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New York High Court Ruling Lowers the Bar at the Pleading Stage for Whistleblowers

By Gregory B. Gilmore

Earlier this year in [Webb-Weber v. Community Action for Human Services, Inc.](#), the New York Court of Appeals (the highest ranking state court in New York) held that to state a cause of action under New York's whistleblower statute, an employee filing a retaliation claim is **not** required to plead the specific law, rule, or regulation that was allegedly violated by the employer. In light of this decision, it will be more difficult for employers to dismiss whistleblower claims by means of pre-answer motions to dismiss.

New York's whistleblower statute - New York Labor Law § 740 - forbids an employer from taking a "retaliatory personnel action" against an employee who "discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud."

In *Webb-Weber*, the employee, Wendy Webb-Weber, was the chief operating officer for a not-for-profit corporation that provided social services to the mentally and physically disabled. In the complaint, Ms. Webb-Weber alleged that she was terminated in violation of New York's whistleblower statute after she complained to the corporation's chief executive officer about issues she felt endangered the welfare and safety of the corporation's patients.

Specifically, she charged that the company had falsified patient medication and treatment records, not ensured adequate fire safety, mistreated patients, and was otherwise responsible for deficiencies in patient care and in the facility. Ms. Webb-Weber also alleged in her complaint that she reported her concerns to various public bodies who, after investigating her complaints, issued sanctions and violations to the employer. While her complaint contained allegations that she complained to the employer regarding certain activities, policies, and practices that she claimed endangered the welfare and safety of patients, the complaint did not specifically identify any particular law, rule, or regulation that the employer allegedly violated by engaging in the complained-of conduct or policy.

Because the complaint failed to identify any law, rule, or regulation that the employer allegedly violated, the Appellate Division dismissed the employee's whistleblower claim, holding that that the complaint failed to state a cause of action. The New York Court of Appeals reversed the Appellate Division and reinstated plaintiff's whistleblower cause of action, holding that she did not need to specifically identify the law, rule, or regulation that the employer allegedly violated in order to state a cause of action under the New York state whistleblower statute. Rather, as the Court of Appeals held, to state a cause of action, the complaint must only "identify the particular activities, policies or practices in which the employer allegedly engaged, so that the complaint provides the employer with notice of the alleged complained-of conduct." The Court of Appeals further noted that the plain language of the New York whistleblower statute did not impose any requirement that the specific law, rule, or regulation be identified.

Undoubtedly, the *Webb-Weber* decision will make it easier for employees to withstand an employer's pre-answer motion to dismiss a whistleblower claim. The Court of Appeals, however, cautioned that, in order to *recover* under the whistleblower statute, a plaintiff still bears the burden of proving that the complained-of activity actually violated a particular law, rule, or regulation (as opposed to merely having a reasonable belief that a violation occurred).

Based on the *Webb-Weber* decision, while it will be more difficult for employers to dismiss a whistleblower cause of action at the initial pleading stage of a case, employers will nonetheless have an opportunity to obtain summary judgment if, during discovery, the employee is unable to identify any law, rule, or regulation that the complained-of conduct violated. Employers doing business may want to take notice of this decision before embarking on any pre-answer motion to dismiss.

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