

# Supreme Court of New Jersey Takes Wide View Of Retaliation Under CEPA

by Christine M. Vanek on December 3, 2012

In a recent decision, the Supreme Court of New Jersey took a wide view of what constitutes retaliation under New Jersey's Conscientious Employee Protection Act (CEPA). The court ruled that a memo to employees referencing a pending wage-and-hour lawsuit and a resulting reduction in overtime hours could support a CEPA claim.

## *The Facts of the Case*

In *Flecker v. Statue Cruises*, A-4390-10, plaintiff Howard Flecker III filed a class action lawsuit alleging that a collective bargaining agreement (CBA) with his employer, Statue Cruises, L.L.C., violated New Jersey's Wage and Hour Law by triggering overtime pay only after 48 hours of work. After filing the complaint, Statue issued a memorandum informing employees about the lawsuit. The memo identified Flecker as the named party in the lawsuit and advised employees that in an effort to mitigate damages, they would not schedule union employees to work more than forty hours per week until the issues raised in the complaint were resolved.

After the memo was issued, Flecker maintains that co-workers immediately started confronting him about his lawsuit. Some of the co-workers urged him to drop the suit, while others started to ignore him or expressed that they were upset with what he had done. Shop steward, Matthew Gill, asked plaintiff "to consider the whole, big picture" and the impact his suit would have on the more senior employees.

The plaintiff did not report these confrontations to Statue management because he did not trust management to be of assistance. He also claims that his hours were reduced after the memo was issued. He ultimately resigned from his position, citing the stress caused by the memo, and filed an amended complaint adding a CEPA claim.

## *The Court's Decision*

The Supreme Court of New Jersey reversed the lower court's dismissal of the plaintiff's CEPA claim, finding that the memo could constitute an adverse employment action. As highlighted by the court, a termination under CEPA may encompass both actual and constructive discharges.

In its opinion, the court acknowledged that an employer's actions will not be deemed "retaliatory under CEPA merely because they result in a bruised ego or injured pride on the part of the employee." However, in this case, it found that "a jury could reasonably find that defendants retaliated against plaintiff by turning his coworkers against him and

that those repeated confrontations stemmed directly from the October 1 memorandum, ultimately causing his resignation.”

*If you have any questions about this case or other CEPA liability issues, please contact me, Christine Vanek, or the Scarinci Hollenbeck attorney with whom you work.*