

United States Supreme Court Signals No Protection For Whistleblower Who Flags Problems As Part of Normal Job Duties

The case is Bradley v. West Chester Univ. of the Pa. State Sys. Of Higher Educ., No. 17-1677 (2018).

The United States Supreme Court recently declined to hear a case involving alleged retaliation against a whistleblower at a public university, suggesting that employees who report problems to their employer as part of their normal job duties do not engage in “protected activity” sufficient to trigger protection from retaliation.

WHAT YOU NEED TO KNOW

The United States Court of Appeals for the Third Circuit dismissed a case brought by a former West Chester University employee who was terminated from her position after she reported alleged manipulations of university budgets and enrollment figures to increase state funding. The employee worked as Director of Budget and Financial Planning. She claimed that she was entitled to First Amendment protection against retaliation for reporting the alleged wrongdoing. Since her supervisor had told her not to speak out about her budgetary concerns, the former employee argued that her reports to the Enrollment Management Committee were not within the scope of her job. The Court disagreed, instead finding that the former employer was acting within her official duties, and was therefore not insulated from discipline. The Court held that she was speaking within her chain of command and was responding, in her official capacity, to a direct question by a member of the Enrollment Management Committee.

Earlier this month, the United States Court of Appeals for the Eleventh Circuit reached an opposite result in the private sector, holding that an HR employee engaged in “protected activity” when she voiced her opposition while supporting a colleague seeking human resources advice.

Although each case arises in a different context and under different statutory frameworks, the Supreme Court’s refusal to intervene may signal that the high court supports a narrower construction of protected activity in the whistleblower context.

WHAT YOU NEED TO DO

Whether someone who complains about perceived problems or issues which fall directly within his or her work responsibilities has engaged in protected activity is one of the most vexing questions in the area of whistleblower law. The Courts are divided on the issue, and the answer can depend on what jurisdiction one is in or what statute is implicated. As the landscape becomes increasingly unsettled, employers should tread carefully before taking any adverse action against a potential whistleblower even if the concerns raised by said individual are within the contours of his or her job duties. Counsel can advise on how various factors, such as private versus public sector, jurisdiction, and legal framework, may influence the best course of action. Additionally, employers should consult with counsel to confirm that their own internal reporting procedures and investigation protocols are adequate under existing laws.

FOR MORE INFORMATION

If you have questions about these developments, please contact Greg Keating, chair of the Whistleblower Defense and Labor, Employment and Benefits Practice Groups, or one of the following attorneys.

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