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California Supreme Court Holds That Whistleblower Statute Protects Employees Who Disclose Illegal Conduct Already Known To The Recipient

Client Alert | May 22, 2023

Decided May 22, 2023 ***People ex rel. Garcia-Brower v. Kolla's, Inc.*****, S269456 The California Supreme Court held today that Labor Code section 1102.5(b), which protects an employee from retaliation for disclosing unlawful activity to an employer or government agency, encompasses reports of information already known to the recipient. Background:** A bartender at a nightclub in Orange County complained to the club's owner that she had not been paid for her previous three shifts. In response, the owner threatened to report the bartender to immigration authorities and terminated her employment.

The bartender filed a complaint with the Division of Labor Standards Enforcement, which found that the nightclub owner's threats and termination of the bartender's employment violated several provisions of the Labor Code. The Labor Commissioner then filed an action 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," but the bartender had not disclosed anything the owner did not already know.

Issue: 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? **Court's Holding:** Yes. Labor Code section 1102.5(b) protects employees from retaliation for disclosing unlawful activity to employers or agencies whether or not the recipients already know about the unlawful activity. 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 Court concluded that the legislative history of section 1102.5(b) supported a broad reading of "disclose."

> *"Although the word 'disclose' often refers to sharing previously unknown information, the word also means bringing into view in a particular context a type of information to which the discloser tends to have special access."*

Justice Liu, writing for the Court

What It Means:

Related People

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- California's whistleblower statute is now in accord on this issue with the federal Whistleblower Protection Act, which Congress amended to protect the disclosure of information regardless of whether it is already known to the recipient.
- Employees are protected under California's whistleblower statute even if they report widely known violations of local, state, or federal law, or disclosures previously reported by other employees.
- The Court reaffirmed that employers may rebut claims of retaliation if they demonstrate, by clear and convincing evidence, that the alleged retaliatory action would have occurred for legitimate reasons independent of the employee's protected activity.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice leaders:

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