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Employers Face Risk of Retaliation Even After an Employee Is Terminated

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While many employers know that the New Jersey Law Against Discrimination (“NJLAD”) prohibits discrimination and retaliation, they may be surprised to find out that a former employee can bring a retaliation claim regarding events that occurred *after* he or she was terminated.

Many employers are aware that if an employee complains about discrimination and/or harassment based on a protected class (*i.e.* race, sex, disability, etc.), that accusation should be investigated and taken seriously. Employers should also be sure not to take any adverse action against the complaining employee (such as terminating the employee or cutting his/her hours or pay) because that may be considered retaliation under the NJLAD.

Although many employers are aware of the risk of retaliation and exercise caution when an employee complains about harassment or discrimination, many do not realize that the risk of retaliation continues even when the employee ceases working for them.

In *Roa v. Roa*, the New Jersey Supreme Court held that retaliation under NJLAD can encompass events that occur even after an employee is terminated. In *Roa*, after the employee was terminated, the employer retroactively cancelled the employee’s health insurance. The Court found that while the statute of limitations had run on the employee’s claims regarding the events that occurred while he was employed, he could maintain a retaliation claim based on the insurance cancellation even though the cancellation occurred when the employee was no longer employed by the employer.

Given the Court’s finding, employers need to be very careful in their interactions with former employees. Retaliation claims may arise from insurance issues, like *Roa*, or from other actions such as challenging a former employee’s unemployment claim or speaking negatively about the employee to a prospective employer.

Attorney

- Tracy Armstrong