

***72037 N.J.S.A. 34:19-1**

**NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION**

Current through L.2003, c. 1 to 191

34:19-1. Short title

This act shall be known and may be cited as the "Conscientious Employee Protection Act."

CREDIT(S)

L.1986, c. 105, § 1, eff. Sept. 5, 1986.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

Title of Act:

An Act to protect employees from retaliatory action by employers and supplementing Title 34 of the Revised Statutes.
L.1986, c. 105.

REFERENCES

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104 ALR 5th 1, Common-Law Retaliatory Discharge Of Employee For Refusing To Perform Or Participate In Unlawful Or Wrongful Acts.

86 ALR 5th 397, Excessiveness Or Adequacy Of Damages For Wrongful Termination Of At-Will Employee Under State Law.

81 ALR 5th 367, Availability And Scope Of Punitive Damages Under State Employment Discrimination Law.

77 ALR 5th 595, Visual Impairment As Handicap Or Disability Under State Employment Discrimination Law.

52 ALR 5th 405, Wrongful Discharge Based On Public Policy Derived From Professional Ethics Codes.

16 ALR 5th 239, In-House Counsel's Right To Maintain Action For Wrongful Discharge.

***72038** 75 ALR 4th 13, Liability For Retaliation Against At-Will Employee For Public Complaints Or Efforts Relating To Health Or Safety.

36 ALR 3rd 900, Wife's Right Of Action For Loss Of Consortium.

Encyclopedias

48 Am. Jur. Proof of Facts 2d 183, Wrongful Discharge-Bad Faith Dismissal Of At-Will Employee.

31 Am. Jur. Trials 317, Wrongful Discharge Of At-Will Employee.

Forms

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New Jersey Pleading and Practice Forms § 81:32, Retaliatory Discharge For Complaints About Tainted Food Being Served In Restaurant.

New Jersey Pleading and Practice Forms § 83:331, In General.

New Jersey Pleading and Practice Forms § 83:341, Complaint-By Employee-For Wrongful Discharge In Violation Of Conscientious Employee Protection Act-Employee's Disclosure Of Employer's Violation Of Statute Or Rule.

New Jersey Pleading and Practice Forms § 83:342, Employee's Information Or Testimony To Public Body Regarding Employer's Violation Of Statute Or Rule.

New Jersey Pleading and Practice Forms § 83:343, Employee's Objection To Or Refusal To Participate In Wrongful Or Improper Activity Of Employer.

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Employment Discrimination Coordinator ¶ 97,037, ¶ 97,037. Public Employers.

Employment Discrimination Coordinator ¶ 97,114, ¶ 97,114. Damages.

Employment Discrimination Coordinator ¶ 113,910, ¶ 113,910. Refusing To Perform Illegal Or Unethical Acts.

Employment Discrimination Coordinator ¶ 113,912, ¶ 113,912. Disclosing Misconduct.

Employment Discrimination Coordinator ¶ 113,940, ¶ 113,940. Exclusivity Of State Statutory Remedies.

*72039 41 N.J. Prac. Series § 19.32, Employment Law In New Jersey-Conscientious Employee Protection Act.

18 N.J. Prac. Series § 3.1, Introduction.

18 N.J. Prac. Series § 5.1, Scope.

18 N.J. Prac. Series § 2.27, Preclusion Of Remedies.

18 N.J. Prac. Series § 3.15, Retaliation Against Whistleblowers.

18 N.J. Prac. Series § 3.34, State Law Statutory Preemption.

18 N.J. Prac. Series § 4.57, Procedure For Filing Complaint.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

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1. In general

Framework for proving a Conscientious Employees' Protection Act (CEPA) claim follows that of a Law Against Discrimination (LAD) claim. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

Methods of proof and the applicable burdens in Law Against Discrimination (LAD) and Conscientious Employees' Protection Act (CEPA) cases generally follow Title VII law. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001).

The overriding policy of the Law Against Discrimination (LAD), the Conscientious Employee Protection Act (CEPA), and the Forfeiture Statute, is to protect society at large. *Cedeno v. Montclair State University*, 163 N.J. 473, 750 A.2d 73 (2000). Civil Rights ☞102.1; Master And Servant ☞30(6.35); Officers And Public Employees ☞31

Because terminated university employee's prior conviction for bribery while in course of public employment rendered him ineligible under Forfeiture Act to hold position from which he was terminated, he could not recover from university under Law Against Discrimination (LAD) or Conscientious Employee Protection Act (CEPA), even though university did not discover such conviction until after employee's termination. *Cedeno v. Montclair State University*, 163 N.J. 473, 750 A.2d 73 (2000). Colleges And Universities ☞8.1(6.1)

*72040 Core value that infuses Conscientious Employee Protection Act (CEPA) is legislative determination to protect from retaliatory discharge those employees who, believing that public interest overrides interest of organization they serve, publicly blow whistle because organization is involved in corrupt, illegal, fraudulent, or harmful activity. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Master And Servant ☞30(6.35)

2. Liberal construction

Conscientious Employee Protection Act (CEPA) was designed to provide broad protections against employer retaliation for employees acting within the public interest and, as remedial legislation, it should be construed liberally to effectuate its important social goal. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Master And Servant ☞10.5

Conscientious Employee Protection Act (CEPA) is designed to protect employees who blow the whistle on illegal or unethical activity committed by their employers or coemployees, and as such, CEPA is remedial legislation which should be construed liberally to achieve its remedial purpose. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

The Conscientious Employee Protection Act (CEPA) is to be construed liberally. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞30(6.35)

As remedial legislation, Conscientious Employee Protection Act (CEPA) should be construed liberally to effectuate its important social goal. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA), like the Law Against Discrimination (LAD), is a civil rights statute; it is remedial legislation and, therefore, should be construed liberally to effectuate its important social goal. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Master And Servant ☞30(6.35)

Because Conscientious Employee Protection Act (CEPA) was adopted as remedial legislation, any stated limitation on its sweep or applicability must be strictly construed. *Crusco v. Oakland Care Center, Inc.*, 305 N.J.Super. 605, 702 A.2d 1363 (A.D.1997). Master And Servant ☞30(6.35)

Courts should construe Conscientious Employee Protection Act (CEPA) liberally to achieve its remedial purpose. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Master And Servant ☞30(6.35)

***72041 2.5. Construction with other law**

Genuine issues of material fact as to whether county detective's union speech and related activities against county prosecutor after prosecutor had read a sealed union letter containing contract negotiations was a substantial factor in county prosecutor's transfer and subsequent termination of detective, precluded summary judgment for prosecutor and prosecutor's office on detective's First Amendment retaliation claim and his claim under the New Jersey Conscientious Employees Protection Act (CEPA). U.S.C.A. Const.Amend. 1; *Crane v. Yurick*, D.N.J.2003, 2003 WL 22434403. Federal Civil Procedure ☞2497.1

New Jersey Conscientious Employee Protection Act (CEPA) does not apply to Delaware River Port Authority (DRPA); CEPA is not substantially similar to Pennsylvania's Whistleblower Law. *Ballinger v. Delaware River Port Authority*, 172 N.J. 586, 800 A.2d 97 (2002). Officers And Public Employees ☞69.7; States ☞6

3. Purpose

New Jersey's Conscientious Employee Protection Act (CEPA) seeks to overcome the victimization of employees and to protect those who are especially vulnerable in the workplace from the improper or unlawful exercise of authority by employers. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

While New Jersey's Conscientious Employee Protection Act (CEPA) is not intended to protect chronic complainers or those who simply disagree with their employer's lawful actions, it does protect those persons who disclose their employer's activities when, given the circumstantial evidence, a reasonable lay person would conclude that illegal activity was going on. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

Despite being liberally construed by the New Jersey courts, New Jersey's Conscientious Employee Protection Act (CEPA) is not intended to shelter every alarmist who disrupts his or her employer's operations by constantly declaring that illegal activity is afoot, or is about to be afoot. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant

☞30(6.35)

***72042** The purpose of New Jersey's Conscientious Employee Protection Act (CEPA) is to enact broad protections against employer retaliation for employees who act in the public interest. *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Master And Servant ☞30(6.35)

New Jersey's Conscientious Employee Protection Act (CEPA) was enacted to protect from retaliatory action employees who "blow the whistle" on employers engaged in illegal or harmful activity. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

Financial advisor's claim under Conscientious Employee Protection Act (CEPA) against securities broker by whom advisor was formerly employed was not "claim alleging employment discrimination" within meaning of amended National Association of Security Dealers (NASD) rule exempting employment discrimination claims from mandatory arbitration pursuant to U-4 form that advisor signed as condition of employment, as CEPA was not derivative of Title VII but rather codification of common law cause of action; thus, advisor was required to arbitrate that claim, which alleged that he was terminated for refusing to participate in employee bonus program which he felt violated federal tax code. *Littman v. Morgan Stanley Dean Witter*, 337 N.J.Super. 134, 766 A.2d 794 (A.D.2001). Exchanges ☞11(12)

The Conscientious Employee Protection Act (CEPA) was not a derivative of Title VII or other federal discriminatory statutes, but rather a codification of the public policy provided in *Pierce* and subsequent cases which had established common law claims. *Littman v. Morgan Stanley Dean Witter*, 337 N.J.Super. 134, 766 A.2d 794 (A.D.2001). Master And Servant ☞30(6.35)

The purpose of the Conscientious Employee Protection Act, (CEPA) is to protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct; it should be considered remedial legislation and construed broadly to meet its social goal. *Zappasodi v. State, Dept. of Corrections, Riverfront State Prison*, 335 N.J.Super. 83, 761 A.2d 96 (A.D.2000). Master And Servant ☞30(6.35); Officers And Public Employees ☞69.7

Conscientious Employee Protection Act (CEPA) is supposed to encourage, not thwart, legitimate employee complaints. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

***72043** The purpose of the Conscientious Employee Protection Act (CEPA) is to protect employees who report illegal or unethical workplace activities; it is also intended to encourage employees to report illegal or unethical workplace activities and to discourage employers from engaging in such conduct. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) protects employee who, with a reasonable basis, complains to her employer about the misconduct of coemployees, even in the absence of employer complicity in the misconduct. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to protect employees who report illegal or unethical workplace activities. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) establishes statutory exception to the general rule that employer may terminate at-will employee with or without cause. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Objective of the Conscientious Employee Protection Act (CEPA) is the protection of the public interest by encouraging the disclosure of employer activities potentially harmful to that interest. *Roach v. TRW, Inc.*, 320 N.J.Super. 558, 727 A.2d 1055 (A.D.1999), certification granted, cause remanded 162 N.J. 195, 743 A.2d 847, on remand 326 N.J.Super. 493, 742 A.2d 135. Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to encourage employees to exercise their rights under Act while affording them protection from retaliation for engaging in such conduct. *Buccinna v. Micheletti*, 311 N.J.Super. 557, 710 A.2d 1019 (A.D.1998). Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Master And Servant ☞30(6.35); Officers And Public Employees ☞66

***72044** There is clear public policy to protect employees who protest illegal activity by their employers. *Casciano v. Board of Review*, 300 N.J.Super. 570, 693 A.2d 531 (A.D.1997). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) was enacted to protect employees from retaliatory discharge and represents codification of the common-law rule that at-will employee may have cause of action for wrongful discharge in violation of clear mandate of public policy. *Falco v. Community Medical Center*, 296 N.J.Super. 298, 686 A.2d 1212 (A.D.1997), certification denied 153 N.J. 405, 709 A.2d 798. Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to protect employees who report illegal or unethical workplace activity, and so viewed, CEPA is remedial legislation which should be construed liberally to achieve its remedial purpose. *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1996). Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct and, thus, CEPA must be considered remedial in nature and should be construed liberally to effectuate its important social goal. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 138 N.J. 405, 650 A.2d 958 (1994). Master And Servant ☞10.5

Conscientious Employee Protection Act (CEPA) was designed to prohibit retaliatory action by employer against an employee who discloses or threatens to disclose an employer's illegal activities, who testifies before a public body regarding employer's violation of law, or who refuses to participate in activity of employer which the employee believes is illegal or in contravention of public health, safety or welfare. *Young v. Schering Corp.*, 275 N.J.Super. 221, 645 A.2d 1238 (A.D.1994), certification denied 139 N.J. 184, 652 A.2d 172, certification granted 139 N.J. 184, 652 A.2d 172, affirmed 141 N.J. 16, 660 A.2d 1153. Master And Servant ☞10.5

