

CLIENT ALERTS

EPSTEIN BECKER & GREEN, P.C.

Resurgens Plaza
945 East Paces Ferry Road
Suite 2700
Atlanta, Georgia 30326-1380
404.923.9000

150 North Michigan Avenue
35th Floor
Chicago, Illinois 60601-7553
312.499.1400

Lincoln Plaza
500 N. Akard Street
Suite 2700
Dallas, Texas 75201-3306
214.397.4300

Wells Fargo Plaza
1000 Louisiana
Suite 5400
Houston, Texas 77002-5013
713.750.3100

1875 Century Park East
Suite 500
Los Angeles, California 90067-2506
310.556.8861

Wachovia Financial Center
200 South Biscayne Boulevard
Suite 2100
Miami, Florida 33131
305.982.1520

Two Gateway Center
12th Floor
Newark, New Jersey 07102-5003
973.642.1900

250 Park Avenue
New York, New York 10177-1211
212.351.4500

One California Street
26th Floor
San Francisco, California 94111-5427
415.398.3500

One Landmark Square
Suite 1800
Stamford, Connecticut 06901-2681
203.348.3737

1227 25th Street, N.W.
Suite 700
Washington, DC 20037-1175
202.861.0900

NEW JERSEY WHISTLEBLOWER LAW AMENDED TO ENHANCE SCOPE AND STRENGTHEN ENFORCEMENT PROVISIONS

On January 12, 2006, the New Jersey legislature amended the state's whistleblower law, the Conscientious Employee Protection Act (CEPA), to include protection against retaliation of employees who disclose or refuse to participate in employer "deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity." The amendment strengthened the enforcement provisions of CEPA by (1) making certain remedies mandatory for a court to order upon a finding of a violation of the statute; (2) raising the maximum civil fine for a first violation from \$1,000 to \$10,000 and from \$5,000 to \$20,000 for each subsequent violation; and (3) exempting punitive damages awarded under CEPA from the limits contained in New Jersey's Punitive Damages Act. The amendment became effective immediately.

Under CEPA, employers are forbidden to retaliate against employees who (a) disclose, or threaten to disclose, to a supervisor or public body any activity, policy or practice of the employer, or another employer who has a business relationship with the employer, that the employee reasonably believes (1) is in violation of a law, or a rule or regulation promulgated pursuant to law; or (2) is fraudulent or criminal; (b) provide information or testimony to any public body conducting an investigation, hearing or inquiry into any violation of law by the employer, or another employer who has a business relationship with the employer; or (c) object to or refuse to participate in any activity, policy or practice that the employee reasonably believes (1) is in violation of a law, or a rule or regulation promulgated pursuant to law; (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.

The amended law enhances the scope of CEPA by expressly including protection for "any activity, policy, or practice of deception or misrepresentation which the employee reasonably believes may defraud any of the employer's shareholders, investors, clients, patients, customers,

CLIENT ALERTS

employees, former employees, retirees or pensioners, or any governmental entity.” In addition, the amendment also strengthens the enforcement provisions of CEPA in three significant ways.

First, the amendment *requires* a court in a civil action to order the following remedies, where appropriate, when there has been a violation of the statute: (1) an injunction to restrain any violation of CEPA that is continuing at the time that the court issues its order; (2) the reinstatement of the plaintiff-employee to the same, or an equivalent, position held before the retaliatory action; (3) the reinstatement of full fringe benefits and seniority rights; (4) the compensation for all lost wages, benefits and other remuneration; and (5) the payment by the employer of reasonable costs, and attorney’s fees. These remedies existed previously, but the amendment makes clear that they are mandatory, not discretionary.

Second, the enforcement provisions increase the civil fines that may be assessed for an employer’s violation of CEPA. The amendment allows the court or jury, in addition to the remedies stated above, to assess a civil fine of not more than \$10,000 for the first violation of the statute and not more than \$20,000 for each subsequent violation. The civil fines are not mandatory however, they may be ordered in the discretion of the court.

Third, the amendment exempts punitive damages awarded under CEPA from the cap on damages set by the Punitive Damages Act. Although the amendment does not change the prerequisites that a plaintiff must meet to establish entitlement to punitive damages, it expands the criteria a court or jury must consider in determining the amount of an award. The amendment directs the court to consider “not only the amount of compensatory damages awarded to the employee, but also the amount of all damages caused to shareholders, investors, clients, patients, customers, employees, former employees, retirees or pensioners of the employer, or to the public or any governmental entity, by the activities, policies or practices of the employer which the employee disclosed, threatened to disclose, provided testimony regarding, objected to, or refused to participate in.”

In the wake of the amendment to CEPA, employers may expect increased litigation alleging violations of the statute. CEPA is broadly interpreted as a remedial statute and the amendments further expand its reach and remedies. The increased enforcement provisions of the amendment enhance the risks of litigation to employers and thus highlight the continuing need for employers to have a demonstrated business reason for employment decisions that adversely affect employees.

* * *

Please feel free to contact **Maxine Neuhauser** in the firm's **Newark** office at 973/639-8269 if you have any questions or comments. Ms. Neuhauser's e-mail address is mneuhauser@ebglaw.com. **Daniel R. Levy**, an associate in the Labor and Employment Department, assisted in the preparation of this Alert.

This document has been provided for informational purposes only, is not intended, and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

© 2006 Epstein Becker & Green, P.C.

