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California Supreme Court Heightens Employers' Burden for Defending Whistleblower Claims

The California Supreme Court set a new, more employee-friendly, evidentiary standard for whistleblower retaliation claims. In *Lawson v. PPG Architectural Finishes, Inc.*, the Court held Labor Code section 1102.6, not the *McDonnell Douglas* test, provides the appropriate framework for evaluating whistleblower retaliation claims brought under Labor Code section 1102.5. Because of this, employers will have to meet a higher burden to show by clear and convincing evidence that they did not retaliate based on the employee's alleged whistleblower activities.

Under Labor Code section 1102.6, the employee plaintiff carries the initial burden to show by a preponderance of evidence that the employee's protected activities was a contributing factor in an adverse employment action. If the employee makes this showing, the burden shifts to the employer to establish by clear and convincing evidence -- a more burdensome standard of proof -- that the alleged adverse employment action would have occurred for a legitimate, independent reason even if the employee had not engaged in protected whistleblowing.

Previously, courts applied the *McDonnell Douglas* framework to whistleblower claims, which requires the employee to prove that (1) they engaged in protected activity; (2) they were thereafter subjected to an adverse employment action; and (3) the two events are causally linked. Once the employee can establish this "prima facie" case, the burden shifts to the employer to present evidence of a legitimate, nondiscriminatory business reason for the adverse employment action. The burden then shifts back to the employee to prove that the employer's proffered reason was pretextual for retaliation.

The Supreme Court's decision provides employees now with a lower burden under Labor Code 1102.6 to prove alleged whistleblower retaliation claims under the Labor Code, while heightening the employer's burden to show by clear and convincing evidence that the adverse employment action happened for non-retaliatory reasons. It also converts the burden of persuasion to the employer rather than the employee, where it previously lied under the *McDonnell Douglas* framework.

Employers should take note of this employee-friendly decision and evaluate their anti-retaliation policies and procedures. Ensuring employee complaints are handled in a uniform and consistent

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manner as well as providing anti-retaliation training can bolster an employer's defense should a whistleblower claim arise. For more information and help on how to tackle the latest developments in California employment law, contact a Stokes Wagner attorney.

Please contact us if you have any questions.

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