

NEW JERSEY SUPREME COURT GIVES GUIDANCE ON RETALIATION CLAIMS UNDER THE LAD

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On February 21, 2007, the New Jersey Supreme Court issued its decision in Carmona v. Resorts International Hotel, Inc., an appeal of a matter in which an employee claimed he was retaliated against in violation of the Law Against Discrimination (LAD) after he complained about unfair treatment. Although Resorts was found liable at the trial court level, Resorts appealed and the Appellate Division reversed the lower court. Plaintiff appealed to the Supreme Court. Specifically, the Supreme Court addressed two issues: 1) whether the employee's complaint that triggers an alleged retaliation claim must be made in good faith and on a reasonable basis; and 2) whether an investigative report prepared by the employer, which the employer claims provided an independent basis for the employee's discharge, should have been admitted into evidence.

The Court held that, in a case alleging retaliation under the LAD, the plaintiff bears the burden of proving that his or her original complaint was made reasonably and in good faith. In other words, an unreasonable, frivolous, bad-faith or unfounded complaint cannot satisfy the statutory prerequisite necessary to establish liability for retaliation under the LAD. The LAD cannot protect one who files a complaint solely in anticipation of an adverse employment action by the employer. The LAD was and is intended to serve as a shield to protect employees from the wrongful acts of their employers, and not as a sword to be wielded by a savvy employee against his employer.

Next, the Court ruled that when an employer defends against a claim alleging that an employee's discharge was the product of retaliation, an investigative report prepared by the employer that purports to demonstrate a non-retaliatory reason for the employee's termination is a non-hearsay statement.

Recommendations

Employers must consistently document performance issues. Employers will now have a defense to a retaliation claim if they can demonstrate that the claim was not brought in good faith or in an attempt to avoid an adverse employment action.