



# New Jersey Courts Reinforce Rule of Limited Waivers of Jury Trials in Employee Lawsuits

Client Advisories

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Earlier this week, the New Jersey Appellate Division held that a jury-waiver provision in an employment agreement did not apply to an employee's whistleblower claim under the New Jersey Conscientious Employee Protection Act ("CEPA") claim. In doing so, the Court reinforced the general rule that employees cannot waive their right to jury trials in employment disputes unless they agree to waive it in writing, in a separate agreement, and with a clear understanding that the employees waive all claims. This case is a reminder to employers that any agreement seeking to waive a jury trial must be carefully written and signed.

Under New Jersey law, employees suing for whistleblowing, discrimination, harassment and most other employment-related claims have a right to a jury trial, which usually means more expensive lawsuits and also a risk of outrageous verdicts. Prior New Jersey court decisions have firmly protected this right; however, as with other legal rights, the right to a jury trial can be waived. Yet, New Jersey courts have applied a high legal standard before a jury trial can be waived in employment cases. Specifically, any waiver of this right had to be clear and unambiguous, in writing in a separate agreement, and done by the employee with full knowledge of the legal right being given up.

In this case, the employee signed an Employment Agreement that had a jury trial waiver. But, the Agreement waived a jury trial for any suit or action "in connection with or to enforce this Agreement." Even though the Agreement related to the employee's employment with the company, the Court concluded that the jury trial waiver was limited to a contract claim, i.e., that the Employment Agreement was violated. As far as the CEPA claim, the Court concluded that this waiver language did not include statutory claims, so the CEPA case had to be tried before a jury.

The result of this decision was especially painful for this employer. The trial court had allowed the entire case, including the CEPA case, to be tried before a judge without a jury. The trial judge ruled completely in favor of the employer, even to the point of awarding the employer \$2 million in attorneys fees. By ruling that the jury

trial of the CEPA claim was not waived, the Appellate court overturned the CEPA verdict and sent the case back down for a new trial before a jury.

In issuing its decision, the Appellate Division did provide guidance as to what type of waiver language is sufficient. For example, the Court stated that a waiver of a jury trial for “any controversy or claim that arises from the agreement or its breach” is ambiguous and insufficient. On the other hand, the Court noted that the waiver does not need to list every statute or claim the employee may have. Instead, it is normally sufficient to agree to waive a jury trial “in any action or proceeding relating to [their] employment.”

For similar reasons, the Appellate Division reversed the award of attorneys’ fees. The Court examined the bases for attorneys’ fees in this matter: the statute, CEPA, and the contract. CEPA requires that there be no basis in law or fact before shifting attorneys’ fees to a prevailing employer. The fact that the CEPA claim survived summary judgment indicated that it had a basis in law or fact. Therefore, the Court was left with the contract provision, which as it already analyzed failed to extend to CEPA or any statutory claims, and instead related only to the Agreement. Accordingly, the Court was left with no basis to shift attorneys’ fees for a CEPA claim, or any statutory claim related to the employment relationship.

A waiver of employees right to a jury trial, or right to have their disputes heard in court, can be a useful tool for employers. Any waiver of rights, however, must be carefully written to insure they are enforceable. This case highlights the need to have these agreements precisely drafted and properly executed.

If you have questions about whether your agreements, such as employment agreements or severance agreements, sufficiently waive a jury trial for statutory claims, such as under CEPA, please contact any member of Archer’s **Labor Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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