

Court Precludes Parallel Cause of Action Where CEPA Violations Are Plead

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On January 30, 2018, the U.S. District Court for the District of New Jersey granted Defendant Public Service Electric & Gas Co.'s motion to dismiss a New Jersey common law wrongful termination claim in a whistleblower retaliation suit after finding that once discovery closes, a plaintiff may not continue pursuing a wrongful termination claim under both common law and New Jersey Conscientious Employee Protection Act (CEPA). See *Hrinuk v. Public Service Electric & Gas Co.*, No. 2014-cv-00988 (unpublished).

Plaintiff allegedly reported to management that he was “forced and directed to sign off on work that he had not actually inspected” and improperly “charge repairs to capital accounts.” Plaintiff claimed that after reporting the alleged inspection practices, he was wrongfully terminated. Shortly thereafter, he filed suit alleging wrongful termination under CEPA and common law.

When discovery in the case closed, Defendant moved to dismiss the common law wrongful termination claim, arguing that, pursuant to a “waiver” provision in CEPA, when a plaintiff brings a suit under the statute, he or she is waiving other rights and remedies available in “contract, collective bargaining agreement, State law, rule or regulation or under the common law.” N.J. Stat. Ann. Section 34:19-8. Plaintiff responded that he should be permitted at the summary judgment stage to elect between moving forward with a CEPA claim or any other claim. The court disagreed, determining that the waiver provision under CEPA activates at the close of discovery and, at that time, bars other causes of action that are based on the same conduct upon which the CEPA claim is based.

This decision benefits employers faced with complaints alleging multiple wrongful termination theories—including CEPA violations—as it enables them to put plaintiffs to an election when discovery closes.

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- **Steven J. Pearlman**
Partner