3.5. Preemption

Section 301 of LMRA did not preempt employee's New Jersey Conscientious Employee Protection Act (CEPA) claim alleging numerous forms of retaliation for his numerous complaints to supervisors of incidents of racial discrimination against African-American and other minority employees, theft of company property, or misappropriation of company funds by coworkers and supervisory level employees; only one form of retaliation made any reference to collective bargaining agreement (CBA), and resolution of elements of claim mostly required examination of parties' actions and motivations, not interpretation of CBA, which employee waived rights under when suing under CEPA. *Patterson v. Exxon Mobil Corp.*, D.N.J.2003, 262 F.Supp.2d 453. Master And Servant ☞35; States ☞18.49

***72045** Since borough and police department conceded that the release of officer's previous Conscientious Employee Protection Act (CEPA) claim against them did not bar officer's subsequent claim, alleging that department continued to retaliate and harass officer in violation of CEPA after the settlement, the release, by failing to refer to discovery in future actions, did not limit the discovery rights inherently appended to officer's second CEPA suit. *Isetts v. Borough of Roseland*, 2003 WL 22533138 (A.D.2003). Municipal Corporations ☞1018

4. Prima facie violation

Bookkeeper who alleged that former employer terminated her employment in violation of New Jersey's Conscientious Employee Protection Act (CEPA), for allegedly refusing to enter employer's shareholder's personal loan fees on corporate books,

was not required to show that employer committed an actual violation of law or policy to establish prima facie violation of CEPA. Mazza v. George Yelland, Inc., D.N.J.2001, 161 F.Supp.2d 376. Master And Servant ↻40(4)

***72046 N.J.S.A. 34:19-2**

NEW JERSEY STATUTES ANNOTATED
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CHAPTER 19. EMPLOYMENT PROTECTION

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34:19-2. Definitions

As used in this act:

a. "Employer" means any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer's consent and shall include all branches of State Government, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board or any other agency or instrumentality thereof.

b. "Employee" means any individual who performs services for and under the control and direction of an employer for wages or other remuneration.

c. "Public body" means:

(1) the United States Congress, and State legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(2) any federal, State, or local judiciary, or any member or employee thereof, or any grand or petit jury;

(3) any federal, State, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

(4) any federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer;

(5) any federal, State or local department of an executive branch of government; or

(6) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.

d. "Supervisor" means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee, who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains, or who has been designated by the employer on the notice required under section 7 of this act. [FN1]

***72047** e. "Retaliatory action" means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

f. "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer that is a health care provider which violates any law or any rule, regulation or

declaratory ruling adopted pursuant to law, or any professional code of ethics.

CREDIT(S)

L.1986, c. 105, § 2, eff. Sept. 5, 1986. Amended by L.1997, c. 98, § 1, eff. May 12, 1997.

[FN1] N.J.S.A. § 34:19-7.

HISTORICAL NOTES

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L.1997, c. 98, § 1, added subsec. (f).

ANNOTATIONS

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1. Employer

New Jersey's Conscientious Employee Protection Act (CEPA) was not applicable to bistate agency, which was created by interstate compact between Pennsylvania and New Jersey for purpose of maintaining bridges and port facilities between the two states, nor to agency's employees; there was no express authority for unilateral action in compact, New Jersey and Pennsylvania did not enact complementary or parallel legislation, and agency had not impliedly consented to exercise of single-state jurisdiction. *Ballinger v. Delaware River Port Authority*, 311 N.J.Super. 317, 709 A.2d 1336 (A.D.1998), affirmed 172 N.J. 586, 800 A.2d 97. States ☞6

2. Employee

As tenured employee, city tax assessor was not type of vulnerable employee the Conscientious Employee Protection Act (CEPA) was intended to protect, thus precluding CEPA claim alleging that he was terminated for speaking out against mayor's tax revaluation and reassessment plan; assessor enjoyed unique, independent status due to his statutorily created job security, and so was not type of employee with deep-rooted fear of losing his livelihood if he spoke out against employer's activities, policies, or practices. *Casamasino v. City of Jersey City*, 304 N.J.Super. 226, 699 A.2d 697 (A.D.1997), certification granted 156 N.J. 383, 718 A.2d 1212, reversed 158 N.J. 333, 730 A.2d 287, appeal dismissed as improvidently granted 162 N.J. 123, 741 A.2d 93. Taxation ☞314

***72048** An employee covered by a collective bargaining agreement, like an at-will employee, can maintain an action for wrongful discharge made in retaliation for reporting safety and health violations. *LePore v. National Tool and Mfg. Co.*, 115 N.J. 226, 557 A.2d 1371 (1989), certiorari denied 110 S.Ct. 366, 493 U.S. 954, 107 L.Ed.2d 353. Master And Servant ☞30(6.10)

3. Supervisor

Employer had no right to limit the Conscientious Employee Protection Act's (CEPA) definition of "supervisor" by

mandating that its employees submit CEPA complaints to their immediate supervisor. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞10.5

Principal was a "supervisor," as required to support industrial arts teacher's claim under Conscientious Employee Protection Act (CEPA) that he was not rehired in retaliation for his complaints about inadequate ventilation in his shop, where principal directed and controlled teacher's work and had authority to correct lack of ventilation for the machines. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 269 N.J.Super. 11, 634 A.2d 538 (A.D.1993), certification granted 136 N.J. 28, 641 A.2d 1039, affirmed 138 N.J. 405, 650 A.2d 958. Schools ☞147.12

3.5. Independent contractor

Under Pukowsky hybrid test, foreman for insulation and asbestos contractor serving as resident contractor for vitamin manufacturer was independent contractor for, rather than employee of, manufacturer and thus could not sustain claim against manufacturer under New Jersey Conscientious Employee Protection Act (CEPA) based on his termination after calling safety and environmental concerns to manufacturer's attention, even though there were some indicia of control or supervision of foreman by manufacturer, foreman had worked at site for approximately thirty years, and manufacturer had the right to remove contractor's employees from work site; supervision was limited and on balance degree of control factor did not weigh in favor of either party, removal of asbestos was specialized skill, contractor provided labor and equipment for each job and was responsible for administration of foreman's employment and payment of his retirement benefits and Social Security taxes, manufacturer was not empowered to make termination decisions for contractor and foreman could have been employed at another work site or in another capacity, and parties' intent as expressed in contract supported conclusion that foreman was also an independent contractor. *DaBronzo v. Roche Vitamins, Inc.*, D.N.J.2002, 232 F.Supp.2d 306. Master And Servant ☞34.1

*72049 4. Attorneys

Conscientious Employee Protection Act does not require implied exception for monetary damage claims of in-house attorney arising from wrongful discharge or other retaliation during in-house employment relationship; Act neither compels employer client to accept unwanted employee attorney by preventing his discharge at will nor threatens to discourage ethics or fee dispute complaint; act compels retaliating employer to pay damages to employee attorney who is wrongfully discharged or mistreated for refusing to join scheme to cheat competitor or for any reason that is violative of law, fraudulent, criminal or incompatible with clear mandate of public policy. *Parker v. M & T Chemicals, Inc.*, 236 N.J.Super. 451, 566 A.2d 215 (A.D.1989). Attorney And Client ☞76(.5)

5. Retaliatory action

United States Postal Service (USPS) supervisor's alleged actions of denying employee use of office telephone to conduct union business, attempting to impose lengthy suspensions on him for de minimis infractions, and writing and disseminating memorandum indicating he had signed himself into psychiatric ward, if proven, did not constitute retaliatory conduct under New Jersey Conscientious Employee Act (CEPA). *Borawski v. Henderson*, D.N.J.2003, 265 F.Supp.2d 475. United States ☞36

Borough did not take retaliatory action against police officers who reported their belief that another officer sought unearned overtime payments, and thus, borough did not violate Conscientious Employee Protection Act (CEPA), where neither reporting officer was discharged or demoted, borough suspended first officer for five days without pay and suspended second officer for seven days without pay for violating chain of command by discussing the ongoing investigation regarding overtime payments with mayor, and borough suspended second officer for eight days without pay for not wearing body armor. *Hancock v. Borough of Oaklyn*, 347 N.J.Super. 350, 790 A.2d 186 (A.D.2002), certification granted 174 N.J. 191, 803 A.2d 1162, appeal dismissed as improvidently granted 177 N.J. 217, 827 A.2d 286. Municipal Corporations ☞185(1)

Borough's disciplinary action against whistleblowing police officers that resulted in officers' brief suspensions did not constitute a de facto termination under Conscientious Employee Protection Act (CEPA), where officers were represented by counsel at disciplinary hearing, were found guilty of charges by hearing officer, charges and disciplinary actions were sustained by reviewing court, and no appeals were filed. *Hancock v. Borough of Oaklyn*, 347 N.J.Super. 350, 790 A.2d 186 (A.D.2002), certification granted 174 N.J. 191, 803 A.2d 1162, appeal dismissed as improvidently granted 177 N.J. 217, 827 A.2d 286.

Municipal Corporations ↪185(1)

***72050** As used in Conscientious Employee Protection Act (CEPA), term "retaliatory action" did not encompass action taken to effectuate discharge, suspension, or demotion and thus, no "retaliatory action" took place, for limitations purposes, until employee's actual discharge. *Keelan v. Bell Communications Research*, 289 N.J.Super. 531, 674 A.2d 603 (A.D.1996). Labor Relations ↪26.5

***72051 N.J.S.A. 34:19-3**

**NEW JERSEY STATUTES ANNOTATED
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34:19-3. Employer retaliatory action; protected employee actions

An employer shall not take any retaliatory action against an employee because the employee does any of the following:

a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;

b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:

(1) is in violation of a law, or a rule or regulation promulgated pursuant to law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;

(2) is fraudulent or criminal; or

(3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

CREDIT(S)

L.1986, c. 105, § 3, eff. Sept. 5, 1986. Amended by L.1989, c. 220, § 1, eff. Dec. 29, 1989; L.1997, c. 98, § 2, eff. May 12, 1997.
***72052**

HISTORICAL NOTES

ASSEMBLY LABOR COMMITTEE STATEMENT

2000 Main Volume

Assembly, No. 661--L.1989, c. 220

The Assembly Labor Committee reports favorably, with committee amendments, Assembly Bill No. 661.

As amended, this bill expands the protections provided to employees under the "Conscientious Employee Protection Act," P.L.1986, c. 105 (C. 34:19-1 et seq.) by prohibiting employers from taking retaliatory action against any employee who:

(1) discloses or threatens to disclose to a public body or a supervisor any activity, policy, or practice of another employer, with whom the employee's employer has a business relationship, if the employee reasonably believes the other employer's activity, policy, or practice to be unlawful;

(2) provides information to, or testifies before, any public body concerning a violation of law by another employer, with whom the employee's employer has a business relationship; or

(3) objects to or refuses to participate in any activity, policy, or practice which the employee reasonably believes to be incompatible with a clear mandate of public policy concerning the protection of the environment.

Under current law, an employee is protected against retaliation only with regard to the disclosure or threatened disclosure of information about his employer and public policies concerning the health, safety or welfare of the public. These protections are available to the employee, though, only if the employee brings the unlawful activity, policy or practice to the attention of the employer, and provides the employer with a reasonable opportunity to correct the unlawful activity, policy or practice.

The aim of the bill is to discourage collusion between employers for the purpose of inhibiting disclosure by their employees of violations of law committed by either employer.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

HISTORICAL AND STATUTORY NOTES

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L.1989, c. 220, § 1, in subsecs. a. and b. inserted reference to another employer with whom business relationship exists; and in subsec. c.(3) inserted reference to protection of environment.

*72053 L.1997, c. 98, § 2, added the provisions relating to health care professionals throughout the law.

REFERENCES

RESEARCH REFERENCES

2000 Main Volume

ALR Library

104 ALR 5th 1, Common-Law Retaliatory Discharge Of Employee For Refusing To Perform Or Participate In Unlawful Or Wrongful Acts.

52 ALR 5th 405, Wrongful Discharge Based On Public Policy Derived From Professional Ethics Codes.

Forms

New Jersey Pleading and Practice Forms § 81:6, Procedural Guide.

New Jersey Pleading and Practice Forms § 83:331, In General.

New Jersey Pleading and Practice Forms § 83:341, Complaint-By Employee-For Wrongful Discharge In Violation Of Conscientious Employee Protection Act-Employee's Disclosure Of Employer's Violation Of Statute Or Rule.

New Jersey Pleading and Practice Forms § 83:342, Employee's Information Or Testimony To Public Body Regarding Employer's Violation Of Statute Or Rule.

New Jersey Pleading and Practice Forms § 83:343, Employee's Objection To Or Refusal To Participate In Wrongful Or Improper Activity Of Employer.

Treatises and Practice Aids

Employment Coordinator ¶ EP-22,729, ¶ Ep-22,729 State Statutory Protection.

Employment Discrimination Coordinator ¶ 110,346, ¶ 110,346. State Statutory Protection.

Employment Discrimination Coordinator ¶ 97,017.5, ¶ 97,017.5. Retaliation Against Whistle-.

