

The Current State of Whistleblower Protections in Connecticut

Working Together

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In the employment context, a “whistleblower” is an employee who discloses the illegal practices of his employer, usually by a report or complaint to a public authority. There are a variety of statutory protections for whistleblowers, and the current legislature is contemplating an expansion of these protections.

Oddly, the initial legal protection for whistleblowers in private employment was crafted by the courts rather than the legislature. In the seminal case of *Sheets v. Freddy’s Frosted Foods, Inc.*, 179 Conn. 471 (1980), the Connecticut Supreme Court recognized that an otherwise at-will employee could sue his employer on a claim of wrongful discharge if he was fired for a reason that violated the public policy of the state, such as reporting to the company’s board of directors that the company was violating regulations related to labeling of food products. In other words, Mr. Sheets was an “internal” whistleblower whose efforts to obtain regulatory compliance by the company were protected by law.

A few years later, the legislature enacted Public Act 82-289, entitled “Protection of employee who discloses employer’s illegal activities or unethical practices.” Codified as Connecticut General Statute section 31-51m, this law prohibits discrimination against an employee who reports violations of state or federal law or regulation to a public agency; that is, who is an “external” whistleblower. Section 31-51m authorizes the employee to bring a civil lawsuit, although the statute is notable for having a very short statute of limitations – only 90 days.

State employees and employees of large state contractors have their own whistleblower protective statute, Conn. Gen. Stat. section 4-61dd. There is another special statute for whistleblowers employed by health care facilities, Conn. Gen. Stat. section 19a-498a. Similarly, whistleblowers working for publicly-traded companies are specially protected under both state law, Conn. Gen. Stat. section 33-1336, and the federal law known as the Sarbanes-Oxley Act (often referred to as “SOX”).

Now the Connecticut legislature is contemplating an expansion of the general whistleblower protection for private sector employees currently contained in Section 31-51m. If enacted, the new Section 31-51m would apply to internal whistleblowers (those who report suspected illegal activities to supervisors or managers) as well as those who report to public agencies. It would also lengthen the statute of limitations to 180 days, and specify the types of damages available to a successful litigant.

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One unanswered question arising from the proposed amendment to Section 31-51m is the status of the common law right for a wrongful discharge lawsuit recognized in the Sheets case. As a general principle, if a statute is available to address a violation of legal rights, common law claims no longer apply. Would the revised Section 31-51m supersede the Sheets cause of action, and thereby reduce the present three-year statute of limitations for common law claims to 180 days? A shorter statute of limitations will ordinarily work in favor of employers, but this question will ultimately have to be answered by the courts.

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