

# NEW YORK'S COURT OF APPEALS MAKES IT EASIER TO PLEAD WHISTLEBLOWER LAW CLAIMS

*Employers' Advisor Blog Archives*  
May 22, 2014

In a decision handed down last week, New York's highest court ruled that a whistleblower need not plead the specific "law, rule or regulation" the employer allegedly violated to state a cause of action under New York's whistleblower statute. The Court of Appeals' decision in *Webb-Weber v. Community Action for Human Services, Inc.* likely means that more whistleblower claims will be able to survive the motion to dismiss stage and can proceed to the discovery stage, which can be expensive and time consuming.

By way of background, New York Labor Law § 740, commonly referred to as the "whistleblower statute," prohibits an employer from retaliating against an employee who "discloses or threatens to disclose to a supervisor or public body an activity, policy, or practice of the employer that is in violation of the law, rule or regulation" that either "creates and presents a substantial and specific danger to the public health or safety, or...constitutes health care fraud." To prevail under this law — which applies to both private and public employers — a whistleblower must ultimately establish an actual violation of a law that created a "substantial and specific danger to public health or safety."

Wendy Webb-Weber was the former chief operating officer of a nonprofit that provided social services to the mentally and physically disabled. She registered a number of complaints with public agencies regarding her employer's policies and practices, including complaints about falsification of patient records, fire safety, and mistreatment of residents. Webb-Weber's complaints resulted in sanctions and violations levied by various public agencies. After she was terminated, she filed an action in state court asserting a whistleblower statute violation. Her complaint, however, did not cite the specific law that her employer allegedly violated.

The mid-level appellate court dismissed the whistleblower claim following other decisions dismissing complaints where the plaintiff had failed to identify a law, rule or regulation the employer had violated. But the Court of Appeals reinstated Webb-Weber's claim holding that for "pleading purposes, the complaint need not specify the actual law, rule or regulation violated, although it must identify the particular activities, policies or practices in which the employer allegedly engaged, so that the complaint provides the employer with notice of the alleged complained-of conduct."

As a result, the Court of Appeals overruled other appellate division opinions to the contrary and eased the plaintiff's burden at the pleading stage. The decision — as well as a [March 2014 U.S. Supreme Court decision](#) extending Sarbanes-Oxley whistleblower protections to employees of contractors and subcontractors of publicly traded companies — reinforces the need for employers to revisit their whistleblower policies and to promptly investigate and respond to claims. And, as entrepreneur and author Margaret Heffernan points out in a [recent article on Inc.com](#), whistleblowers can save companies time and money when treated properly.