

## Are punitive damages available in a N.J. whistleblower suit?

Written by Australian Business

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September 06, 2013 /**24-7PressRelease**/ -- The term "whistleblower" has been in the news plenty as of late. Between the sentencing of Bradley Manning and the saga of Edward Snowden, the word has shown up in news stories, blogs and op-ed pieces. Whistleblowers are those who report on wrongdoing, misconduct, illegal activity or threats to public interest or health. People who act as whistleblowers are protected by state and federal laws. In fact, whistleblower lawsuits are on the rise; the Department of Justice recovered over \$3 billion in settlements and judgments under the federal False Claims Act in 2012 alone.

In New Jersey, there are laws relating to the rights of employees who engage in protected whistleblowing activity. One of these, the Conscientious Employee Protection Act prohibits an employer from retaliating against an employee if the employee discloses or provides certain information that is statutorily protected. An employee who is fired in retaliation for whistleblowing is entitled to compensatory and punitive damages if the employee successfully files suit against the employer. However, there are requirements that must be met in the courtroom in order for an award of such damages to stand. A recent [whistleblower retaliation](#) case before the New Jersey Supreme Court, *Longo v. Pleasure Productions, Inc.*, focused on those requirements.

### The Longo decision

Earlier this year, the New Jersey Supreme Court heard a case involving a jury's decision to grant punitive damages against an employer which was found to have violated the CEPA. There, a woman claimed her employment was terminated by her employer after she reported acts of sexual harassment and intimidation by a coworker to her supervisors. She filed a suit under the CEPA against her former employer and several former co-employers, including the co-worker who had harassed and intimidated her and some of whom constituted upper management. A jury found that the woman proved her case against some defendants and awarded her economic loss damages in the amount of \$120,000 and \$30,000 in damages for emotional distress.

The court then turned to the issue of punitive damages, which are meant to punish defendants and prevent the same conduct in the future. The trial court gave instructions to the jury about how the jury members were to make their decision. Since this was a CEPA action, the judge should have instructed the jury that punitive damages were only available against an employer if there was actual participation in, or willful indifference to, the retaliatory action by the upper management of the employer. The jury awarded \$500,000 in punitive damages, and the defendants appealed based on the incorrect jury instructions.

The Supreme Court found that the jury instructions were in error in that the lower court should

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have provided a definition of upper management to the jury. In addition, the judge should have told the jury it could award punitive damages only if the jury found that the upper management employees' conduct was especially egregious, showing wanton and willful disregard for the rights of the plaintiff; it would not be enough if their acts amounted to mere negligence. Based on the lack of the required instructions, the punitive damages award was overturned and sent back to the lower court for a new trial on the matter.

If you feel that your employer has retaliated against you for protected whistleblowing, you have rights under the law. Contact an experienced employment law attorney to learn more and discover if you have a viable case.

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