

FLASHPOINTS (ARCHIVED 2022)

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Seventh Circuit: Illinois Whistleblower Act Does Not Protect Those Asserting Violation of Another State's Laws

On April 14, 2022, the Seventh Circuit Court of Appeals upheld the entry of summary judgment for an employer in a suit brought by a terminated employee under the Illinois Whistleblower Act, 740 ILCS 174/1, *et seq.*, and the Illinois Jury Act, 705 ILCS 305/0.01, *et seq.* [Perez v. Staples Contract & Commercial, LLC, 31 F.4th 560 \(7th Cir. 2022\)](#), is a notable decision for employers to consider when assessing whether employees have engaged in protected “whistleblower” activity under Illinois law.

The Illinois Jury Act and the Illinois Whistleblower Act

Relevant to the court’s decision in *Perez* are two Illinois laws. The Illinois Jury Act provides that “[n]o employer shall discharge, threaten to discharge, intimidate or coerce any employee by reason of the employee’s jury service, or the attendance or scheduled attendance in connection with such service” in any Illinois court. 705 ILCS 305/4.1(b). In order to bring a claim for common-law retaliatory discharge based on the Illinois Jury Act, a former employee who was discharged must show (1) that the employer discharged the employee (2) in retaliation for the employee’s activities and (3) that the discharge violates a clear mandate of public policy. 31 F.4th at 571.

The Illinois Whistleblower Act states that “[a]n employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation.” 740 ILCS 174/20. Similar to a claim brought under the Illinois Jury Act, in order to bring a common-law retaliatory discharge claim in connection with protected whistleblowing activity, a plaintiff must establish (1) that the employer discharged the employee (2) in retaliation for the employee’s activities and (3) that the discharge violates a clear mandate of public policy. 31 F.4th at 574.

Perez’s Employment with and Subsequent Discharge from Staples

Plaintiff James Perez was hired by Staples in 2011 and became a sales representative in 2015. 31 F.4th at 563. Shortly after assuming the new sales position, Perez was notified that his year-to-year sales growth did not meet the company’s expectations, which resulted in him being placed on a “weekly activity plan.” 31 F.4th at 563 – 564. After Perez continued to not meet the employer’s expectations, Perez was placed on an “associate success plan.” 31 F.4th at 564. While the plan was in effect, Perez’s supervisor and he met regularly to monitor his performance and to assist him in meeting the performance expectations. *Id.* However, over the duration of the plan, Perez’s sales numbers did not meet the minimum requirements outlined in the plan. *Id.*

In early 2016, Perez worked on an account that involved the sale of laundry detergent in New York. 31 F.4th at 564. Perez and other Staples employees were informed that the sale of the particular detergent was prohibited in New York due to its chemical makeup. *Id.* However, sale of the detergent was not restricted or otherwise illegal in Illinois. 31 F.4th at 564. Perez claims to have told his supervisor that he did “not feel comfortable knowingly selling an illegal detergent to the state of New York.” *Id.* In response, the supervisor became angry, said he would “take care of it,” and never discussed the issue with Perez again. *Id.* Perez never reported his concerns to Staple’s human resources department or ethics hotline. 31 F.4th at 565.

In May 2016, after the associate success plan was in effect, Perez was summoned for jury service in Illinois state court and served on a jury over a period of four days. *Id.* In June 2016, near the conclusion of the associate

success plan, Perez's supervisor elevated Perez's updated sales figures to leadership and human resources, which reflected that Perez was not in compliance with the plan. Perez was subsequently notified that his employment with Staples was terminated. *Id.*

Perez's Lawsuit Challenging Termination

One week after his termination, Perez sued Staples in Illinois state court, alleging violations of the Illinois Jury Act and the Illinois Whistleblower Act, as well as common-law retaliatory discharge. *Id.* Staples removed the case to the U.S. District Court for the Northern District of Illinois. *Id.*

At the district court level, Staples moved for summary judgment, which was entered on all counts. *Id.* With respect to Perez's jury-duty claims, the district court concluded there was insufficient evidence of causation between his May 2016 jury service and June 2016 termination because Perez had failed to meet the minimum requirements of his associate success plan. 31 F.4th at 566. Regarding his whistleblower claims, the district court ruled that the New York state regulation prohibiting sale of the laundry detergent in New York did not trigger an Illinois retaliatory discharge claim, as such a claim can only arise when a "clearly established policy of Illinois" is at issue. *Id.* The district court interpreted the term "State" in the Illinois Whistleblower Act to mean "Illinois," so Perez could not assert a whistleblower claim based on refusing to participate in a violation of New York law. 31 F.4th at 567. Perez appealed the entry of summary judgment. *Id.*

Seventh Circuit's Decision to Uphold Grant of Summary Judgment

The court began its analysis of Perez's appeal by considering whether Perez's four days of jury service caused his termination from employment. 31 F.4th at 571. The court noted that if there is no genuine issue of material fact that Staples had a valid, non-pretextual basis for its termination decision, then summary judgment was properly entered on the Illinois Jury Act claim. *Id.* The court concluded that the "funny" facial reaction of Perez's supervisor in response to receiving notice of Perez's jury duty summons, as well as comments made as to whether Perez could "get out of" the jury service, would not allow a reasonable jury to conclude that Staples fired Perez because of his jury service. 31 F.4th at 572. The court also concluded that Perez had not met a number of the requirements imposed on him via the associate success plan and, that based on the evidence, no reasonable juror could conclude that Perez's poor performance under the plan was a pretextual reason for his termination. *Id.* As such, Perez failed to show a genuine issue of material fact that his jury service was a proximate cause of his termination from employment, and therefore summary judgment was proper on the Illinois Jury Act claim. 31 F.4th at 573.

With respect to Perez's whistleblower claim, the court noted that the parties did not dispute that the laundry detergent's sale in New York violated a New York state environmental regulation. 31 F.4th at 574. Staples instead asserted that because Perez's whistleblower claims did not involve Illinois law, he did not engage in statutorily protected activity. *Id.* Perez argued in response that he did engage in protected activity under the Illinois Whistleblower Act because he refused to participate in a protected activity by refusing to condone the sale of the detergent when he discovered it was illegal in New York. *Id.*

The court concluded that the district court's statutory interpretation of the word "State" within the Illinois Whistleblower Act was "sound," in that usage of the word elsewhere within the statute made it highly improbable that "State" meant any state in the United States. 31 F.4th at 575. Moreover, Perez was unable to cast any doubt on the district court's conclusion that the New York environmental regulation at issue did not implicate any interest related to a "social duty or responsibility" or the "health and welfare" of Illinois citizens, which, according to the court, "dooms" his common-law claim for retaliatory discharge. *Id.* The court found no authority to suggest that the environmental regulations of other states, when not adopted by Illinois law, could support a common-law retaliatory discharge claim under Illinois law. *Id.* Therefore, according to the court, it was correctly concluded that Perez could not base such a whistleblower claim under Illinois law on the New York regulation, and summary judgment was proper. 31 F.4th at 575. However, the court concurrently noted that even if the New York regulation could support such a claim, there was still insufficient evidence of any retaliatory motive on the part of Staples to support Perez's claim, primarily because of Perez's documented performance issues. *Id.*

Key Takeaways

The court's decision affirms for employers that protected whistleblower activity under Illinois law cannot be based on assertions of alleged violations of another state's laws, rules, or regulations. In addition, the decision confirms the importance of fully documenting employee performance deficiencies and, in certain circumstances, placing an employee on a performance improvement or action plan prior to moving for discharge, as this documentation is often a crucial portion of an employer's defense of a discrimination, harassment, retaliation, or whistleblower claim.

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