18 N.J. Prac. Series § 5.1, Scope.

18 N.J. Prac. Series § 5.2, Protection For Disclosure Of Employer Conduct.

18 N.J. Prac. Series § 5.3, Protection For Testifying Or Giving Information To A Public Body.

18 N.J. Prac. Series § 5.4, Protection For Objecting To Or Refusing To Participate In Illegal Conduct.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

39 N.J. Prac. Series § 32.1, Discrimination-Generally.

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ANNOTATIONS

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Purpose 4**Questions of law or fact 14****Refusal to participate 10****Retaliatory action 13****Summary judgment 16****Testifying or providing information 9****Validity 1****Violation of law 11****1. Validity**

Officer's Conscientious Employee Protection Act (CEPA) claim, alleging that police department and others continued to retaliate and harass him in violation of CEPA after settlement of officer's previous CEPA claim, formed a legitimate basis for discovery of pre-settlement occurrences and information which might demonstrate prior bad acts or suggest a motive for department's alleged improper actions; however, the potential relevance of evidence relating to events which formed basis for prior suit did not necessarily mean that parties had unfettered right to duplicate the same discovery which could have been obtained during course of the first suit had it not been dismissed. *Isets v. Borough of Roseland*, 2003 WL 22533138 (A.D.2003). Pretrial Procedure ☞36.1

To determine whether a plaintiff has presented a viable Conscientious Employee Protection Act (CEPA) claim, a trial court must first find and enunciate the specific terms of a statute or regulation, or the clear expression of public policy, which would be violated if the facts as alleged are true. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

*72055 Conscientious Employee Protection Act (CEPA) award for retaliatory discharge of employee who objected to distribution in Japan of gasoline with excessive benzene content by employer's subsidiary was neither repugnant to commerce clause nor an intrusion into nation's foreign policy-making; foreign commerce would not be impermissibly burdened if state required employer to refrain from retaliatory discharge of intrastate employee for objecting to what he reasonably believed was a violation of public policy, and employer could still opt to produce and to sell gasoline in Japan containing excessive benzene levels despite known adverse consequences, subject to actions of Japanese officials. *Mehlman v. Mobil Oil Corp.*, 291 N.J.Super. 98, 676 A.2d 1143 (A.D.1996), certification granted 147 N.J. 264, 686 A.2d 764, affirmed 153 N.J. 163, 707 A.2d 1000. Commerce ☞62.20; Master And Servant ☞41(.5)

2. Preemption

Section 301 of LMRA did not preempt employee's New Jersey Conscientious Employee Protection Act (CEPA) claim alleging numerous forms of retaliation for his numerous complaints to supervisors of incidents of racial discrimination against African-American and other minority employees, theft of company property, or misappropriation of company funds by coworkers and supervisory level employees; only one form of retaliation made any reference to collective bargaining agreement (CBA), and resolution of elements of claim mostly required examination of parties' actions and motivations, not interpretation of CBA, which employee waived rights under when suing under CEPA. *Patterson v. Exxon Mobil Corp.*, D.N.J.2003, 262 F.Supp.2d 453. Master And Servant ☞35; States ☞18.49

Title VII does not preempt New Jersey's "whistleblower" statute. *Sandom v. Travelers Mortg. Services, Inc.*, D.N.J.1990, 752 F.Supp. 1240. Master And Servant ☞30(6.35); States ☞18.49

Former union employee's alleged claim under the Conscientious Employee Protection Act (CEPA) against her former employer, a labor union, that she was wrongfully terminated over a policy dispute relating to the manner and extent of providing information to the union general membership, was preempted by the Labor Management Reporting and Disclosure Act (LMRDA), even if the employee was dismissed because she reasonably believed that the LMRDA required more of the union; employee had significant responsibility in her capacity as union's arbitration officer for the day-to-day conduct of union affairs, and there was no suggestion that union's activity was criminal in nature, but rather, the case involved the LMRDA and the union's own internal operating policies. *Dzwonar v. McDevitt*, 348 N.J.Super. 164, 791 A.2d 1020 (A.D.2002), certification granted in

part 172 N.J. 180, 796 A.2d 897, affirmed 177 N.J. 451, 828 A.2d 893. Master And Servant ☞35; States ☞18.49

Conscientious Employee Protection Act (CEPA) did not apply to employee's disclosures about coemployee's alleged cheating on his expense account and approval of lease of computer equipment from firm in which he allegedly had an interest and alleged interest of coemployees in employer's acquisition of company; coemployees' alleged activities did not implicate the public interest. *Roach v. TRW, Inc.*, 326 N.J.Super. 493, 742 A.2d 135 (A.D.1999), certification granted 163 N.J. 78, 747 A.2d 286, reversed 164 N.J. 598, 754 A.2d 544. Master And Servant ☞30(6.35)

***72056** State law whistleblower claim by former railroad signalman was not preempted by Federal Railway Safety Act where signalman's allegation of retaliatory discharge related to cheating and fraud rather than reporting of safety code violations. *Maher v. New Jersey Transit Rail Operations, Inc.*, 125 N.J. 455, 593 A.2d 750 (1991). Master And Servant ☞30(6.35); States ☞18.49

3. In general

New Jersey's Conscientious Employee Protection Act (CEPA) does not require that the activity complained of be an actual violation of a law or regulation, only that the employee reasonably believes that to be the case, for purposes of CEPA section prohibiting employer from taking retaliatory action against employee because employee refuses to participate in activity which he reasonably believes is in violation of a law or regulation. *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Master And Servant ☞30(6.35)

When a Conscientious Employee Protection Act (CEPA) claim is brought under sections providing that employer shall not take any retaliatory action against employee because employee objects to policy which the employee reasonably believes is in violation of a law or is incompatible with a clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment, trial judge must first find and enunciate the specific terms of a statute or regulation, or the clear expression of public policy, which would be violated if the facts alleged are true. *Cosgrove v. Cranford Bd. of Educ.*, 356 N.J.Super. 518, 813 A.2d 591 (A.D.2003). Master And Servant ☞30(6.35)

Plaintiff invoking a Conscientious Employee Protection Act (CEPA) claim is not required to have specific knowledge of the precise source of public policy so long as the court may identify the law or public policy that might have been violated by the challenged conduct. *Cosgrove v. Cranford Bd. of Educ.*, 356 N.J.Super. 518, 813 A.2d 591 (A.D.2003). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) was designed to provide broad protections against employer retaliation for employees acting in the public interest, and as remedial legislation it should be construed liberally to effectuate its important social goal. *Dzwonar v. McDevitt*, 348 N.J.Super. 164, 791 A.2d 1020 (A.D.2002), certification granted in part 172 N.J. 180, 796 A.2d 897, affirmed 177 N.J. 451, 828 A.2d 893. Master And Servant ☞30(6.35)

***72057** Conscientious Employee Protection Act's (CEPA) protection against employer retaliation extends to employees who communicate information either to employers or public bodies concerning co-employee misconduct encompassed by CEPA. *DeLisa v. County of Bergen*, 165 N.J. 140, 755 A.2d 578 (2000). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) is intended to protect those employees whose disclosures fall sensibly within the statute, and it is not intended to spawn litigation concerning the most trivial or benign employee complaints; for example, if employee complains about coemployee who takes extended lunch break or makes personal call to spouse or friend, court is hard pressed to conclude that complaining employee could have reasonably believed that such minor infractions represented unlawful conduct as contemplated by CEPA. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

Threshold question in Conscientious Employee Protection Act (CEPA) case is whether employee has identified either a law, or a rule or regulation promulgated pursuant to law, or clear mandate of public policy concerning the public health, safety or welfare which the employer has allegedly violated. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

Courts look generally to federal and state constitutions, statutes, administrative rules and decisions, judicial decisions, and professional codes of ethics to determine whether specific corrupt, illegal, fraudulent or harmful activity violates clear mandate of public policy for purposes of Conscientious Employee Protection Act (CEPA); however, these sources are not necessarily exclusive. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Courts ☞95(1); Courts ☞97(1); Master And Servant ☞30(6.35)

4. Purpose

The Conscientious Employee Protection Act (CEPA) embodies a remedy based on unlawful retaliation against any employee, as opposed to one designed to protect against a discriminated class. *Littman v. Morgan Stanley Dean Witter*, 337 N.J.Super. 134, 766 A.2d 794 (A.D.2001). Master And Servant ☞30(6.35)

Purpose of Conscientious Employee Protection Act (CEPA) is to provide protection for workers who may be subjected to retaliatory actions by their employers if they reveal corrupt, illegal, fraudulent, or harmful activity by their employers. *Williams v. Pemberton Tp. Public Schools*, 323 N.J.Super. 490, 733 A.2d 571 (A.D.1999). Master And Servant ☞30(6.35)

*72058 5. Law governing

Law of New Jersey, the forum state, rather than law of foreign jurisdiction, Switzerland, applied to wrongful discharge claim brought by employee of Swiss subsidiary of New Jersey corporation based on employee's alleged refusal to bribe Swiss officials; underlying controversy involved alleged violation in New Jersey of Foreign Corrupt Practices Act (FCPA), involved participation of United States citizen who could be exposed to criminal prosecution for violation of FCPA, and outcome could affect health and welfare of New Jersey citizens. *D'Agostino v. Johnson & Johnson, Inc.*, 133 N.J. 516, 628 A.2d 305 (1993). Master And Servant ☞18.5

6. Grounds for action

Employer's articulated reasons for terminating Loss Prevention Specialist, contained in declaration signed by terminated employee's supervisor, were legitimate and nondiscriminatory for purposes of analyzing employee's retaliatory discharge claim under New Jersey Conscientious Employee Protection Act (CEPA) under McDonnell Douglas framework; supervisor stated his decision to fire employee was based on several acts of misconduct, including wrongfully obtaining social security numbers of several employees and using that confidential information to conduct unauthorized background checks on them, signing contract for installation of metal detectors at facility despite being told he did not have authority to enter into contracts on company's behalf, and compromising integrity of internal investigation into theft of computer parts at facility by revealing location of newly installed hidden cameras to certain employees. *Schlichtig v. Inacom Corp.*, D.N.J.2003, 271 F.Supp.2d 597. Master And Servant ☞30(6.35)

Assistant city attorney's allegations that another member of the office was assigned to him as second chair in the middle of a trial in order to mislead the court about his availability for another trial, in violation of New Jersey's Rules of Professional Conduct, were sufficient to state a claim under the New Jersey Conscientious Employee Protection Act (CEPA). *Sunkett v. Misci*, D.N.J.2002, 183 F.Supp.2d 691. Municipal Corporations ☞218(3)

In order to establish violation of New Jersey Conscientious Employee Protection Act (CEPA), claimant must show: (1) that he or she reasonably believed employer's conduct was violating either law or rule or regulation promulgated pursuant to law; (2) that he or she performed whistle-blowing activity described in CEPA; (3) retaliatory action was taken against him or her; and (4) there was causal connection between whistle-blowing activity and adverse employment action. *McCullough v. City of Atlantic City*, D.N.J.2001, 137 F.Supp.2d 557. Master And Servant ☞30(6.35)

*72059 To state a claim under New Jersey's Conscientious Employee Protection Act (CEPA), a plaintiff must show that: (1) he reasonably believed illegal conduct was occurring; (2) he disclosed or threatened to disclose the activity to a supervisory or public body; (3) retaliatory action was taken against him; and (4) there was a causal connection between the whistleblowing and the adverse employment action. *Kadetsky v. Egg Harbor Tp. Bd. of Educ.*, D.N.J.2000, 82 F.Supp.2d 327. Master And Servant ☞30(6.35)

To maintain a claim under Conscientious Employee Protection Act (CEPA), plaintiff must show: (1) that she reasonably believed that her employer's conduct was violating either law or rule or regulation promulgated pursuant to law; (2) that she performed whistle-blowing activity; (3) adverse employment action was taken against her; and (4) casual connection exists between whistle-blowing activity and adverse employment action. *Carlino v. Gloucester City High School*, D.N.J.1999, 57 F.Supp.2d 1, affirmed in part 44 Fed.Appx. 599, 2002 WL 1877011. Master And Servant ☞30(6.35)

In order to maintain a cause of action under New Jersey's Conscientious Employee Protection Act (CEPA), plaintiff must satisfy two elements: (1) he must show that he reasonably believed at the time he articulated his concerns that his employer's conduct was violating either a law or a rule or regulation promulgated pursuant to law; and (2) that he performed a "whistleblowing" activity described in the Act, that he was terminated, and there was a causal connection between his whistleblowing activity and the termination. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

New Jersey's Conscientious Employee Protection Act (CEPA) does not require a whistleblowing employee to know, to a legal certitude, the precise contours and components of the law that employer has purportedly violated. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

