



## Michigan Supreme Court Clears Way for Employee Whistleblower Claims

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*Foster Swift Employment, Labor & Benefits E-News*

February 20, 2013

In a decision surely to be relied on by future plaintiffs, the Michigan Supreme Court issued an opinion which will make it more difficult for employers to defeat whistleblower claims before trial. *Debano-Griffin v Lake County and Lake County Board of Commissioners*.

Cheryl Debano-Griffin sued her employer, a county board of commissioners, after the board terminated her position as the director of the county 911 department. The board asserted that it eliminated her position due to a budget crisis, and relied upon a financial audit and the testimony of the county clerk to demonstrate the crisis. In contrast, Ms. Debano-Griffin claimed that the board fired her because she had complained to the board of commissioners about an unlawful transfer of funds.

Before trial, the board moved to have the case dismissed on the grounds that Ms. Debano-Griffin could not produce sufficient evidence to show that its stated reason for eliminating her position was false. The trial court denied the board's motion and a jury subsequently returned a verdict for Ms. Debano-Griffin. On appeal, the Court of Appeals reversed the verdict finding that, based upon the record, no reasonable jury could have concluded that the board terminated her because of her complaints.

However, on appeal to the Michigan Supreme Court, the Court reversed the Court of Appeals and reinstated the jury verdict. Although the Supreme Court acknowledged the general rule that the mere closeness in time between an employee's whistleblowing and the employer's adverse employment action is simply not enough for a jury to conclude that the adverse action was the result of the whistleblowing, the Court explained that the following additional scenarios may strengthen the "causal link":

1. if the employee makes her complaint directly to the person(s) who then made the adverse employment decision, then the retaliation link is stronger,

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2. the greater the negative effect of the whistleblowing activity on the employer, the greater the likelihood that the employer retaliated against the employee, and
3. if the employer took steps to correct the alleged unlawful activity raised by the whistleblower, then the employer more likely retaliated against the employee.

The Supreme Court's opinion also eroded employers' traditional "business judgment" defense. That defense prohibits an employee from trying to prove a retaliation claim by attacking the employer's decision on the grounds that it was unwise, imprudent or incompetent. The Court held that Ms. Debanon-Griffin successfully avoided the business judgment defense by asserting that she was not questioning the judgment of the board of commissioners, but rather she was questioning the meaning of the financial data upon which the board relied to make its decision. Similarly, the Court held that Ms. Debanon-Griffin avoided the impact of the business judgment defense by questioning the credibility of the county officer who asserted that the county faced a financial crisis, as opposed to questioning the board's judgment.

What does this mean to employers? This opinion will likely make it more difficult for employers to eliminate whistleblower claims with a summary disposition motion, requiring more employers to go to trial.

This summary was prepared by Karl Butterer, who specializes in employment and civil rights matters. If you have any questions, please feel free to contact Karl directly at (616)726-2212 or by email.