boiler investigation. The Court further noted that the WPA preempts common-law public policy claims arising from the same activity. Because the true nature of the employee's claim was within the scope of the WPA, the 90-day limitations period applied despite the fact that it was pled as a common-law claim. The Court affirmed the trial court's grant of summary disposition in favor of the employer.

The Court also considered whether the trial court made an improper finding of fact when considering the motion for summary disposition. The trial court had stated in its original and amended opinions that "Plaintiff's employment was terminated due to her participation in the investigation." A court may not make a finding of fact when ruling on a motion for summary disposition. However, on a motion for summary disposition, the court must accept as true all well-pleaded allegations. Accordingly, for the purpose of this motion the trial court was obligated to accept the employee's allegation as true and the statement was proper.