New Jersey's Conscientious Employee Protection Act (CEPA) does not merely require that whistleblowing employee subjectively believe that certain employer activities have taken or were about to take place; belief must be reasonable, and in order for employee's belief to be considered reasonable, that belief must be such that reasonable layperson would conclude that illegal activity was going on or, at the very least, was imminent. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

***72060** Employee who merely questioned or disagreed with employer's pricing practices and was concerned about their potential legal impact was not a "whistleblower" for purposes of New Jersey's Conscientious Employee Protection Act (CEPA). *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

To succeed on a claim under the New Jersey Conscientious Employees Protection Act (CEPA), a plaintiff must show (1) that he disclosed or threatened to disclose the activity to a supervisory or public body, (2) that he suffered an adverse employment decision, and (3) a causal connection between the two. *Fioriglio v. City of Atlantic City*, D.N.J.1998, 996 F.Supp. 379, affirmed 185 F.3d 861, certiorari denied 120 S.Ct. 789, 528 U.S. 1075, 145 L.Ed.2d 666. Master And Servant ☞30(6.35)

Activity of employee in exposing alleged fraud directed solely at the employer company, with the shareholding public only indirectly affected, was not the type of activity that Conscientious Employee Protection Act was designed to combat, or whose disclosure the act was designed to protect; fact that activity hurts the corporate employer does not place whistle-blower outside the protection of the act, but absence of injury to the interest of others or the public at large from the disclosed activity does bar coverage of the act. *Littman v. Firestone Tire & Rubber Co.*, 1989, 715 F.Supp. 90. Master And Servant ☞30(6.35)

Evidence that employee's name became known as whistleblower did not establish that employer compromised employee's anonymity and thereby created hostile work environment which became so intolerable that employee was forced to take disability leave, as basis for establishing adverse action against employee, as element of claim for retaliation under Conscientious Employee Protection Act (CEPA); employee admitted that she would have been one of the prime suspects as the whistleblower because of her "straight" personality, and employee herself told vice president of sales and executive secretary about her anonymous letter alleging fraudulent activities. *Cokus v. Bristol Myers Squibb Co.*, 362 N.J.Super. 366, 827 A.2d 1173 (L.2002), affirmed 362 N.J.Super. 245, 827 A.2d 1098, certification denied 178 N.J. 32, 834 A.2d 405. Master And Servant ☞40(4)

Employee's allegations that, after her whistleblowing, she received no expressions of condolences following her husband's death, that no one talked to her other than for work-related purposes, that head of division in which employee worked glared at her and started coming in early as if he was spying on her, and that she perceived other employees were talking about her behind closed doors, did not establish employer's failure to protect her from hostility and ostracism by her co-workers and superiors, as basis for establishing adverse action against employee, as element of claim for retaliation under Conscientious Employee Protection Act (CEPA). *Cokus v. Bristol Myers Squibb Co.*, 362 N.J.Super. 366, 827 A.2d 1173 (L.2002), affirmed 362 N.J.Super. 245, 827 A.2d 1098, certification denied 178 N.J. 32, 834 A.2d 405. Master And Servant ☞40(4)

***72061** Supervisor's conduct, over three-day period, in telling secretary who supervisor shared with whistleblowing employee that secretary should not sit and socialize with employee, in issuing negative performance evaluation, and in implicitly threatening employee with termination by broaching the subject of other employment, did not constitute adverse action against employee, as element of claim for retaliation under Conscientious Employee Protection Act (CEPA); secretary did not stop socializing with employee, negative performance evaluation did not become part of employee's personnel file, and employee was not fired, demoted, or transferred. *Cokus v. Bristol Myers Squibb Co.*, 362 N.J.Super. 366, 827 A.2d 1173 (L.2002), affirmed 362 N.J.Super. 245, 827 A.2d 1098, certification denied 178 N.J. 32, 834 A.2d 405. Master And Servant ☞30(6.35)

Employer's firing employee for refusing to sign noncompete agreement might, depending on the surrounding circumstances, violate the public policy necessary to support a cause of action under Conscientious Employee Protection Act (CEPA) and to support wrongful discharge claim under public policy exception to at-will employment, and therefore, dismissal of employee's CEPA and wrongful discharge claims before she had an opportunity to develop her case through discovery was premature. *Maw v. Advanced Clinical Communications, Inc.*, 359 N.J.Super. 420, 820 A.2d 105 (A.D.2003). Master And Servant ☞30(1.10); Master And Servant ☞30(6.35)

In order to maintain a cause of action under the Conscientious Employee Protection Act (CEPA), a plaintiff must establish that: (1) he or she reasonably believed that his or her employer's conduct was violating either a law or rule or regulation promulgated pursuant to law; (2) he or she performed whistleblowing activity described in the statute; (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistleblowing activity and the adverse employment action. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Master And Servant ☞30(6.35)

The elements necessary to prove a retaliatory discharge claim under Conscientious Employees' Protection Act (CEPA) are similar to those necessary to prove a violation of Title VII. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001).

Under a pretext theory, in order for casino employee to establish a prima facie case of unlawful retaliation under Conscientious Employees' Protection Act (CEPA), employee, who alleged that he was discharged after he informed employer that unlicensed technicians were working in tote room, had to present evidence that: (1) he reasonably believed that allowing unlicensed employees to operate the tote room violated casino law; (2) he reported it to a supervisor or public authority; (3) he was fired; and (4) there was a causal connection between his reporting and his firing. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

***72062** Employer violated Conscientious Employees' Protection Act (CEPA) when it fired casino employee who blew whistle about unlicensed technicians in tote room; employer fired employee, but retained supervisors who were equally, if not more, culpable in licensing violation, and employee would not have been the one of the three employees to be sacrificed "but for" his protected activity. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

To prove a Conscientious Employees' Protection Act (CEPA) claim, the employee must show that the retaliatory discrimination was more likely than not a determinative factor in the adverse employment decision. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

Before permitting trial of an employee's retaliation claim under the Conscientious Employee Protection Act (CEPA), the court must first find and enunciate the specific terms of a statute or regulation, or the clear expression of public policy, which would be violated if the facts as alleged are true. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞30(6.35)

So long as his actions were not invidiously discriminatory or contrary to some other pertinent law, county prosecutor could discharge investigator in county prosecutor's office without a formal hearing, in keeping with their at-will relationship, and since there was no allegation of discrimination, if investigator's discharge did not violate Conscientious Employee Protection Act (CEPA), his discharge was lawful because he served at the will of the prosecutor. *DeLisa v. County of Bergen*, 165 N.J. 140, 755 A.2d 578 (2000). District And Prosecuting Attorneys ☞3(.5)

Employee provided sufficient proofs to jury that his complaints to employer about coemployees' allegedly unethical conduct were protected under Conscientious Employee Protection Act (CEPA) and that his discharge was motivated by those complaints, and as such, jury's findings in favor of employee on his CEPA claim would not be disturbed; employer's code of conduct stressed ethical conduct, and based on code, employee reasonably could have believed that coemployees' alleged action of falsifying expense report rose to level of significant impropriety. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞43

Because employee failed to present prima facie case of Conscientious Employee Protection Act (CEPA) violation, there was no foundation for his claim that his suspension and demotion constituted an unlawful constructive discharge. *Schechter v. New Jersey Dept. of Law & Public Safety, Div. of Gaming Enforcement*, 327 N.J.Super. 428, 743 A.2d 872 (A.D.2000). Master And Servant ☞31(2)

***72063** Employee did not state claim under Conscientious Employee Protection Act (CEPA) section, prohibiting employer from retaliating against employee because employee provides information to public body conducting investigation into any violation of law by the employer, since employee alleged retaliation for his report about co-employee, not employer, misconduct. *DeLisa v. County of Bergen*, 326 N.J.Super. 32, 740 A.2d 648 (A.D.1999), certification granted 163 N.J. 77, 747 A.2d 286, reversed 165 N.J. 140, 755 A.2d 578. Master And Servant ☞30(6.35)

School guidance counselor, who alleged that she was terminated in retaliation for her complaints regarding teacher's failure to refer student for counselling in a timely fashion, did not establish claim under Conscientious Employee Protection Act (CEPA); there was no indication that student's mother ever advised teacher that student was contemplating suicide, and there was no support for counselor's allegations that teacher was aware of a risk of suicide and ignored it for several months. *Williams v. Pemberton Tp. Public Schools*, 323 N.J.Super. 490, 733 A.2d 571 (A.D.1999). Schools ☞147.12

To maintain action under Conscientious Employee Protection Act (CEPA) sections prohibiting retaliation against employee who discloses employer practice or refuses to participate in activity which violates the law, employee must show that she reasonably believed that employer's conduct violated the law, that she performed whistleblowing activity, that adverse action was taken against her, and that causal connection exists between whistleblowing activity and adverse action. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Master And Servant ☞30(6.35)

Sine qua non of Conscientious Employee Protection Act (CEPA) claim is not actual occurrence of violation of promulgated authority or public policy, but, rather, existence of reasonable belief to effect that such authority or policy has been breached. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Master And Servant ☞30(6.35)

Reasonable and objective belief of violation is sufficient for Conscientious Employee Protection Act (CEPA) claim. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Master And Servant ☞30(6.35)

While neither discharge nor whistleblower case, public policy nevertheless required that unemployment compensation claimant's legitimate distress when required by his employer to act illegally or immorally by overbilling clients be recognized as good cause for leaving, such that claimant was not disqualified from receiving benefits. *Casciano v. Board of Review*, 300 N.J.Super. 570, 693 A.2d 531 (A.D.1997). Social Security And Public Welfare ☞415

***72064** Sine qua non of Conscientious Employee Protection Act (CEPA) claim is not actual occurrence of violation of promulgated authority or public policy, but rather existence of reasonable belief to effect that such authority or policy has been breached. *Falco v. Community Medical Center*, 296 N.J.Super. 298, 686 A.2d 1212 (A.D.1997), certification denied 153 N.J. 405, 709 A.2d 798. Master And Servant ☞30(6.35)

Former employee did not make out submissible claim under Conscientious Employee Protection Act (CEPA) in connection with allegations that he was fired for threatening to go to federal authorities about treatment of co-worker; although employee was dissatisfied with treatment of co-worker and stated that he knew there were "certain labor laws," that employees had to be treated properly, and threatened to go to Internal Revenue Service (IRS), there was no evidence that employee suspected or was aware of any illegal acts committed by employer or of any basis for employee's threats. *Catalane v. Gilian Instrument Corp.*, 271 N.J.Super. 476, 638 A.2d 1341 (A.D.1994), certification denied 136 N.J. 298, 642 A.2d 1006. Master And Servant ☞

30(6.35)

7. Disclosure

Public high school freshman field hockey coach, who alleged that she was terminated for erecting sign on her house suggesting that principal was bad role model for students, failed to state claim under the Conscientious Employee Protection Act (CEPA), where sign did not suggest that principal engaged in illegal activity, and erection of sign was not disclosure to public body. *Carlino v. Gloucester City High School*, D.N.J.1999, 57 F.Supp.2d 1, affirmed in part 44 Fed.Appx. 599, 2002 WL 1877011. Schools ☞147.12

Display of sign on front of employee's private home regarding state employer's conduct does not constitute disclosure to public body, for purposes of Conscientious Employee Protection Act (CEPA). *Carlino v. Gloucester City High School*, D.N.J.1999, 57 F.Supp.2d 1, affirmed in part 44 Fed.Appx. 599, 2002 WL 1877011. Master And Servant ☞30(6.35)

Filing of individual Equal Employment Opportunity Commission claim did not constitute "disclosure" under this section, nor did filing of charge fall under "providing information" clause of this section, and thus, filing of claim did not fall within protections of this act. *Smith v. Travelers Mortg. Services*, D.N.J.1988, 699 F.Supp. 1080. Master And Servant ☞30(6.35)

***72065** Conscientious Employee Protection Act (CEPA) did not apply to employee's disclosures about coemployee's alleged cheating on his expense account and coemployee's approval of a lease of computer equipment from firm in which he allegedly had an interest; none of activities attributed to coemployee constituted an activity of employer within meaning of the Act, which prohibits retaliation against employee for disclosing activity or practice of the employer. *Roach v. TRW, Inc.*, 320 N.J.Super. 558, 727 A.2d 1055 (A.D.1999), certification granted, cause remanded 162 N.J. 195, 743 A.2d 847, on remand 326 N.J.Super. 493, 742 A.2d 135. Master And Servant ☞30(6.35)

