

NEWS & INSIGHTS

Certain employee retaliation claims may be filed under PA whistleblower law, bypassing agency filing requirements

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The Pennsylvania Supreme Court recently ruled in a 6-1 decision in *Harrison v. Health Network Laboratories*, that employees covered under Pennsylvania's Whistleblower Law (PWL) and alleging adverse employment action for reporting discriminatory conduct by an employer against another employee may file directly in state court and bypass the agency filing requirements under the Pennsylvania Human Relations Act (PHRA).

The court's decision is a significant blow to employers litigating current or former employee retaliation claims based upon the employer's alleged discriminatory conduct against another employee. Under the court's ruling, these plaintiff-employees may file a complaint directly in state court. With these plaintiffs no longer having to first file with the Pennsylvania Human Relations Commission (PHRC) and/or Equal Employment Opportunity Commission (EEOC), employers will be forced to endure increased litigation costs and settlement values.

Employers covered by whistleblower law

Importantly, the PWL applies not only to employees of a "public body" (generally, state and local governments, agencies and affiliated entities), but also to employees of for-profit and not-for-profit businesses that receive certain types of funding from the government. For example, hospitals have been held to be employers subject to the PWL. Additionally, construction companies providing services to state or municipal governments would also very likely be covered by the PWL.

Harrison v. Health Network Laboratories

In *Harrison v. Health Network Laboratories*, the plaintiff (Harrison) was employed as a manager by the defendant employer. Harrison received a complaint from a co-worker that she had been discriminated against by a supervisor of Indian descent. The supervisor was alleged to have openly disparaged and mistreated non-Indian employees. Harrison forwarded the discrimination complaint to upper-level management and was terminated shortly thereafter. Harrison alleges that she was terminated for calling attention to her co-worker's claim of discrimination.

Harrison filed a complaint in state court alleging a violation of the PWL. The employer successfully argued to the trial court that the PWL claim was pre-empted by the PHRA. The trial court dismissed the complaint because Harrison had not exhausted, or even pursued, a discrimination and retaliation claim with the PHRC or EEOC as is required under the PHRA.

On appeal, a three-judge panel of the Superior Court, in an unpublished opinion, vacated the portion of the trial court's order dismissing Harrison's PWL claim. The Superior Court distinguished between the underlying wrongdoing (i.e., the employer's alleged discrimination against Harrison's co-worker) and the retaliatory act applicable to her (i.e., her termination of employment). In so doing, the Superior Court held that Harrison's retaliation claim could proceed under the PWL independent of any potential PHRA claims that could have been asserted.

On appeal to the Pennsylvania Supreme Court, the justices affirmed the order of the Superior Court and held that "plaintiffs who are not themselves the victims of discrimination...but who report discriminatory conduct made unlawful by the PHRA" may pursue a claim under the PWL independent of any PHRA claim. For now, the court indicates that plaintiffs bringing retaliation claims based on his/her own discrimination must continue to first abide by the PHRA's agency filing requirements.

Impact on employers

The Supreme Court's ruling is potentially significant to employers covered under the PWL. The agency filing requirements under the PHRA have typically resulted in reduced litigation costs and settlement values for employers. Additionally, where the PHRA is unable to substantiate an employee's allegations of discrimination and/or retaliation, the employee may decide it is not worth pursuing further legal action against the employer in court. The result of the Supreme Court's recent ruling is that, in certain circumstances, an employee is no longer required to file with the PHRC and/or EEOC and may instead file directly in court, thereby resulting in increased employer litigation costs and settlements values.

Seek legal counsel

Employers should be quick to engage experienced employment litigation counsel as early as possible whenever they are considering an adverse employment action against an employee who may be likely to assert claims of discrimination and/or retaliation. Saxton & Stump attorneys [Stephen J. Fleury Jr., Esq.](#) and [Richard L. Hackman, Esq.](#) are available to further discuss how to cost-effectively manage these matters should they arise and how our [Labor and Employment Group](#) can help develop internal best practices designed to minimize the risks to employers.

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