

Employee Motivation For Making a Whistleblower Claim Is Not Relevant Under WPA, MSC Rules

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An employee's motivation for making a whistleblower claim is not relevant to his lawsuit under the Whistleblower Protection Act (WPA), the Michigan Supreme Court ruled in *Whitman v. City of Burton* on May 1. The Court clarified its decision in *Shallal v. Catholic Social Services of Wayne County*, which had long been interpreted by lower courts as requiring that an employee's primary motivation behind engaging in protected activity under the Whistleblower's Protection Act ("WPA" or "the Act") be a desire to inform the public on matters of public concern, rather than personal vindictiveness.

In *Whitman*, the former City of Burton police chief filed a WPA lawsuit after the mayor decided not to reappoint him. The police chief alleged that the reason he was not reappointed was because he had complained on multiple occasions to the mayor and the city attorney that the City's refusal to pay him for unused vacation, personal and sick time violated a City ordinance. The police chief prevailed at trial and was awarded \$232,500 in damages. The City appealed.

The Michigan Court of Appeals reversed the decision, finding that the police chief's claim failed because his primary motivation was to advance his own financial interests – not a matter of public concern.

The Supreme Court, however, disagreed, stating that nothing in the WPA addresses the employee's motivation for engaging in protected conduct, nor does any language in the Act mandate that the employee's primary motivation be a desire to inform the public on matters of public concern. Therefore, the proper interpretation of the Act is that a plaintiff's motivation is not relevant to the issue of whether the person engaged in protected activity nor is proof of primary motivation a prerequisite to bringing a WPA claim.

The Court also clarified its holding in *Shallal*, explaining that the reason that the plaintiff could not prevail in that case was because she only engaged in protected activity under the WPA in order to insulate herself from termination. As a result, no reasonable juror could find that her protected activity was causally connected to her firing, which a plaintiff must prove to be successful under the WPA.

What Does This Mean for Employers?

Employers can no longer have a reasonable expectation of winning a WPA lawsuit simply because the employee's whistleblower complaints may have been motivated by personal gain. If a plaintiff can demonstrate a causal connection between the protected activity and the adverse employment action, his or her subjective motivation is irrelevant. Consequently, employers must be very careful not to take adverse actions against employees because they have engaged in protected activity under the WPA – regardless of the reason why.