

MEALEY'S™ LITIGATION REPORT

# Employment Law

## **Whistleblower Protection Extended To Outside Contractors**

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# Commentary

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## Whistleblower Protection Extended To Outside Contractors

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*[Editor's Note: John Riccione, Commercial Litigator & Managing Partner at Aronberg Goldgehn Davis & Garmissa. Copyright © 2014 by John Riccione. Responses are welcome.]*

In a 6-3 ruling, the Supreme Court recently decided to expand protections for whistleblowers. Previously, the only people who were protected under whistleblower laws were those directly employed by the company in question. With the new ruling, protections will now be extended to people who do consulting work outside the firm, such as accountants, auditors, attorneys and advisors.

Many people expect that this new ruling will help to stop fraudulent activity on a much larger scale. Previously, outside contractors who exposed wrongdoing were subject to termination or punishment of some sort; hence they had little incentive to expose fraudulent activity. The latest ruling should protect outside professionals from retribution and therefore encourage more honest and more frequent whistleblowing.

### **Lawson v. FMR, 2014 U.S. Lexis 1783**

In *Lawson et al. v. FMR LLC*, Jackie Hosang Lawson and Jonathan M. Zang, former employees for a contractor working with Fidelity family of mutual funds, were penalized and eventually fired due to speaking out about suspicious accounting practices and an

inaccurate SEC filing. Because they worked for a contractor rather than the firm itself, they were let go for their actions, and many people say the decision was unjust.

### **Concerns About 'Stunning Reach'**

With the Supreme Court ruling, more people might be comfortable coming forward and exposing fraudulent activity. Still, the Supreme Court ruling was not unanimous and Justices Sonia Sotomayor, Anthony Kennedy and Samuel Alito voted against the ruling, stating that it gives undue reach across the board. For example, in her dissenting opinion, Justice Sotomayor suggested that even a person sweeping up at Starbucks might have protection under this new ruling. She suggested that household employees would become virtual babysitters. Therefore, she concluded, the ruling goes too far. Meanwhile, The National Federation of Independent Businesses also spoke out against the decision, citing fears that it will lead to aggressive and unnecessary prosecution.

Others feel that this is an important step in the right direction. Whistleblower protection plays a vital role in ensuring that people are able to speak out against fraudulent practices, and with this new ruling, it is expected that many more people will speak out when they see something they believe to be illegal or, at least, suspicious. ■

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