In enacting Conscientious Employee Protection Act (CEPA), legislature did not intend that the disclosure of employee activities victimizing employer would fall within CEPA. *Roach v. TRW, Inc.*, 320 N.J.Super. 558, 727 A.2d 1055 (A.D.1999), certification granted, cause remanded 162 N.J. 195, 743 A.2d 847, on remand 326 N.J.Super. 493, 742 A.2d 135. Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) prohibited retaliatory action against employee for making disclosure to either supervisor or public body. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 269 N.J.Super. 11, 634 A.2d 538 (A.D.1993), certification granted 136 N.J. 28, 641 A.2d 1039, affirmed 138 N.J. 405, 650 A.2d 958. Master And Servant ☞30(6.35)

8. Activity, policy or practice

Alleged unfair distribution of overtime was not a practice involving a clear mandate of public policy as contemplated by Conscientious Employee Protection Act (CEPA), and as such, school custodial employee's complaint that he was never given the opportunity for premium overtime, i.e., Sunday overtime, for which double time was paid, was not cognizable under CEPA. *Cosgrove v. Cranford Bd. of Educ.*, 356 N.J.Super. 518, 813 A.2d 591 (A.D.2003). Schools ☞63(1)

Police officers' protected activity under Conscientious Employee Protection Act (CEPA) could not be inferred to be cause of officers becoming subject of disciplinary charges after their whistleblowing, where one officer had been subject of several administrative charges and reprimands prior to whistleblowing, disciplinary actions taken after whistleblowing were substantiated, and a final judicial determination sustained findings and suspensions. *Hancock v. Borough of Oaklyn*, 347 N.J.Super. 350, 790 A.2d 186 (A.D.2002), certification granted 174 N.J. 191, 803 A.2d 1162, appeal dismissed as improvidently granted 177 N.J. 217, 827 A.2d 286. Municipal Corporations ☞185(1)

***72066** There was no clear mandate of public policy that prohibited head of social services agency from obtaining unrestricted access to agency's files, and therefore, former employee, who alleged that she was discharged in retaliation for her refusal to turn over confidential client files to agency's director, did not establish claim under Conscientious Employee Protection Act (CEPA) section prohibiting employer from taking retaliatory action against employee who objects to activity which he believes is incompatible with mandate of public policy or violates the law. *Smith-Bozarth v. Coalition Against Rape and Abuse*,

Inc., 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

Threshold question in Conscientious Employee Protection Act (CEPA) case is whether plaintiff has identified either a law, rule, or regulation promulgated pursuant to law or clear mandate of public policy concerning public health, safety, or welfare which the employer has allegedly violated. *Schechter v. New Jersey Dept. of Law & Public Safety, Div. of Gaming Enforcement*, 327 N.J.Super. 428, 743 A.2d 872 (A.D.2000). Master And Servant ☞30(1.10)

Employee's activities which are in conflict solely with employer's interests cannot constitute an "activity, policy, or practice of the employer" for purposes of the Conscientious Employee Protection Act (CEPA), which prohibits employer from retaliating against employee who discloses an activity, policy, or practice of the employer. *Roach v. TRW, Inc.*, 320 N.J.Super. 558, 727 A.2d 1055 (A.D.1999), certification granted, cause remanded 162 N.J. 195, 743 A.2d 847, on remand 326 N.J.Super. 493, 742 A.2d 135. Master And Servant ☞30(6.35)

8.5. Another employer

Vitamin manufacturer with which insulation and asbestos contractor had a business relationship was not "another employer" of contractor's foreman for purposes of New Jersey Conscientious Employee Protection Act (CEPA). *DaBronzo v. Roche Vitamins, Inc.*, D.N.J.2002, 232 F.Supp.2d 306. Master And Servant ☞30(6.35)

9. Providing information or testifying

Providing of information or testimony to investigative body must relate to a violation of law "by the employer" for purposes of Conscientious Employee Protection Act (CEPA) section prohibiting employer from taking retaliatory action against employee because employee provides information to public body conducting investigation into any violation of law by the employer. *DeLisa v. County of Bergen*, 326 N.J.Super. 32, 740 A.2d 648 (A.D.1999), certification granted 163 N.J. 77, 747 A.2d 286, reversed 165 N.J. 140, 755 A.2d 578. Master And Servant ☞30(6.35)

*72067 10. Objection or refusal to participate

Exclusion or "shunning" of assistant city attorney, allegedly for criticizing and refusing to participate in what she perceived to be a series of illegal contracts, was not a sufficiently adverse action to establish a claim under the New Jersey Conscientious Employee Protection Act (CEPA). *Sunkett v. Misci*, D.N.J.2002, 183 F.Supp.2d 691. Municipal Corporations ☞218(3)

Under Conscientious Employee Protection Act (CEPA), objecting employee must have objectively reasonable belief, at time of objection or refusal to participate in employer's offensive activity, that such activity is either illegal or harmful to public health and safety and that there is substantial likelihood that questioned activity is incompatible with constitutional, statutory, or regulatory provisions; specific knowledge of precise source of public policy is not required. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) claim could be maintained based on employee's discharge in New Jersey in retaliation for employee's objection to practice that violated another country's public policy and endangered that country's citizens; court declined to impose artificial geographical limits on harm or illegality that objecting employee sought to avoid. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Master And Servant ☞30(6.35)

Regulation governing access to pupil records, prior to its amendment, was either unclear or not sufficiently comprehensive and either deficiency led teacher, who was denied salary increment because of her refusal to obey school superintendent's order that teacher select records to be given to outside contractor hired to evaluate learning disabilities program, to reasonably believe that to obey superintendent's order would be violation of the law for purposes of Conscientious Employee Protection Act section providing that employer shall not take any retaliatory action against employee because employee refuses to participate in practice which employee reasonably believes is in violation of the law. *Delran Educ. Ass'n v. Delran Bd. of Educ.*, 277 N.J.Super. 538, 650 A.2d 7 (A.D.1994). Schools ☞147.12

*72068 Veterinary doctor's allegations that he was fired by drug company in retaliation for expressing disapproval of

company's decision to research particular drug did not sufficiently allege cause of action under the Conscientious Employee Protection Act (CEPA); because company's research decision was not unlawful or wrongful in any way, its termination of doctor's employment, even if caused by his complaints and disagreements with research decision, did not violate law, regulation, or a clear mandate of public policy. *Young v. Schering Corp.*, 275 N.J.Super. 221, 645 A.2d 1238 (A.D.1994), certification denied 139 N.J. 184, 652 A.2d 172, certification granted 139 N.J. 184, 652 A.2d 172, affirmed 141 N.J. 16, 660 A.2d 1153. Master And Servant ☞39(1)

Blood-bank supervisor's intentional destruction of blood samples to show his objection to, or refusal to participate in, hospital's allegedly defective blood-identification practices, was not protected by Conscientious Employee Protection Act (CEPA); less drastic avenues of protest or objection were readily available. *Haworth v. Deborah Heart and Lung Center*, 271 N.J.Super. 502, 638 A.2d 1354 (A.D.1994). Master And Servant ☞30(6.35)

Under New Jersey law, jury's finding against insurance adjuster on his claim, under the New Jersey Conscientious Employee Protection Act (CEPA), which alleged that employer fired adjuster for refusing to work in New York despite fact that employer was not licensed in New York, was supported by evidence that employer had received other work that would have required field activity in New Jersey rather than New York, and that the field job was a real job that adjuster could have performed, and that adjuster decided to resign rather than to accept the New Jersey field position. *Worbetz v. Ward North America, Inc.*, C.A.3 (N.J.)2002, 54 Fed.Appx. 526, 2002 WL 31732444, Unreported. Master And Servant ☞40(4)

11. Violation of law

Employee who alleged that he was terminated for whistleblowing in violation of New Jersey's Conscientious Employee Protection Act (CEPA) failed to establish that any antitrust law would have been violated if the facts concerning employer's pricing policy, as described by employee, were true; employee's belief that antitrust law might someday be violated if certain precautions were not taken or certain changes were not made was insufficient. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

Employee who merely conveyed his concerns, through various memos and conversations that a law might at some point in the future be violated if certain precautions were not taken and changes were not made in employer's pricing system then being developed did not satisfy element of whistleblowing claim under New Jersey's Conscientious Employee Protection Act (CEPA) that employee show that he reasonably believed at time he articulated his concerns that his employer's conduct was violating either law or rule or regulation promulgated pursuant to law. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

***72069** Labor union's former arbitration officer's claims arising from union's failing to read minutes of board meetings at general membership meetings did not implicate issues of free speech and assembly and, thus, as a matter of law, officer did not possess an objectively reasonable belief that actions of union and its officials violated provision of Labor Management Reporting and Disclosure Act (LMRDA) governing free speech and assembly protections, as was required to maintain action under Conscientious Employee Protection Act (CEPA) section prohibiting employers from taking retaliatory action against employees. *Dzwonar v. McDevitt*, 177 N.J. 451, 828 A.2d 893 (2003). Master And Servant ☞30(6.35)

Labor union's former arbitration officer's belief that union's failing to read minutes of board meetings at general membership meetings violated provision of Labor Management Reporting and Disclosure Act (LMRDA) setting forth fiduciary responsibilities of union officers to organization and its members was not objectively reasonable, as was required to maintain action under Conscientious Employee Protection Act (CEPA) section prohibiting employers from taking any retaliatory action against employee; officer did not contend that union and its officials misappropriated union money or property, but instead challenged adequacy of union's internal procedures. *Dzwonar v. McDevitt*, 177 N.J. 451, 828 A.2d 893 (2003). Master And Servant ☞30(6.35)

Employer could not terminate employee, a nurse in a prison for women, for insubordination for submitting her complaints, that prisoners were receiving medication without making statutory copayments and under expired physician orders, to individual to whom her immediate supervisor reported, as that individual fell within Conscientious Employee Protection Act's (CEPA) definition of "supervisor." *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Officers And

Public Employees ☞69.7

Division of Gaming Enforcement's decision to assign lower degree of priority to exclusion cases, involving persons excluded from casinos, than in prior years did not violate any law, rule, or regulation or clear mandate of public policy as required to maintain cause of action under Conscientious Employee Protection Act (CEPA); Division could reasonably have concluded that maintenance of exclusion list played less important role in preserving integrity of gaming industry than many of its other regulatory responsibilities. *Schechter v. New Jersey Dept. of Law & Public Safety, Div. of Gaming Enforcement*, 327 N.J.Super. 428, 743 A.2d 872 (A.D.2000). States ☞53

Conscientious Employee Protection Act (CEPA) protects employee who reports illegal act of minority partner, even if partners' relationship did not exist at time of the wrongdoing. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

***72070 12. Clear mandate of public policy**

Specific knowledge of the precise source of public policy is not required for employee to bring claim under New Jersey's Conscientious Employee Protection Act (CEPA) for employer's allegedly terminating employee based on her refusal to perform certain activities she reasonably believed to be illegal. *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Master And Servant ☞30(6.35)

No clear mandate of public policy concerning the public health, safety, or welfare or protection of the environment was violated by union's failing to read minutes of board meetings at general membership meetings, as was required for labor union's former arbitration officer to maintain action under Conscientious Employee Protection Act (CEPA) section prohibiting employers from taking retaliatory action against employees. *Dzwonar v. McDevitt*, 177 N.J. 451, 828 A.2d 893 (2003). Master And Servant ☞30(6.35)

New Jersey's strong prohibition against restraint of trade, and against unduly burdening employees by restricting their right to engage in their chosen field of employment, establishes the public policy necessary to support a Conscientious Employee Protection Act (CEPA) claim and a wrongful discharge claim under public policy exception to at-will employment in the context of an employee's refusal to sign a noncompete clause. *Maw v. Advanced Clinical Communications, Inc.*, 359 N.J.Super. 420, 820 A.2d 105 (A.D.2003). Master And Servant ☞30(1.10); Master And Servant ☞30(6.35)

For purposes of Conscientious Employee Protection Act (CEPA) section prohibiting employer from taking retaliatory action against employee who objects to activity which the employee reasonably believes is incompatible with clear mandate of public policy concerning the public health, safety or welfare, sources of public policy include the Federal and State Constitutions, federal and state laws and administrative rules, regulations and decisions, the common law and specific judicial decisions, and in certain cases, professional codes of ethics. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

***72071** Vague, controversial, unsettled, or otherwise problematic public policy does not constitute a clear mandate for purposes of Conscientious Employee Protection Act (CEPA) section prohibiting employer from taking retaliatory action against employee who objects to activity which the employee reasonably believes is incompatible with clear mandate of public policy concerning the public health, safety or welfare. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) prohibits employer retaliation against employee who objects to employer practice that violates foreign country's public policy, as expressed in industry safety guideline, even if employee is unaware of the precise source of the public policy. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Under Conscientious Employee Protection Act (CEPA) section prohibiting retaliation against employee for refusing to participate in activity which is incompatible with public policy, employee must articulate existence of a clear mandate of public policy which employer's conduct violates, and court must make threshold determination regarding specific terms of statute or

regulation, or the clear expression of public policy, which would be violated if facts, as alleged, are true. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Master And Servant ☞30(6.35)

