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NOVEMBER 2004

NJ whistleblowing cases have more than doubled over the past three years and are expected to rise once employees are notified of their whistleblowing rights.

## **Hear The Whistle Blow** New Jersey Employers Must Annually Distribute Summaries of Employee Rights Under the State's Whistleblower Protection Statute

By David I. Rosen and Jessica S. Boar

Under recently enacted legislation, New Jersey businesses employing more than 10 employees must annually distribute to their employees a written or electronic summary of their rights and protections under New Jersey's "whistleblower" statute, entitled the Conscientious Employee Protection Act (CEPA). The new law became effective September 14, 2004, and is codified at N.J.S.A. 34:19-17.

The CEPA-mandated summary must be written in English, Spanish and, if a majority of the employer's employees speak a different language, in that other language as well. The summary also must contain the name of the person or persons whom the employer has designated to receive written notification of any policies or practices that an employee believes violates the law. The summary distribution requirement is in addition to an employer's current obligation to conspicuously post in the workplace a notice of CEPA's provisions. An employer who fails to post and distribute the required summary may face a civil fine of up to \$1,000 for the first violation and up to \$5,000 for any additional violations.

CEPA, enacted in 1986, prohibits retaliatory action against an employee who discloses an activity that the employee reasonably believes is in violation of the law or provides information to a public body conducting an investigation into a violation of law. The statute's protection also extends to an employee who objects to or refuses to participate in any activity which the employee reasonably believes violates a law, is fraudulent or criminal, or is incompatible with a clear mandate of public policy

concerning the public health, safety or welfare or protection of the environment.

This new legislation was passed in the wake of the Enron and WorldCom scandals that lead to the passage of the Sarbanes-Oxley Act in 2002. Sarbanes-Oxley granted federal statutory protection to employees of publicly-traded companies who provide information about actions that they reasonably believe violate federal securities law. Because CEPA applies to public and private companies alike, it provides additional protection to employees who may, or may not, be covered by the federal statute. This may explain why, according to a recent *New Jersey Law Journal* article, CEPA cases have more than doubled since 2001. CEPA filings can reasonably be expected to increase as a result of employer compliance with the new law's summary distribution mandate.

In light of this new legislation, employers conducting business in New Jersey should take immediate steps to distribute a legally compliant summary of their employees' rights under CEPA, and should repeat this process annually. New Jersey employers should also designate and train an individual to receive all CEPA-related allegations, ensure that all reported CEPA allegations are promptly investigated, and take appropriate, corrective action whenever warranted.

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