

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

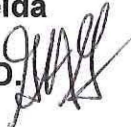
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DIRECTIVE # 04-17

[Supersedes Directive #09-09]

[Questions or comments may be directed to
(609) 376-3000]

TO: Hon. Carmen Messano
Assignment Judges
Hon. Patrick DeAlmeida

FROM: Glenn A. Grant, J.A.D. 

RE: Revised Judiciary Policy on the Conscientious Employee Protection Act (CEPA)

DATE: June 13, 2017

This promulgates the revised Judiciary policy on the Conscientious Employee Protection Act ("CEPA"), as adopted by the New Jersey Supreme Court, superseding the previously issued Directive #09-09. The following policy clarifies the reporting process, simplifies the language of the policy, and deletes provisions inapplicable to the Judiciary.

Judiciary Policy on the Conscientious Employee Protection Act (CEPA)

I. Authority

N.J.S.A. 34:19-1 et seq.

II. Applicability

This policy is applicable to all Judiciary employees and judges.

III. Definitions

Employee is any Judiciary staff member or judge who performs services for and under the control and direction of the Judiciary for wages or other remuneration.

Supervisor is any Judiciary employee who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective

action regarding an alleged violation of law, rule, regulation or public policy of which the employee complains.

IV. Policy

An employee has the right under the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 et seq., to complain about any workplace activity, policy or practice that the employee reasonably believes is in violation of a law, rule, or regulation promulgated pursuant to law.

The Judiciary shall not take any retaliatory action or tolerate any reprisal against an employee for any of the following:

- Disclosing or threatening to disclose to a supervisor, manager, or the Administrative Director of the Courts, or to any public body, an activity, policy or practice of the Judiciary or another employer, with whom the Judiciary has a business relationship, that the employee reasonably believes is in violation of a law, or a rule, or a regulation issued under the law or, in the case of an employee who is a licensed or certified health care professional, and who discloses or threatens to disclose information that he/she reasonably believes constitutes improper quality of patient care;
- Disclosing or threatening to disclose to a supervisor, manager, Administrative Director of the Courts, or to any public body, an activity, policy or practice of the Judiciary or another employer, with whom the Judiciary has a business relationship, that constitutes a fraudulent or criminal action, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud a client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
- Providing information to, or testifying before any public body conducting an investigation, hearing or inquiry into any violation of law, or rule or regulation issued under the law by the Judiciary or another employer, with whom the Judiciary has a business relationship, or, in the case of an employee who is a licensed or certified health care professional, and who provides information to, or testifies before any public body conducting an investigation, hearing or inquiry into quality of patient care; or
- Objecting to, or refusing to participate in any activity, policy, or practice that the employee reasonably believes:
 1. is in violation of a law, or rule or regulation issued under the law, including any violation involving deception of, or misrepresentation to any client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or if the employee is a licensed

or certified health care professional, and the activity, policy or practice constitutes improper quality of patient care;

2. is fraudulent or criminal, including any activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or
3. is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

V. Employee Complaint Procedures

An employee is protected against retaliation when he or she does the following:

- A. The employee brings the activity, policy, or practice that he or she reasonably believes is in violation of a law, rule or regulation immediately to the attention of the following Judiciary staff or managers¹:
 1. his or her supervisor or manager; or
 2. any Judiciary supervisor or manager; or
 3. the Judiciary staff member designated as the contact person on the annual notice provided to employees regarding CEPA protections and rights (Judiciary CEPA Contact); or
 4. the Administrative Director.
- B. The employee may make a CEPA complaint verbally or in writing.²
 1. Verbal CEPA Complaints: If an employee verbally informs a supervisor, manager or the Judiciary CEPA Contact of an employer activity, policy, or practice that is in violation of a law, rule, regulation or public policy, that supervisor/CEPA Contact should memorialize in writing the employee's complaint, and provide it to the employee and the Administrative Director as soon as possible, but no later than the next business day.
 2. Written CEPA Complaints: If an employee provides the CEPA complaint in writing to a supervisor, manager or the CEPA Contact, that supervisor/CEPA Contact shall accept the employee's written complaint, and shall transmit it to the Administrative Director as soon as possible, but no later than the next business day.

¹ CEPA also protects disclosures to any public body as defined in N.J.S.A. 34:19-2. Pursuant to N.J.S.A. 34:19-3, protected activity includes such disclosures to a federal, state or local public body (other than the Judiciary).

² Pursuant to N.J.S.A. 34:19-4, in most situations, in order for an employee to be protected from retaliation from disclosure of a Judiciary activity, policy, or practice that he/she reasonably believes is in violation of a law, rule, regulation or public policy to a public body, other than the Judiciary, the employee must first provide the Judiciary with a written complaint of the alleged violation, and then afford the Judiciary reasonable opportunity to correct the alleged activity, policy or practice.

VI. Action Taken on Each CEPA Complaint

Each CEPA complaint made by an employee shall be reviewed, and depending on the nature of the complaint, the Administrative Director may direct that the employee's complaint be investigated by Judiciary staff, by an outside consultant, or direct such other appropriate action or investigation. If the results of the investigation substantiate a violation of a law, rule, or regulation promulgated pursuant to law, the Judiciary will take corrective and/or disciplinary action.