Employee demonstrated that sale in Japan of gasoline with five percent or more benzene was incompatible with clear mandate of public policy for purposes of his Conscientious Employee Protection Act (CEPA) claim, alleging that he was discharged in retaliation for objecting to excessive levels of benzene in gasoline produced and sold by employer's subsidiary in Japan; Japanese Petroleum Association Guideline prohibiting sale of gasoline with five percent or more benzene constituted clear mandate of public policy. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Master And Servant ☞30(6.35)

Adverse action against employee stemming from employer's good-faith investigation of employee's complaint as to co-worker's conduct that is alleged to have violated clear mandate of law or public policy is not sufficient, in itself, to impose liability on employer under Conscientious Employee Protection Act (CEPA), even if jury believes that employer reached incorrect result; rather, it is employer's complicity in alleged unlawful activity that must be basis for damages under CEPA. *Higgins v. Pascack Valley Hosp.*, 307 N.J.Super. 277, 704 A.2d 988 (A.D.1998), certification granted 156 N.J. 405, 719 A.2d 637, affirmed in part, reversed in part 158 N.J. 404, 730 A.2d 327. Master And Servant ☞30(6.35)

***72072** Public policy sources under Conscientious Employee Protection Act (CEPA) include legislation, administrative rules, regulations or decisions, judicial decisions, and, in some circumstances, professional code of ethics. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Master And Servant ☞30(6.35)

Police officer's belief that defendant may have been improperly charged with criminal assault would show violation of public policy sufficient to form basis of Conscientious Employee Protection Act (CEPA) claim if that belief was reasonable. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Municipal Corporations ☞184.1

Employee identified a clear mandate of public policy which he reasonably believed that employer, a petroleum company, had violated when he objected to distribution in Japan of gasoline with excessive benzene content by employer's subsidiary, as required to establish a cause of action for retaliatory discharge in violation of Conscientious Employee Protection Act (CEPA); clear mandate of public policy derived from federal regulations and New Jersey product liability law which was effective in Japan through operation of Japanese Petroleum Association guideline and Japanese Environmental Agency Notification. *Mehlman v. Mobil Oil Corp.*, 291 N.J.Super. 98, 676 A.2d 1143 (A.D.1996), certification granted 147 N.J. 264, 686 A.2d 764, affirmed 153 N.J. 163, 707 A.2d 1000. Master And Servant ☞30(6.35)

Real estate broker's disclosure to Real Estate Commission of appellate court's decision that competing broker had tortiously interfered with exclusive contract between broker's employer and its client and with employer's prospective economic advantage implicated the public interest so as to be protected by Conscientious Employee Protection Act (CEPA). *Barratt v. Cushman & Wakefield of New Jersey, Inc.*, 144 N.J. 120, 675 A.2d 1094 (1996). Master And Servant ☞30(6.35)

In deciding whether nursing home discharged physician in violation of Conscientious Employee Protection Act (CEPA), judge's balance should have taken into account not merely single dimension of public policy mandate asserted by physician--caring for 300 patients during vacation by other physician and leave of absence by medical director violated ethical responsibilities--but existence of other applicable policies bearing on clarity of mandate and benefit to public. *Fineman v. New Jersey Dept. of Human Services*, 272 N.J.Super. 606, 640 A.2d 1161 (A.D.1994), certification denied 138 N.J. 267, 649 A.2d 1287. Health ☞276

***72073 13. Retaliatory action**

Former employee failed to make prima facie claim that she suffered adverse employment action as result of her complaint that she was compelled to work overtime without pay, in violation of Conscientious Employee Protection Act (CEPA); employer never took any retaliatory action against employee after she complained, but rather employee chose not to return to work, despite efforts by employer to have her return. *Mosley v. Femina Fashions, Inc.*, 356 N.J.Super. 118, 811 A.2d 910 (A.D.2002), certification denied 176 N.J. 279, 822 A.2d 609. Master And Servant ☞30(6.35)

Harassment which high school band director experienced after reporting misconduct of supervisory school officials did not constitute an "adverse employment action" actionable under New Jersey's Conscientious Employee Protection Act (CEPA) since director failed to allege that he suffered any lasting prejudice. *Kadetsky v. Egg Harbor Tp. Bd. of Educ.*, D.N.J.2000, 82 F.Supp.2d 327. Schools ☞147.12

Firefighter's allegations that city officials including the mayor intentionally deprived him of a promotion to battalion chief in retaliation for his criticism of mayor while running against him in election were insufficient to establish violation of New Jersey Conscientious Employees Protection Act (CEPA); firefighter failed to establish that his lack of a promotion was causally connected to his mayoral campaign. *Fioriglio v. City of Atlantic City*, D.N.J.1998, 996 F.Supp. 379, affirmed 185 F.3d 861, certiorari denied 120 S.Ct. 789, 528 U.S. 1075, 145 L.Ed.2d 666. Municipal Corporations ☞197

Former employee's allegation that she was discharged in retaliation for filing sex discrimination claim against her employer with Equal Employment Opportunity Commission (EEOC) was sufficient to state claim under New Jersey's "whistleblower" statute. *Sandom v. Travelers Mortg. Services, Inc.*, D.N.J.1990, 752 F.Supp. 1240. Master And Servant ☞39(1)

Borough did not take retaliatory action against police officers who reported their belief that another officer sought unearned overtime payments, and thus, borough did not violate Conscientious Employee Protection Act (CEPA), where neither reporting officer was discharged or demoted, borough suspended first officer for five days without pay and suspended second officer for seven days without pay for violating chain of command by discussing the ongoing investigation regarding overtime payments with mayor, and borough suspended second officer for eight days without pay for not wearing body armor. *Hancock v. Borough of Oaklyn*, 347 N.J.Super. 350, 790 A.2d 186 (A.D.2002), certification granted 174 N.J. 191, 803 A.2d 1162, appeal dismissed as improvidently granted 177 N.J. 217, 827 A.2d 286. Municipal Corporations ☞185(1)

***72074** Borough's disciplinary action against whistleblowing police officers that resulted in officers' brief suspensions did not constitute a de facto termination under Conscientious Employee Protection Act (CEPA), where officers were represented by counsel at disciplinary hearing, were found guilty of charges by hearing officer, charges and disciplinary actions were sustained by reviewing court, and no appeals were filed. *Hancock v. Borough of Oaklyn*, 347 N.J.Super. 350, 790 A.2d 186 (A.D.2002), certification granted 174 N.J. 191, 803 A.2d 1162, appeal dismissed as improvidently granted 177 N.J. 217, 827 A.2d 286. Municipal Corporations ☞185(1)

Examining whether retaliatory motive existed in Conscientious Employee Protection Act (CEPA) case, jurors may infer causal connection based on the surrounding circumstances. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) does not require that the activity complained of be actual violation of a law or regulation, only that employee reasonably believes that to be the case, for purposes of CEPA section prohibiting employer from taking retaliatory action against employee because employee refuses to participate in activity which he reasonably believes is in violation of a law or regulation. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) affords protection to employees if they reasonably believe that the activity complained of is fraudulent or criminal, even when the activity does not rise to level of actual crime, for purposes of CEPA section prohibiting employer from taking retaliatory action against employee because employee refuses to participate in activity which he reasonably believes is fraudulent or criminal. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

An employer may fire an employee without violating the Conscientious Employee Protection Act (CEPA), even a whistleblower, who is unreasonable in expressing his complaints. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞30(6.35)

An employer may not, under the Conscientious Employee Protection Act (CEPA), fire a whistle-blowing employee for insubordination when that employee sidesteps an involved immediate supervisor and reports his complaints to an individual to whom that supervisor reports. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master

And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) prohibits employer from taking retaliatory action against employee who has reasonable basis for objecting to coemployee's activity, policy, or practice; however, filing complaint does not insulate complaining employee from discharge or other disciplinary action for reasons unrelated to the complaint. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

***72075** Even when employer conducts thorough investigation of alleged misconduct by coemployees, evaluation of employer's retaliatory conduct focuses not on the reasonableness of employer's investigation, but on that of the underlying complaint for purposes of employee's Conscientious Employee Protection Act (CEPA) claim. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

As long as reasonable basis exists for employee's complaint about misconduct, whether of employer or of coemployee, the complaining employee should not be exposed to retaliation by employer pursuant to Conscientious Employee Protection Act (CEPA); however, employer retains authority to dismiss complaining employee for filing complaint that is not supported by objectively reasonable basis. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Not every employee action connected with employment is chargeable to employer under the Conscientious Employee Protection Act (CEPA). *Roach v. TRW, Inc.*, 320 N.J.Super. 558, 727 A.2d 1055 (A.D.1999), certification granted, cause remanded 162 N.J. 195, 743 A.2d 847, on remand 326 N.J.Super. 493, 742 A.2d 135. Master And Servant ☞30(6.35)

Conscientious Employee Protection Act (CEPA) does not apply to postemployment retaliatory negative references. *Beck v. Tribert*, 312 N.J.Super. 335, 711 A.2d 951 (A.D.1998), certification denied 156 N.J. 424, 719 A.2d 1022. Master And Servant ☞30(6.35)

Termination of town tax assessor, allegedly because she instructed her secretary not to take messages for another secretary, did not violate Conscientious Employee Protection Act. *Kaman v. Montague Tp. Committee*, 306 N.J.Super. 291, 703 A.2d 680 (A.D.1997), certification granted 156 N.J. 383, 718 A.2d 1212, affirmed 158 N.J. 371, 730 A.2d 309. Taxation ☞314

Employee may be fired for any reason, in absence of contract, be it for good cause, no cause, or even morally wrong cause, so long as discharge is not contrary to clear mandate of public policy. *D'Agostino v. Johnson & Johnson, Inc.*, 133 N.J. 516, 628 A.2d 305 (1993). Master And Servant ☞30(1.10)

14. Questions of law or fact

Genuine issue of material fact existed as to whether bookkeeper, who refused employer's request to enter employer's shareholder's personal loan fees on employer's books, had reasonable belief that had she followed employer's request, she would have been subjected to criminal liability or that a false tax return would be filed, precluding summary judgment in employee's action brought pursuant to New Jersey's Conscientious Employee Protection Act (CEPA). *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Federal Civil Procedure ☞2497.1

***72076** In determining whether to grant employer's motion for summary judgment on employee's claim under New Jersey's Conscientious Employee Protection Act (CEPA), court would consider whether or not a reasonable jury could find that employee reasonably believed that the actions employer asked of her would have been unlawful. *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Federal Civil Procedure ☞2497.1

In determining whether to grant employer's motion for summary judgment on employee's claim under New Jersey's Conscientious Employee Protection Act (CEPA), court would consider whether employee had an objectively reasonable belief, at the time of her refusal to follow employer's request to perform certain activities, that the employer's offensive activity was illegal. *Mazza v. George Yelland, Inc.*, D.N.J.2001, 161 F.Supp.2d 376. Federal Civil Procedure ☞2497.1

Material issues of fact, as to whether police chief took adverse employment action against police inspectors in retaliation for

their public statements critical of police department, precluded summary judgment on claim under New Jersey Conscientious Employee Protection Act (CEPA). *McCullough v. City of Atlantic City*, D.N.J.2001, 137 F.Supp.2d 557. Federal Civil Procedure ☞2497.1

Court need not consider whether plaintiff asserting Conscientious Employee Protection Act (CEPA) claim has sufficient evidence to support a finding that he reasonably believed defendant's conduct violated a statute, rule, regulation, or public policy unless the judge has first identified the same; this threshold identification is a question of law to be decided by the judge before a CEPA claim is submitted to a jury. *Cosgrove v. Cranford Bd. of Educ.*, 356 N.J.Super. 518, 813 A.2d 591 (A.D.2003). Master And Servant ☞43

Trial judge in Conscientious Employees' Protection Act (CEPA) case was not required to find any more than that retaliation was a motivating factor in employer's discharge of casino employee who blew whistle on employer regarding unlicensed technicians in tote room. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

The value judgment as to whether the plaintiff adequately has established the existence of a clear mandate of public policy is an issue of law that must be made by the court, and not by the jury, in a retaliation action under the Conscientious Employee Protection Act (CEPA). *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞43

***72077** To maintain retaliation claim under Conscientious Employee Protection Act (CEPA), it is incumbent upon employee to furnish trial court with enough by way of proof and legal basis to enable court to determine as matter of law, on threshold basis, that statute, rule, or public policy would have been violated if jury were to find that the conduct employee alleges actually occurred; only after the court identifies the asserted violation with adequate particularity may jury consider objective reasonableness of employee's belief that his information indicated the actual occurrence of such a violation. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞30(6.35)

