

Press Release from the New Jersey Work Environment Council (WEC)

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27 Environmental, Labor, and Community Organizations Ask N.J. Supreme Court to Uphold State's Whistleblower Law That Protects Employees Who Report Violations Affecting Public Safety, Health, Environment, and Financial Security

The N.J. Supreme Court has been asked by 27 environmental, labor, and community organizations representing more than half a million New Jerseyans to uphold the state's whistleblower law that protects employees from employer retaliation when they report violations of the law.

In a friend of the court brief <http://www.njwec.org/legal-brief-lippman.cfm> the groups cite multiple cases in which employees have been protected by the courts under the Conscientious Employee Protection Act (CEPA). This makes it more likely that employees will report without fear of retaliation violations affecting public safety and health, the environment, and financial security of individual households and businesses.

Corporate interests, including the N.J. Business and Industry Association and the N.J. Employers Association, have filed their own briefs asking the state Supreme Court to effectively repeal the law by establishing new restrictions on CEPA's coverage that the legislature did not write into the legislation itself.

Under the corporations' legal theory, any employee who detects unsafe or unethical practices *in the course of their job duties* would not have whistleblower protection under CEPA. Corporate executives could then write the responsibility to report violations into every employee's job description, effectively removing CEPA protection from all employees.

The public interest groups' friend of the court brief points out that no such restriction exists in the law and asks the State Supreme Court to clearly place the burden of proof on employers to show that they did not fire or take other action against an employee in retaliation for whistleblowing.

"Our whistleblower law doesn't just protect employees," said Rick Engler, director of the N.J. Work Environment Council (WEC), a coalition of labor, environmental, and community groups. "It protects all of us by making it more likely that violations that affect the public will be reported. Responsible employers should support this public interest law, instead of looking for a backdoor way to essentially repeal it."

"The company I work for is just one of many that require all their employees to report hazards and releases," said John Pajak, vice president of Teamsters Local 877 who works at the Phillips 66 refinery in Linden. "Under the convoluted theory that corporations want the State Supreme Court to adopt, that would set up every employee to lose their whistleblower protection, and that's not good for anybody."

The N.J. Supreme Court will be considering two conflicting Appellate Division decisions, *Lippman v. Ethicon* and *Massarano v. NJ Transit*. *Lippman* rejected the corporate legal theory gutting the law, while *Massarano* accepted that theory, outlining new restrictions on whistleblowers that are not found in CEPA. The State Supreme Court is expected to consider the issue this fall.

In the *Massarano* case, the Appellate Division ruled that a security operations manager for a N.J. Transit contractor had no whistleblower protection even though she was fired for reporting security breaches that could have made the system vulnerable to attack. The court decision said she was “merely doing her job.” A subsequent ruling in *White v. Starbucks* denied whistleblower protection to a Starbucks district manager who was forced to resign after reporting to supervisors about unsanitary conditions, food not being refrigerated properly, and violations of wheelchair access laws. Based on the *Massarano* precedent, the Appellate Division said reporting such violations was part of the manager’s job and therefore not protected by the state whistleblower law.

“It stands the intent of the law on its head to say that employees who see legal violations in the course of their job somehow should get less protection,” said Bennet Zurofsky, one of the attorneys who filed the brief on the public interest groups’ behalf. “They are the whistleblowers who need the most protection, and the burden should be on employers to show retaliation did not occur.”

“At stake is whether CEPA will remain a viable statute,” said Andrew Dwyer, the other attorney who prepared the brief. “If the statute is judicially amended to provide that an employee is not protected if her complaints fall within her regular job duties, then employees who are best positioned to identify and object to illegal or dangerous practices will put their jobs at risk if they complain.”

“At a time when public agencies often don’t have enough resources to effectively enforce laws, whistleblowers play a crucial role in identifying hazards and getting them corrected,” said Rev. Fletcher Harper, executive director of GreenFaith, a group that unites people of diverse religious faiths on environmental issues. “They are the community’s eyes and ears on the job, and they must not be silenced.”

“Every health care worker has a responsibility to report violations that affect patient safety,” said Bernie Gerard, vice president of Health Professionals and Allied Employees (HPAE), the state’s largest health care union. “Removing whistleblower protection would be a huge blow to quality patient care throughout N.J.”

"This is a backdoor legal attempt by business interests to gut whistleblower protections," said Doug O'Malley, director of Environment New Jersey. "Employees are the eyes and ears to observe environmental wrongs -- they should not be silenced."

“As consumers, homeowners, small business operators, taxpayers, and community residents, we all have a stake in an effective whistleblower law in our state,” said Phyllis Salowe Kaye, executive director of N.J. Citizen Action, the state’s largest citizen watchdog coalition. “We’re counting on the State Supreme Court to reject this outrageous attack on the law by big corporations.”

The organizations submitting the friend of the court brief to the N.J. Supreme Court are the American Federation of Teachers-NJ; Burlington County Central Labor Council; CATA - The Farmworker Support Committee/El Comite de Apoyo a los Trabajadores Agricolas; Clean Water Action New Jersey; Communications Workers of America District 1; Concerned Citizen Coalition of Long Branch; Delaware Riverkeeper Network; Environment New Jersey; GreenFaith; Hackensack Riverkeeper; Health Professionals and Allied Employees AFT; International Brotherhood of Teamsters Local 469; International Brotherhood of Teamsters Local 877; National Employment Lawyers Association/New Jersey; New Jersey Citizen Action; New Jersey Education Association; New Jersey Environmental Lobby; New Jersey Public Interest Research Group; New Jersey State Industrial Union Council; New Jersey State Laborers Health and Safety Fund; New Jersey Work Environment Council; New Labor; NY/NJ Baykeeper; Public Employees for Environmental Responsibility; Raritan Headwaters Association; United Steelworkers District 4; and Utility Workers Union of America Local 534.