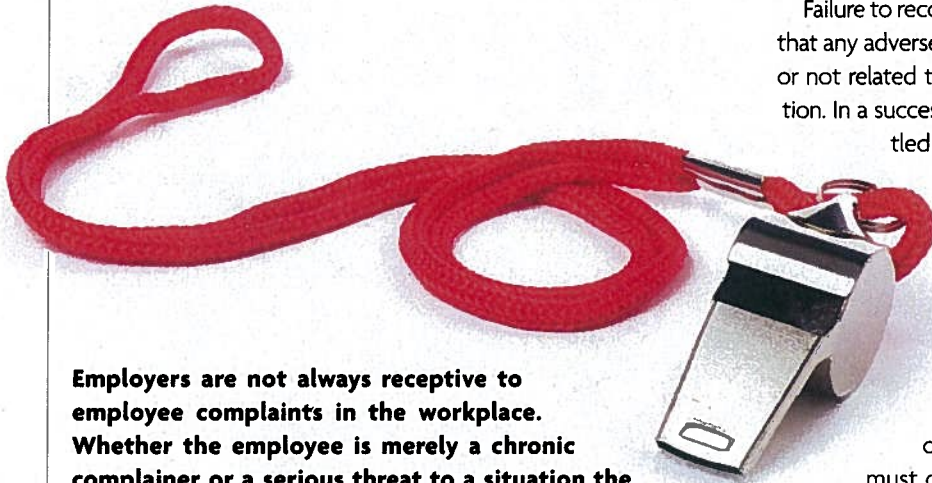


Attention All Supervisors: Embrace Employee Complaints With Open Arms!

By Kathleen M. Connelly, Esq.



Employers are not always receptive to employee complaints in the workplace. Whether the employee is merely a chronic complainer or a serious threat to a situation the employer would rather keep off the radar screen, employers must handle workplace complaints carefully to avoid a Pandora's Box of liability. This article highlights the legal protections accorded to complaining employees and the steps employers must take when faced with complaints.

The Whistleblower Laws: The New Jersey Conscientious Employee Protection Act (CEPA) makes it unlawful for an employer to retaliate against an employee who complains about workplace activities the employee believes are unlawful or unsafe. Even if the employee's concerns are unfounded, as long as the employee reasonably believed there were illegal/unsafe activities, CEPA's protections apply.

Whistleblower protections were expanded in the wake of the Enron scandal by the Sarbanes-Oxley Act, which accorded whistleblower protection to employees complaining about fraudulent corporate financial activities.

Finally, the New Jersey Law Against Discrimination (NJLAD) prohibits retaliatory action against employees who complain of unlawful discrimination in the workplace. The employee is protected even if the allegations are unfounded, unless the complaint was made in bad faith.

Employers must keep in mind that not every complaint qualifies as protected whistleblowing activity. For example, a complaint that a supervisor is not being "fair" in meeting out discipline will not trigger NJLAD protection unless the employee maintains that the differential treatment is the due to age, race, or other discriminatory animus. Employee concerns about air quality in the workplace will not trigger CEPA protection unless the employee maintains that these conditions threaten health and safety. Employee complaints of excessive corporate expenditures will not trigger Sarbanes-Oxley protection absent allegations that the employer is misrepresenting its financial statements in its annual report to shareholders.

Failure to recognize protected whistleblowing activity poses a risk that any adverse action against the complaining employee, whether or not related the complaint, will be construed as unlawful retaliation. In a successful whistleblower suit, the employee may be entitled to lost wages, emotional distress damages, punitive damage and attorney's fees, damages that can easily reach hundreds of thousands of dollars.

Receiving the Complaint: Supervisors must take all employee complaints seriously – a rush to judgment that the complaint is baseless can be fatal to a retaliation claim. The employee must be given an opportunity to voice all concerns and should submit the complaint in writing. Thereafter, the employer must determine whether any aspect of the employee's complaint implicates issues of health and safety, unlawful activity, fraud or discrimination in the workplace that trigger whistleblower protection.

Investigating the Complaint: Employers must promptly investigate employee complaints to determine if the concerns are legitimate. In certain circumstances the employer should consider engaging an outside human resources professional or employment counsel to investigate, particularly where the neutrality of an internal investigator can be called into question (e.g., charges of unlawful conduct by senior management). All interviews conducted and actions taken during the investigation should be adequately documented.

Resolving the Complaint: If an employee's complaint is legitimate, the employer must be prepared to take all action to remedy the situation. Regardless of the outcome, the complaining employee and the accused must be informed of the outcome. Leaving the complaining employee "in the dark" about the resolution of the complaint will likely lead to charges that the employer failed to take any action on the employee's complaint.

Conclusion: Openly embracing employee complaints with an eye toward resolving legitimate concerns is the greatest weapon an employer has in the defense of a whistleblower claim. Moreover, the good will engendered by the caring employer is a powerful vaccine against poor employee morale in the workplace. •



KATHLEEN M. CONNELLY, ESQ.
LINDABURY, MCCORMICK, ESTABROOK
& COOPER LAW FIRM
KCONNELLY@LINDABURY.COM

Have
a fr
pro
You
supp
beco
C
tion
of k
gains
caus

Syr
Alth
toms
eatir
by W
the a
to El
psycl
Faste