

NJ Supreme Court upholds workers' 'whistleblower' rights



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(Photo: ~File)

BRIDGEWATER (/search/bridgewater/) – A state Supreme Court decision on Wednesday strengthens protections for workers who sound the alarm on illegal or dangerous workplace practices without fear of retaliation or being fired.

The decision, applauded by labor groups, clarifies that the state's so-called Whistleblower Law — the Conscientious Employee Protection Act (CEPA) of 1986 — also applies to employees whose jobs serve a "watchdog" capacity such as factory safety inspectors.

And the decision reverses a lower court's decision that would have added extra requirements for employees seeking to sue under the law.

"We feel like we saved CEPA with this decision," said Bennet D. Zurofsky, an attorney who helped file a friend of the court brief on behalf of New Jersey Work Environment Council and other labor groups arguing in favor of the position that prevailed.

The decision stems from a lawsuit filed by a former vice president and chief medical officer of Ethicon, a Bridgewater-based subsidiary of the pharmaceutical giant Johnson & Johnson.

Joel S. Lippman was responsible for product safety and served on internal review boards that assessed health risks of the company's medical devices.

Court records show he objected on numerous occasions to the proposed or continued sale of certain Ethicon products because they were unsafe or violated the law. In April 2006 he advocated for a product recall that was implemented by the next month. But within days of the recall, he was fired.

The ostensible reason for the termination was that he was having an inappropriate relationship with a subordinate, but Lippman sued under the Whistleblower Law claiming retaliation.

A trial judge dismissed his case arguing that because Lippman's job required him to be a company watchdog, the law was not meant for him.

But an appellate panel, brushing aside arguments made by industry groups siding with Ethicon, reversed that decision, reasoning that watchdog employees "are among those most in need of CEPA's protections."

But the panel further demanded that employees bringing Whistleblower suits demonstrate that they "either refused to participate in the objectionable conduct or pursued and exhausted all internal means of securing compliance."

The company appealed to the Supreme Court, saying the decision would make it difficult to reprimand watchdog employees or workers acting within the scope of their employment.

The Supreme Court sided with the appellate panel's review of the law but struck down the panel's attempt to clarify requirements for a lawsuit.

"Simply put, the panel has added to the burden required for watchdog employees to secure CEPA protection ... by including an obligation nowhere found" in the text of the law, Chief Justice Stuart Rabner said in a 5-0 decision.

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