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EMPLOYER LAW BLOG

Missouri Appellate Court Concludes Whistleblower Law Protections Extend To Employees Reporting Coworker Misconduct

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The trial court had reached the opposite conclusion on what the Court of Appeals characterized as an issue of first impression in Missouri, but some factual and procedural background is in order to understand how and why this dispute and issue developed.

In this case, the plaintiff—Jimmy Yount ("Yount")—had worked for Keller Motors, Inc. ("Keller"). Yount alleged he was retaliated against and fired for reporting that his coworkers were stealing car parts from vehicles owned by Keller. Yount alleged he reported this theft to his supervisor at Keller, as well as Keller's owners, and a week later he was fired as a result.

The trial court concluded the WPA did not protect his conduct because he only reported misconduct of his coworkers, not Keller or its management. The trial court based its conclusion on the plain language of the WPA's definitions of "protected persons" and "employers." The trial court reasoned that these definitions only protected individuals reporting serious misconduct or unlawful acts *of employers themselves*—but not that of employees or coworkers.

The trial court pointed to the fact that the WPA defines "protected persons," in relevant part, as:

- "an employee of an employer who has reported to the proper authorities an unlawful act *of his or her employer*;" or
- "an employee of an employer who reports to his or her employer serious misconduct of the employer that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute."

(emphases added). And it further pointed to the fact that the WPA's definition of "employer" specifically excludes "an individual employed by an employer." One could reasonably expect that this would end the analysis. But the Court of Appeals disagreed.

In its opinion, the Court of Appeals acknowledged these definitions, but believed that their interplay created "uncertainty and confusion" as to who and what the WPA protects. In particular, the Court assumed "any misconduct or unlawful act of the employer necessarily would include the conduct of the employer's employees when the employer acts through its employees" and thus it would be "absurd" to conclude the WPA could not protect the reporting of coworker misconduct.

To avoid what it characterized as an "absurd" result, the Court looked to other sources to understand what the legislature intended the WPA to protect. It first noted that other states' decisions interpreted similar whistleblower laws to conclude that the WPA did protect reporting of misconduct of other employees, not just that of the employer or its management.

But then the Court looked at other provisions in the WPA and what it characterized as its "broad retention of the common-law exceptions to the at-will employment doctrine under Section 285.575.3." This statutory provision states, in relevant part: "[t]his section is intended to codify the existing common law exceptions to the at-will employment doctrine and to limit their future expansion by the courts."

Many practitioners have viewed this particular provision as evidencing an intent by the legislature to generally limit the WPA's applicability or coverage, in the wake of a variety of court decisions in Missouri over the years that seemed, from time to time, to create more whistleblower exceptions to at-will employment.

Nonetheless, the Court then pointed to some language in pre-WPA cases that generally suggested whistleblower protections could or would extend to reports of *other employees'* misconduct or unlawful acts. Given these decisions, the Court emphasized its view that the WPA codified all existing common law exceptions and principles that have developed in the case law over the years (including coverage of reports of coworker misconduct).

In so concluding, the Court thus distinguished the first half of Section 285.575.3—that is, the part codifying *existing* common law—with the second half of it—that is, the part limiting *future* expansion of its coverage. Given this distinction, the Court stressed its view that it was not creating *new* protections for employees, but was merely applying the statute as the legislature intended.

Only time will tell if the employer will try to appeal this decision to the Missouri Supreme Court (and whether the Missouri Supreme Court would hear it if requested). But for now, the takeaway from this case is that employers should be careful in how they handle and respond to any complaints or reports by its employees about other employees—regardless of their position in the company—committing serious misconduct or engaging in unlawful acts. In the aftermath of such reporting, any disciplinary or employment decisions must be handled with great care and circumspection.

In short, it would be a mistake for an employer to assume that it cannot be held liable in a situation where reports of unlawful acts or serious misconduct only concerned other employees and not a member of management. If you are facing such circumstances, do not hesitate to reach out to a member of the Labor & Employment Team here at Sandberg Phoenix to make sure you are managing them appropriately.