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Court Expands NJLAD Definition of Post-Termination Retaliatory Conduct

Pursuant to a recent ruling from the New Jersey Appellate Court, employees may now sue under the New Jersey Law Against Discrimination (LAD) for post-termination, non-job related, retaliatory conduct.

In *Roa v. LAFE*, (App. Div. July 7, 2008), plaintiffs Fernando and Liliana Roa, husband and wife and former LAFE employees, sued LAFE, alleging that they were terminated in retaliation for Mr. Roa's participation in a sexual harassment complaint against his supervisor. The Roas further claimed that LAFE's post-termination conduct was retaliatory and violated the LAD. In particular, the plaintiffs argued that LAFE told the unemployment agency that Mrs. Roa was terminated for misconduct and, as a result, she was denied her unemployment benefits for approximately six months. Additionally, Mrs. Roa underwent surgery after her termination but during the time that Mr. Roa was still employed. Mr. Roa was informed by the insurance carrier that his health insurance was retroactively cancelled by LAFE while he was still employed and therefore, the surgical bills went unpaid for approximately four months (until the insurance was reinstated). Plaintiff's alleged that LAFE's termination of Mr. Roa's health insurance was retaliatory.

The trial court dismissed the plaintiff's complaint *in toto*. In relation to post-termination actions, the trial court held that as the post-termination conduct did not directly implicate the plaintiffs' employment relationship with either LAFE or some other proposed employer, the post-termination actions could not form the basis for an independent retaliation claim. The plaintiffs appealed, and the Appellate Division, among other things, reversed the lower court's legal decision on the post-termination retaliation issue.

In its analysis, the Appellate Court explained that a recent United States Supreme Court decision regarding a Title VII claim held that the Title VII anti-retaliation provision is not limited to retaliatory conduct that only affects the terms and conditions of employment. Retaliatory conduct that harms the plaintiff in any way is actionable. Based on the fact that courts have "traditionally looked to federal precedent governing Title VII" to interpret LAD claims, the court held that the LAD anti-retaliation provision is also not limited to conduct solely related to one's employment or the workplace. Thus, a distinct cause of action exists under LAD's anti-retaliation provision for post-termination conduct that injures or harms the plaintiff, regardless of the conduct's affect (or lack of affect) to the employment relationship.

Applying this principle, the court held that both LAFE's retroactive cancellation of Mr. Roa's health insurance and its submission to unemployment that Ms. Roa was terminated for misconduct could form the basis for LAD retaliation claims. The court reinstated Mr. Roa's claim as it was filed within the two year statute of limitations period from the date he discovered his health insurance was cancelled. As to his wife, the court held that her claim was not timely because she did not file suit within two years after she was denied unemployment benefits which was when she knew or should have known that LAFE claimed that she was terminated for misconduct.

This decision emphasizes the broad remedial application of LAD. With the exception of reference policies, many employers do not have policies regarding post-termination actions. To assist in preventing and defending against post-termination retaliation claims, we encourage employers to adopt policies and procedures on post-termination actions and to monitor those actions to ensure compliance with those policies.

For more information about this ruling, contact Leslie A. Lajewski or Steven J. Luckner.

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