No employee will be penalized for reporting a complaint. There shall be no discrimination or retaliation against any individual, who makes a good-faith complaint, even if the investigation produces insufficient evidence to support the complaint. There shall be no discrimination or retaliation against any individual who participates in the investigation of the complaint.

VII. Confidentiality of CEPA Complaints and Investigations

To the extent practicable, the Judiciary will maintain the confidentiality of CEPA complaints and investigations conducted pursuant to this policy, including the identity of the employee who makes the disclosure.

VIII. Posting of the CEPA Protections, and Distribution of Judiciary CEPA Policy

Every Judiciary unit must post in work areas a written notice in English and Spanish of the CEPA protections, obligations, rights and procedures. **The CEPA Rights Notices (English and Spanish) are attached and should be posted wherever notices to employees are customarily placed.** The Judiciary's CEPA policy is distributed electronically to all employees on an annual basis.

Any questions regarding the revised CEPA policy may be directed to the Administrative Director's Office at 609-376-3000.

Attachments (CEPA Rights Notices)

cc: Chief Justice Stuart Rabner
Hon. Jack M. Sabatino
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Ann Marie Fleury, Special Assistant
Melaney S. Payne, Special Assistant
Tonya Hopson, Chief, EEO
HR Division Managers
Vicinage EEO Officers

Conscientious Employee Protection Act "Whistleblower Act"

Employer retaliatory action; protected employee actions; employee responsibilities

1. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
 - a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
 - b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
 - c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (2) is fraudulent or criminal; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.
2. The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergency in nature.

CONTACT INFORMATION

The Judiciary has designated the following contact person to receive written notifications, pursuant to paragraph 2 above (N.J.S.A. 34:19-4):
Administrative Director, Administrative Office of the Courts 25 Market Street,
Floor, Trenton, New Jersey 08625
609-376-3000 or 609-815-2900 ext. 55004

This notice must be conspicuously displayed.

Once each year, employers with 10 or more employees must distribute notice of this law to their employees.
If you need this document in a language other than English or Spanish, please call (609) 292-7832.

La Ley de protección al empleado consciente

"Ley de protección del denunciante"

Acciones de represalia del empleador; protección de las acciones del empleado

1. La ley de New Jersey prohíbe que los empleadores tomen medidas de represalia contra todo empleado que haga lo siguiente:
 - a. Divulgue o amenace con divulgar, ya sea a un supervisor o a una agencia pública toda actividad, directriz o norma del empleador o de cualquier otro empleador con el que exista una relación de negocios y que el empleado tiene motivos fundados para pensar que violan alguna ley, o en el caso de un trabajador licenciado o certificado de la salud y que tiene motivos fundados para pensar que se trata de una manera inadecuada de atención al paciente;
 - b. Facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la violación de alguna ley, regla o reglamento que el empleador o algún otro empleador con el que exista una relación de negocios; o en el caso de un trabajador licenciado o certificado de la salud que facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la calidad de la atención al paciente; o
 - c. Ofrece información concerniente al engaño o la tergiversación con accionistas, inversionistas, usuarios, pacientes, clientes, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - d. Ofrece información con respecto a toda actividad que se pueda percibir como delictiva o fraudulenta, toda directiva o práctica engañosa o de tergiversación que el empleado tenga motivos fundados para pensar que pudieran estafar a accionistas, inversionistas, usuarios, pacientes, clientes, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - e. Se opone o se niega a participar en alguna actividad, directriz o práctica que el empleado tiene motivos fundados para pensar que:
 - (1) viola alguna ley, o regla o reglamento que dicta la ley o en el caso de un empleado licenciado o certificado en cuidado de la salud que tiene motivos fundados para pensar que constituya atención inadecuada al paciente;
 - (2) es fraudulenta o delictiva; o
 - (3) es incompatible con algún mandato establecido por las directrices públicas relacionadas con la salud pública, la seguridad o el bienestar o la protección del medio ambiente. Artículo 34:19-3 de las Leyes comentadas de New Jersey de protección del empleado consciente (N.J.S.A., por sus siglas en inglés)
2. No se puede acoger a la protección contra la represalia, cuando se hace una divulgación a un organismo público, a no ser que el empleado le informe al empleador de tal actividad, política o norma a través de un aviso por escrito y le haya dado al empleador una oportunidad razonable para corregir tal actividad, política o norma. Sin embargo, no es necesaria la divulgación en los casos en que el empleado tenga indicios razonables para creer que un supervisor o más de un supervisor del empleador tienen conocimiento de tal actividad, política o norma o en los casos en los que el empleado teme que tal divulgación pueda traer como consecuencia daños físicos a su persona siempre y cuando la naturaleza de la situación sea la de una situación de emergencia.

Información del Contacto

El Poder Judicial ha designado la siguiente persona para recibir notificaciones de acuerdo al párrafo 2, de la ley (N.J.S.A. 34:19-4):

Administrative Director, Administrative Office of the Courts
25 Market Street, 7th Floor, Trenton, New Jersey 08625
609-376-3000 or 609-815-2900 ext. 55004

Este aviso se debe exponer a la vista de todos.

Anualmente, patronos con 10 o más empleados, deberán distribuir notificación de esta ley a todos sus empleados. Si necesita este documento en algún otro idioma que no sea inglés o español, sírvase llamar al (609) 292-7832.

