

# Client Alert

A report  
for clients  
and friends  
of the firm

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## New Jersey Legislation Enhancing Scope of Whistleblower Law and Toughening Its Remedies May Soon Become Law

The New Jersey Senate recently passed Senate Bill 1886, which would expressly provide that Enron-type internal fraud is covered by the Conscientious Employee Protection Act ("CEPA"), otherwise known as the Whistleblower Law. CEPA prohibits an employer from retaliating against an employee who: (1) discloses or threatens to disclose to a supervisor or public body conduct that the employee reasonably believes violates a law, or a rule or regulation promulgated pursuant to law; (2) provides information to or testifies before public bodies regarding such conduct; or (3) objects to or refuses to participate in an activity, policy or practice the employee reasonably believes violates a law, rule, regulation or public policy, or is fraudulent or criminal.

The proposed amendment, as noted in the accompanying statement by the bill's sponsor, is intended to "enhance" the scope of CEPA by specifically providing that protected whistleblowing activity includes disclosing, objecting to, or refusing to participate in "any violation [of law, rule or regulation] involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity." Similarly, the amendment would expressly protect any employee providing information or testimony to a public body investigating such a violation, or who blows the whistle on "fraudulent or

criminal" conduct that involves "any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity." The amendment would also protect employees who disclose, or threaten to disclose, fraudulent or criminal conduct to a supervisor or public body, and not just for objecting to or refusing to participate in such conduct as under the present law.

The new legislation would also strengthen the remedy provisions of CEPA. The bill exempts CEPA claims from the Punitive Damages Act ("PDA") provision limiting such damages to \$350,000 or five times the amount of compensatory damages, whichever is greater. Discrimination claims are already included in the exemptions from the PDA cap on damages. In addition, the legislation would require a punitive damage award to include consideration of the amount of compensatory damages to be awarded to the employee, as well as any damage caused to shareholders, investors, clients, patients, customers, employees, former employees, retirees or pensioners of the employer, or to governmental entities or the public as a result of the employer's wrongful activities, policies or practices.

Other provisions would make it mandatory, rather than optional as under the current law, to order injunctive relief, reinstatement, compensatory damages and attorneys' fees for CEPA violations "where appropriate and to the fullest extent possible." Civil fines would also increase from \$1,000 to \$10,000 for first-time offenders and from \$5,000 to \$20,000 for each additional violation, which may be imposed by the court or a jury.

Current reports are that Assembly Bill 764, which mirrors S-1886, seems likely to pass. If so, the legislation is expected to be signed into law by Acting Governor Richard Codey, who posted and voted for the Senate bill when he was Senate Majority Leader.

**EDITORIAL COMMENT:**

If this amendment is enacted, employers can expect more whistleblowing suits involving allegations of internal fraud or misconduct. The courts will then have to determine whether, by “enhancing” CEPA in this manner, the bill is an expansion of rights, or merely a clarification of existing law. Some plaintiffs’ lawyers are predicting that the law will enlarge protection for blowing the whistle on private internal disputes. Even under the new language, however, it appears that an employee’s whistleblowing must still relate to a violation of a law, rule or regulation, or something that is fraudulent or criminal, and not merely any “deception or misrepresentation.” If an employer is found guilty of retaliating against an employee for Enron-like internal misconduct, the potential for substantial punitive damages in such cases would certainly be “enhanced.”

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