

New Jersey Appellate Division Holds “Watchdog Employees” Can Bring CEPA Claims

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In *Lippman v. Ethicon, Inc.*, No. A-4318-10T2 (N.J. App. Div., Sept. 4, 2013), the New Jersey Appellate Division held that a pharmaceutical employee hired to be a watchdog—his job was to bring forth issues regarding the safety of company drugs and products—can be a whistleblower under New Jersey’s Conscientious Employee Protection Act (CEPA) simply by virtue of doing his job. Conceding its ruling was a departure from prior Appellate Division jurisprudence, the court set forth a new test to establish a *prima facie* cause of action under CEPA for such “watchdog” employees: “First, the employee must establish that he or she reasonably believed that the employer’s conduct was violating either a law, government regulation, or a clear mandate of public policy. Second, the employee must establish that he or she refused to participate or objected to this unlawful conduct, and advocated compliance with the relevant legal standards to the employer or to those designated by the employer with the authority and responsibility to comply. To be clear, this second element requires a plaintiff to show he or she either (a) pursued and exhausted all internal means of securing compliance; or (b) refused to participate in the objectionable conduct. Third, the employee must establish that he or she suffered an adverse employment action. And fourth, the employee must establish a causal connection between these activities and the adverse employment action.”

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