

## Non-Economic Damages Recoverable Under Pennsylvania Whistleblower Law

On March 27, 2018, the Pennsylvania Supreme Court unanimously ruled that noneconomic damages for injuries such as humiliation and mental anguish are recoverable for whistleblowers harmed in violation of Pennsylvania's Whistleblower Law. *See Bailets v. Pa. Turnpike Comm'n*, No. 126 MAP 2016 (Pa. March 27, 2018). In addressing an issue of first impression, the Supreme Court ruled that the Pennsylvania General Assembly intended to include recovery for these injuries when outlining that the statute permitted a successful claimant to recover "actual damages." While examining the legislature's intent, the court noted that the law is primarily a "remedial measure" designed "to protect whistleblowers who come forth with good faith reports of wrongdoing." Accordingly, the court determined that the law's provisions must be liberally construed to effect its statutory remedial object.

Pennsylvania's Whistleblower Law, 43 P.S. § 1421 *et seq.*, is not strictly limited to public employers. Rather, it also protects employees harmed in retaliation for exposing wrongdoing by private employers that receive public funds. Therefore, the Supreme Court's decision could impact litigation for a significant number of Pennsylvania employers.

This case arose from claims brought by Ralph Bailets, a former financial reporting manager with the Pennsylvania Turnpike Commission (the Commission). During Mr. Bailets' employment with the Commission, he made several complaints about a consulting firm with multiple contracts with the Commission. Eventually, Mr. Bailets' position was eliminated for budgetary reasons.

Believing that he was terminated in retaliation for his reports of wrongdoing and waste, Mr. Bailets filed a whistleblower complaint in the Commonwealth Court, which had original jurisdiction over the claim. The Commission denied the allegations outlining that Bailets was terminated, along with 14 other employees, in an organization-wide effort to reduce expenses.

After a four-day non-jury trial, the Commonwealth Court concluded that Bailets met his burden of proving he made a good faith report of the Commission's wrongdoing and waste and that the Commission fired him in retaliation for making the report. In determining damages, the Commonwealth Court awarded Mr. Bailets a total of \$3.2 million in damages, with half representing economic damages and half representing non-economic damages for harm to his reputation, humiliation, and mental anguish. The Commission appealed to the Pennsylvania Supreme Court arguing Bailets was not entitled to an award of non-economic damages pursuant to Pennsylvania's Whistleblower Law.

In rejecting this argument and granting Bailets \$1.6 million in non-economic damages, the Supreme Court looked to the context in which the phrase "actual damages" appears in the Whistleblower Law and determined that if the term actual damages was limited to only economic losses, the phrase would be "practically superfluous," and ignore "the long-held understanding that actual damages are synonymous with compensatory damages which, of course, include damages for actual loss." Lastly, the court also acknowledged its previous determination in *O'Rourke v. Dep't of Corrections*, 778 A.2d 1194, 1202 (Pa. 2001), that "a whistleblower must be put in no worse a position for having reported the wrongdoing." Accordingly, the court held, consistent with this precedent, that damages for non-economic losses, such as humiliation, embarrassment, loss of reputation, and mental anguish, are recoverable under the law.

Accordingly, Pennsylvania employers who receive public funds should be aware of this case, as it may expose them to suits that were not previously viable and increase the potential liability for whistleblower claims.



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