In determining whether to dismiss police officer's retaliation claim against police department under the Conscientious Employee Protection Act (CEPA), trial court was required to address the question whether officer had sufficient basis for an objectively reasonable belief that either of gun permits challenged by the officer was illegal, or for an objectively reasonable belief that either permit was issued in violation of a public policy cognizable under CEPA. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Municipal Corporations ☞185(1)

Once the plaintiff asserting a claim under the Conscientious Employee Protection Act (CEPA) provides the court with some basis in the proofs to establish the existence of a violation of law or public policy and of a connection between the asserted retaliatory conduct and the violation, it is the court's duty to determine whether the matter should go to the jury, i.e., whether the violation of law or public policy alleged is real and whether there is evidence to support the connection. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞43

In an employee's action under the Conscientious Employee Protection Act (CEPA), if the trial court determines that the asserted violation of law or public policy is real and that there is evidence to support connection between the alleged retaliatory conduct and the violation, the court must then carefully instruct the jury concerning the nature of the violation so as to preclude jury speculation about that element, and it must guide the jury in its function of determining whether, as a matter of fact, there was a connection between the violation and the asserted retaliation. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞44

Police officer did not make adequate showing that he had objectively reasonable belief that deputy police chief had illegally obtained a gun permit that would otherwise have been denied on ground that he was nonresident, as required to maintain retaliation claim under Conscientious Employee Protection Act (CEPA); uncontradicted testimony established that it was common and lawful practice to allow nonresident police officers to receive gun permit from municipality that employed them, and only flaw in deputy chief's use of this practice was his failure to use police station's proper street address. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Municipal Corporations☞

185(1)

***72078** Whether a plaintiff has identified a clear mandate of public policy, for purposes of Conscientious Employee Protection Act (CEPA) claim, is a question of law which the court must decide before submitting a CEPA claim to a jury. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞43

To determine whether plaintiff has presented viable Conscientious Employee Protection Act (CEPA) claim, trial court must first find and enunciate the specific terms of a statute or regulation or the clear expression of public policy which would be violated if the facts, as alleged, are true, and the determination of whether plaintiff has made this threshold showing is a question of law which court must decide before submitting CEPA claim to jury. *Schechter v. New Jersey Dept. of Law & Public Safety, Div. of Gaming Enforcement*, 327 N.J.Super. 428, 743 A.2d 872 (A.D.2000). Master And Servant ☞30(1.10); Master And Servant ☞43

15. Presumptions and burden of proof

Summary judgment in favor of employer, in suit alleging retaliation for whistle-blower activity in violation of New Jersey Conscientious Employee Protection Act (CEPA), is improper if complaining employee points to some evidence that raises doubt about employer's proffered explanation for adverse employment decision. *McCullough v. City of Atlantic City*, D.N.J.2001, 137 F.Supp.2d 557. Federal Civil Procedure ☞2497.1

Employer's statement that casino employee was terminated because of his role in the employment of unlicensed workers in the tote room was, by itself, a lawful explanation for employee's firing, and thus, the burden of producing evidence shifted back to employee for purposes of his Conscientious Employees' Protection Act (CEPA) claim, alleging that he was discharged after he informed employer that technicians who were not licensed by Casino Control Commission were working in tote room in violation of Casino Simulcasting Act. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞40(1)

Although the burden of production shifts throughout the process, the employee at all phases of Conscientious Employees' Protection Act (CEPA) claim retains the burden of proof that the adverse employment action was caused by purposeful or intentional retaliation, and in meeting that burden, employee need not prove that retaliation was the sole or exclusive consideration in the determination to discharge him; rather, he need only show by a preponderance of the evidence that it made a difference in that decision. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞40(1)

***72079** Trial judge's conclusion that employee's whistleblowing played a "significant part" in employer's decision to fire him meant that employee would not have been the one of the three employees to be sacrificed "but for" his protected activity, and judge's conclusion established that employee met his burden of proof for purposes of his Conscientious Employees' Protection Act (CEPA) claim, alleging that he was fired after he informed casino employer that technicians who were not licensed by Casino Control Commission were working in tote room. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

Under Conscientious Employees' Protection Act (CEPA), employee's ultimate burden of proof is to prove by a preponderance of the evidence that his protected, whistleblowing activity was a determinative or substantial, motivating factor in employer's decision to terminate him or, in other words, that it made a difference, and employee need not prove that his whistleblowing activity was the only factor in the decision to fire him. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞40(1)

Casino, which fired employee after employee blew whistle about unlicensed technicians in tote room, met its burden of production by offering reasons for retaining supervisors who were equally, if not more, culpable in licensing violation, and employer's proffered reasons countered inference of retaliatory motive arising from disparate treatment of two culpable supervisors who did not blow whistle and were not fired, but trial judge was not bound to accept employer's explanation or to conclude that retaliation was not motivating factor for purposes of employee's Conscientious Employees' Protection Act (CEPA) claim. *Donofry v. Autotote Systems, Inc.*, 350 N.J.Super. 276, 795 A.2d 260 (A.D.2001). Master And Servant ☞30(6.35)

To establish an objectively reasonable belief that employer's activity was incompatible with a recognized source of public policy, so as to support a retaliation claim under the Conscientious Employee Protection Act (CEPA), the employee is not required to have specific knowledge of the precise source of public policy; it is enough that a court will be able to identify the law or public policy that might have been violated by the challenged conduct. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Master And Servant ☞30(1.10); Master And Servant ☞30(6.35)

Police officer did not make adequate showing that he had objectively reasonable belief that deputy police chief illegally issued gun permit to former member of police department who allegedly was a known drug dealer, as required to maintain retaliation claim under Conscientious Employee Protection Act (CEPA); deputy chief could not have rejected former member's permit application on basis of unsubstantiated rumors or based on fact that address given by former member was for a "rooming house" above a bar. *McLelland v. Moore*, 343 N.J.Super. 589, 779 A.2d 463 (A.D.2001), certification denied 171 N.J. 43, 791 A.2d 221. Municipal Corporations ☞185(1)

***72080** Employee was not required to prove a defined public policy violation to win a jury verdict under sections of the Conscientious Employee Protection Act (CEPA) prohibiting employer from taking retaliatory action against employee because employee discloses activity of employer that employee reasonably believes violates the law or because employee refuses to participate in activity which he reasonably believes is in violation of a law or regulation or is fraudulent or criminal. *Estate of Roach v. TRW, Inc.*, 164 N.J. 598, 754 A.2d 544 (2000). Master And Servant ☞30(6.35)

If Conscientious Employee Protection Act (CEPA) plaintiff fails to identify a clear mandate of public policy, there is no need to consider whether plaintiff has presented evidence that would support a finding that he reasonably believed that defendant's conduct violated public policy. *Smith-Bozarth v. Coalition Against Rape and Abuse, Inc.*, 329 N.J.Super. 238, 747 A.2d 322 (A.D.2000). Master And Servant ☞30(6.35)

15.5. Fact issues

Genuine issue of material fact, as to whether employee's protected conduct of contacting law enforcement authorities to report that coworker had been found in possession of illegal drug was more likely than not substantial or motivating factor in facility human resources director's decision to fire him, precluded summary judgment, under mixed motive theory, on employee's retaliatory discharge claim under New Jersey Conscientious Employee Protection Act (CEPA). *Schlichtig v. Inacom Corp.*, D.N.J.2003, 271 F.Supp.2d 597. Federal Civil Procedure ☞2497.1

Testimony by custodian that he informed principal of school and facilities manager of district that toilets at elementary schools overflowed and that light in exit sign was out, that he tried to schedule meetings with superintendent and business administrator when he became frustrated at the lack of response, and that based on his twenty years of experience with another employer and safety training he received he believed conditions violated health and safety rules and regulations, and testimony by custodian's wife who was also employed by district that she left notes for district officials, raised fact issue for jury as to whether custodian reasonably believed that district's conduct violated health and safety rules and regulations and that he performed whistleblowing activity, in custodian's Conscientious Employee Protection Act (CEPA) action against school district. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Schools ☞63(1)

Evidence that, until custodian began complaining about overflowing toilets at elementary schools and light that was out in exit sign, custodian had a good work record, raised fact issue for jury as to whether a causal connection existed between his whistleblowing activity and his termination, in custodian's Conscientious Employee Protection Act (CEPA) action against school district. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Schools ☞63(1)

***72081 16. Summary judgment**

Genuine issue of material fact when nursing supervisor became aware that charges she was told to file against a nurse were based on personal animus on the part of a hospital director precluded summary judgment in supervisor's action against hospital

under Conscientious Employee Protection Act (CEPA). *Gerard v. Camden County Health Services Center*, 348 N.J.Super. 516, 792 A.2d 494 (A.D.2002), certification denied 174 N.J. 40, 803 A.2d 636. Judgment ☞181(21)

Fact issue as to whether an intent to retaliate motivated insurance adjuster's discharge precluded summary judgment on issue of whether employer violated New Jersey Conscientious Employee Protection Act (CEPA) by firing adjuster who raised concerns about status of employer's license to do work in another state. *Worbetz v. Ward North America, Inc.*, C.A.3 (N.J.)2002, 54 Fed.Appx. 526, 2002 WL 31732444, Unreported. Federal Civil Procedure ☞2497.1

17. Instructions

Federal district court did not err by providing a dictionary definition of "retaliation" to the jury and did not prejudice the jury by stating to defendant-employer's counsel "[h]ere's your definition," where the definition of "retaliation" read to the jury was "to repay, as an injury, in kind; to return like for like, especially, to get revenge," and that definition was consistent with case law requiring plaintiff in action under the New Jersey Conscientious Employee Protection Act (CEPA) to show a causal connection between the protected activity and the adverse employment action taken by employer. *Worbetz v. Ward North America, Inc.*, C.A.3 (N.J.)2002, 54 Fed.Appx. 526, 2002 WL 31732444, Unreported. Master And Servant ☞44

*72082 N.J.S.A. 34:19-4

NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION

Current through L.2003, c. 1 to 191

34:19-4. Disclosure to public body; requirement of notice and opportunity to correct

The protection against retaliatory action provided by this act pertaining to disclosure to a public body shall not apply to an employee who makes a disclosure to a public body unless the employee has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice. Disclosure shall not be required where the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer or where the employee reasonably fears physical harm as a result of the disclosure provided, however, that the situation is emergency in nature.

CREDIT(S)

L.1986, c. 105, § 4, eff. Sept. 5, 1986.

REFERENCES

CROSS REFERENCES

Persons designated to receive notice under this section, see § 34:19-7.

RESEARCH REFERENCES

2000 Main Volume

Forms

New Jersey Pleading and Practice Forms § 83:333, Notice To Employer Of Violation And Opportunity To Correct.

New Jersey Pleading and Practice Forms § 83:344, Answer-Defense-Employee Did Not Bring Activity, Policy, Or Practice To Attention Of Supervisor.

Treatises and Practice Aids

41 N.J. Prac. Series § 19.32, Employment Law In New Jersey-Conscientious Employee Protection Act.

18 N.J. Prac. Series § 5.2, Protection For Disclosure Of Employer Conduct.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

***72083 N.J.S.A. 34:19-5**

**NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION**

Current through L.2003, c. 1 to 191

34:19-5. Violations; civil action

Upon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction. Upon the application of any party, a jury trial shall be directed to try the validity of any claim under this act specified in the suit. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided by this act or any other statute. The court may also order:

- a. An injunction to restrain continued violation of this act;
- b. The reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position;
- c. The reinstatement of full fringe benefits and seniority rights;
- d. The compensation for lost wages, benefits and other remuneration;
- e. The payment by the employer of reasonable costs, and attorney's fees;
- f. Punitive damages; or
- g. An assessment of a civil fine of not more than \$1,000.00 for the first violation of the act and not more than \$5,000.00 for each subsequent violation, which shall be paid to the State Treasurer for deposit in the General Fund.

CREDIT(S)

L.1986, c. 105, § 5, eff. Sept. 5, 1986. Amended by L.1990, c. 12, § 4.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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L.1990, c. 12, § 4, in opening par., provided that a jury trial would be directed to try claims under this act and that remedies available in common law torts actions were available in addition to relief provided by statute.

***72084** For effective date and applicability of L.1990, c. 12, see L.1990, c. 12, § 5, set out under § 10:5-3.

Statement: Committee statement to Assembly, Nos. 2872, 2118 and 2228--L.1990, c. 12, see § 10:5-3.

REFERENCES

RESEARCH REFERENCES

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Forms

New Jersey Pleading and Practice Forms § 83:334, Limitation Of Action.

New Jersey Pleading and Practice Forms § 83:335, Remedies.

