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California, Ethics / Whistleblower, State Developments

California Supreme Court Extends Whistleblower Protections Again

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On May 22, 2023, the Supreme Court of California answered the following question in ***People ex rel. Garcia-Brower v. Kolla's, Inc.***, S269456:

"Does Labor Code section 1102.5(b), which protects employees against retaliation for 'disclosing information' about suspected violations of the law to their employer or a government agency, encompass a report of unlawful activities made to an employer or agency that already knew about the violation?"

In a unanimous opinion, the court concluded that an employee's disclosure about suspected violations of the law to their employer or a government agency *is* protected whistleblowing activity under California's Labor Code, even when the disclosure relates to information already known by the employer or a government agency.

Quick Hits

- The Supreme Court of California held that an employee is protected under California's whistleblower statute, even when the employee reports information already known by the employer or a government agency.
- The court noted that California's whistleblower statute is in accord with the federal Whistleblower Protection Act.

Background and Court's Holding

In *Kolla's, Inc*., the employee-bartender complained to the owner of the nightclub where she worked that the nightclub owed her unpaid wages. In response, the California Supreme Court stated, "her employer fired her, threatened to report her to immigration authorities, and told her never to return to the nightclub."

The employee-bartender filed a complaint with the California Department of Industrial Relations' Division of Labor Standards Enforcement, which found that the nightclub owner's threats and termination of the bartender's employment violated several Labor Code provisions. The Labor Commissioner then filed an action against the employer under Labor Code section 1102.5(b), which prohibits employers from retaliating against employees for "disclosing information" about suspected violations of the law to their employers or a government agency.

The trial court and court of appeal ruled against the commissioner on the Section 1102.5(b) claim. The court of appeal concluded that a "disclosure" of information required "the revelation of something *new*, or at least believed by the discloser to be

new, to the person or agency to whom the disclosure is made." (Emphasis added). The bartender, however, had not disclosed anything to the owner that the owner already did not know.

The California Supreme Court, however, disagreed and overruled the court of appeal. The majority opinion explained that it was undisputed that the California Labor Code prohibited the employer's conduct. The court rejected the lower courts' limited reading of "disclosure" and reasoned that although the word "disclosure" sometimes "refers to sharing previously unknown information," it "does not require that the [information] be unknown to the current recipient." The California Supreme Court concluded that the legislative history of section 1102.5(b) supported a broad reading of "disclose."

The court further noted that California's whistleblower statute is in accord on this issue with the federal Whistleblower Protection Act, which protects the disclosure of information regardless of whether the recipient already is aware of it. The court reaffirmed that employers may rebut claims of retaliation but only if they demonstrate "by clear and convincing evidence that the alleged [retaliatory] action would have occurred for legitimate, independent reasons" regardless of the employee's protected activity.

Key Takeaways

The landscape of whistleblower retaliation litigation in California continues to shift in employees' favor. Now, more than ever, employers may want to proceed with caution, given that California's whistleblower statute protects employees even if they report widely known violations of local, state, or federal law, or disclosures previously reported by other employees.

Ogletree Deakins will continue to monitor developments and provide updates on the **California** and **Ethics / Whistleblower** blogs.