New Jersey Pleading and Practice Forms § 83:341, Complaint-By Employee-For Wrongful Discharge In Violation Of Conscientious Employee Protection Act-Employee's Disclosure Of Employer's Violation Of Statute Or Rule.

Treatises and Practice Aids

3 N.J. Prac. Series § 8.14, Tolling Of Statutes Of Limitation.

41 N.J. Prac. Series § 19.32, Employment Law In New Jersey-Conscientious Employee Protection Act.

18 N.J. Prac. Series § 5.5, Practice And Procedure.

18 N.J. Prac. Series § 5.6, Remedies.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

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Weight and sufficiency of evidence 13**1. Preemption**

Airline employee's claims for retaliatory discharge under New Jersey's Conscientious Employee Protection Act (CEPA) were not completely preempted by Federal Aviation Administration Authorization Act (FAAAA), and therefore FAAAA did not provide a basis for removal. *Espinosa v. Continental Airlines*, D.N.J.2000, 80 F.Supp.2d 297. Removal Of Cases ☞25(1); States ☞18.49

Airline employee's claims for retaliatory discharge under New Jersey's Conscientious Employee Protection Act (CEPA) did not require interpretation of a collective bargaining agreement, and involved purely factual questions, and accordingly, were not completely preempted by Railway Labor Act so as to warrant removal. *Espinosa v. Continental Airlines*, D.N.J.2000, 80 F.Supp.2d 297. Removal Of Cases ☞25(1); States ☞18.49

Whistleblower's claim for recovery under New Jersey's Conscientious Employee Protection Act (CEPA) was not preempted by her claim for recovery under Federal Claims Act (FCA). *Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc.*, D.N.J.1999, 68 F.Supp.2d 455. Master And Servant ☞30(6.35); States ☞18.49

2. Right of action

A cause of action for retaliatory action under Conscientious Employee Protection Act (CEPA) arises upon the commission of a violation by the employer. *Daniels v. Mutual Life Ins. Co.*, 340 N.J.Super. 11, 773 A.2d 718 (A.D.2001), certification denied 170 N.J. 86, 784 A.2d 719. Limitation Of Actions ☞58(1)

Former state university employee who was statutorily disqualified from obtaining public employment as result of his prior criminal conviction could not maintain action for alleged wrongful discharge in violation of the Conscientious Employee Protection Act (CEPA) or the Law Against Discrimination (LAD). *Cedeno v. Montclair State University*, 319 N.J.Super. 148, 725 A.2d 38 (A.D.1999), affirmed 163 N.J. 473, 750 A.2d 73. Colleges And Universities ☞8.1(6.1)

***72086** Terminated at-will employee has cause of action against employer for wrongful termination when discharge violates state law or public policy. *Beck v. Tribert*, 312 N.J.Super. 335, 711 A.2d 951 (A.D.1998), certification denied 156 N.J. 424, 719 A.2d 1022. Master And Servant ☞30(1.10)

3. Limitations period

Equitable tolling of limitations period of New Jersey Conscientious Employee Protection Act (CEPA) was not available to discharged employee absent allegation that he did not become aware of employer's allegedly retaliatory conduct until after his dismissal. *Jones v. Jersey City Medical Center*, D.N.J.1998, 20 F.Supp.2d 770. Limitation Of Actions ☞104.5

Township police officer's action under New Jersey's Conscientious Employee Protection Act (CEPA) alleging that township, police department, and police chief investigated him and secured his resignation in retaliation for criticizing department's reward system and other conduct accrued no later than when officer tendered his resignation, for purposes of one year statute of limitations under such Act. *Boody v. Township of Cherry Hill*, D.N.J.1997, 997 F.Supp. 562. Limitation Of Actions ☞58(2)

For purposes of township police officer's action under New Jersey's Conscientious Employee Protection Act (CEPA) alleging that township, police department, and police chief investigated him and secured his resignation in retaliation for criticizing department's reward system and other conduct, doctrine of equitable estoppel did not preclude defendants from raising statute of limitations defense, despite officer's allegations that he was misled regarding impact that his resignation would have on his ability to secure other employment. *Boody v. Township of Cherry Hill*, D.N.J.1997, 997 F.Supp. 562. Estoppel ☞62.4

For purposes of township police officer's action under New Jersey's Conscientious Employee Protection Act (CEPA) alleging that township, police department, and police chief investigated him and secured his resignation in retaliation for criticizing

department's reward system and other conduct, any representations that defendants made to officer's prospective employers after his resignation did not constitute continuing violations of CEPA, as would toll statute of limitations on officer's claim under such act. *Boody v. Township of Cherry Hill, D.N.J.1997, 997 F.Supp. 562. Limitation Of Actions* ☞58(2)

***72087** The one-year statute of limitations in the Conscientious Employee Protection Act (CEPA) began to run from the final act of retaliation against science teacher in the course of many separate, but relatively minor, instances of denial of training and additional programs, substandard evaluations, move to dilapidated classroom with inadequate furniture, rejection of requests for photocopying services, and denial of student participation in opening exercises, an honor roll ceremony, and field trips. *Green v. Jersey City Bd. of Educ., 177 N.J. 434, 828 A.2d 883 (2003). Limitation Of Actions* ☞58(1)

Even if discovery rule applied to claims under Conscientious Employee Protection Act (CEPA), rule did not postpone accrual of former employee's CEPA retaliation claim against county, county prosecutor and others until, four years after former employee's resignation, a co-worker told him about information regarding the alleged retaliation, but rather former employee's CEPA claim accrued on date of his resignation; former employee's first job transfer occurred less than two weeks after confrontational meeting with supervisor, and former employee had been aware of co-worker's CEPA action arising out of same incident. *Villalobos v. Fava, 342 N.J.Super. 38, 775 A.2d 700 (A.D.2001), certification denied 170 N.J. 210, 785 A.2d 438. Limitation Of Actions* ☞95(14)

An employee's retaliation claim under Conscientious Employee Protection Act (CEPA) accrues on the date of his actual demotion, suspension or termination of employment. *Villalobos v. Fava, 342 N.J.Super. 38, 775 A.2d 700 (A.D.2001), certification denied 170 N.J. 210, 785 A.2d 438. Limitation Of Actions* ☞58(1)

Former employee of county prosecutor's office was not entitled to equitable tolling of one-year statute of limitations for his retaliation claim under the Conscientious Employee Protection Act (CEPA) based on county prosecutor's retaliatory conduct after former employee reported prosecutor's allegedly improper handling of an investigation to Attorney General's Office or based on county prosecutor's misrepresentations that former employee's job transfers were "for the good of the [p]rosecutor's [o]ffice." *Villalobos v. Fava, 342 N.J.Super. 38, 775 A.2d 700 (A.D.2001), certification denied 170 N.J. 210, 785 A.2d 438. Limitation Of Actions* ☞104.5

Unlike the discovery rule which suspends the limitation period because the plaintiff is unaware of retaliatory action, equitable tolling of a statute of limitations occurs when a plaintiff is misled as to the real reason for demotion or termination and as a result fails to act within the prescribed time limit for an action under the Conscientious Employee Protection Act (CEPA). *Villalobos v. Fava, 342 N.J.Super. 38, 775 A.2d 700 (A.D.2001), certification denied 170 N.J. 210, 785 A.2d 438. Limitation Of Actions* ☞104.5

***72088** An employee's Conscientious Employee Protection Act (CEPA) claim generally accrues on the date of actual termination, not on the date the employee receives notice of the termination. *Daniels v. Mutual Life Ins. Co., 340 N.J.Super. 11, 773 A.2d 718 (A.D.2001), certification denied 170 N.J. 86, 784 A.2d 719. Limitation Of Actions* ☞58(1)

Notice of discharge is not final and does not constitute retaliatory action under Conscientious Employee Protection Act (CEPA) until the day of separation from employment. *Daniels v. Mutual Life Ins. Co., 340 N.J.Super. 11, 773 A.2d 718 (A.D.2001), certification denied 170 N.J. 86, 784 A.2d 719. Master And Servant* ☞30(6.35)

Former employee's cause of action against employer for constructive discharge under Conscientious Employee Protection Act (CEPA) accrued on the date she tendered her resignation, which was the last date violation can occur, rather than on the last date of her employment. *Daniels v. Mutual Life Ins. Co., 340 N.J.Super. 11, 773 A.2d 718 (A.D.2001), certification denied 170 N.J. 86, 784 A.2d 719. Limitation Of Actions* ☞58(1)

When employer's alleged conduct consists of wrongful termination, employee's cause of action under Conscientious Employee Protection Act (CEPA) accrues on the date of actual discharge, and that date is the last day for which employee is paid regular salary or wage, and it does not include any subsequent date on which severance, health, or other extended benefits are paid. *Alderiso v. Medical Center of Ocean County, Inc., 167 N.J. 191, 770 A.2d 275 (2001). Limitation Of Actions* ☞58(1)

For computation purposes, first day to be included in Conscientious Employee Protection Act's (CEPA) one year limitations period is the day after the date of discharge. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Time ⌚9(2)

Employee's suit under Conscientious Employee Protection Act (CEPA), which had one year limitations period, could proceed notwithstanding that she filed suit one year and one day after date of discharge; employee's view that her action accrued on first day of her unemployment, which should be excluded from computation of limitations period, represented plausible interpretation of law, decision that cause of action accrued on date of discharge and first day to be included in limitations period was day after discharge applied prospectively, and employer would experience no prejudice. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Limitation Of Actions ⌚58(1); Time ⌚9(2)

***72089** In determining whether statute of limitations had been satisfied, the court would consider date on which employee filed her original complaint to be the operative date of employee's Conscientious Employee Protection Act (CEPA) action. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Limitation Of Actions ⌚118(2)

Date of discharge was last day for which employee was paid her regular wage or salary, notwithstanding her absence from work on that date, for purposes of principle that employee's cause of action under Conscientious Employee Protection Act (CEPA) accrued on date of discharge. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Limitation Of Actions ⌚58(1)

Date of discharge represents appropriate accrual date for employee's Conscientious Employee Protection Act (CEPA) claim, not date on which employee receives notice of termination. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Limitation Of Actions ⌚58(1); Limitation Of Actions ⌚95(14)

Decision holding that cause of action for wrongful discharge under Conscientious Employee Protection Act (CEPA) accrues on date of discharge would be applied prospectively, and for suits already commenced or on appeal, cause of action for wrongful discharge under CEPA would be considered to have accrued on employee's first day of unemployment. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Courts ⌚100(1)

Former employee's Conscientious Employee Protection Act (CEPA) claim for retaliatory discharge which was brought 22 months after he was terminated was time-barred by CEPA's one-year statute of limitations. *Beck v. Tribert*, 312 N.J.Super. 335, 711 A.2d 951 (A.D.1998), certification denied 156 N.J. 424, 719 A.2d 1022. Master And Servant ⌚38

Employee's termination was discrete event which triggered his duty to assert his rights arising from that deprivation for purposes of Conscientious Employee Protection Act's (CEPA) one-year statute of limitations. *Beck v. Tribert*, 312 N.J.Super. 335, 711 A.2d 951 (A.D.1998), certification denied 156 N.J. 424, 719 A.2d 1022. Limitation Of Actions ⌚58(1)

Employee's cause of action under the Conscientious Employee Protection Act (CEPA) accrued for limitations purposes on the date of actual discharge and not the earlier date on which he had received written notification of employer's future intent to terminate him and thus, employee's claim which was filed within one year after termination date was timely. *Keelan v. Bell Communications Research*, 289 N.J.Super. 531, 674 A.2d 603 (A.D.1996). Limitation Of Actions ⌚58(1)

***72090 4. Jury trial**

Fact that Conscientious Employee Protection Act (CEPA) provides for jury trial for any aggrieved party under Act did not preclude mandatory arbitration before National Association of Security Dealers (NASD) of financial advisor's CEPA claim against securities broker by whom advisor was formerly employed, pursuant to arbitration clause in U-4 form that advisor signed as condition of employment. *Littman v. Morgan Stanley Dean Witter*, 337 N.J.Super. 134, 766 A.2d 794 (A.D.2001). Exchanges ⌚11(12)

Issue of award of punitive damages under Conscientious Employee Protection Act (CEPA) is for jury. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 269 N.J.Super. 11, 634 A.2d 538 (A.D.1993), certification granted 136 N.J. 28, 641 A.2d 1039, affirmed 138 N.J. 405, 650 A.2d 958. Master And Servant ⌚43

Nontenured industrial arts teacher bringing wrongful termination action pursuant to Conscientious Employee Protection Act was not entitled to jury trial; the Act did not expressly provide for jury trial nor did it supplant any cause of action for which jury trial would be available. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 238 N.J.Super. 603, 570 A.2d 479 (A.D.1990), on subsequent appeal 269 N.J.Super. 11, 634 A.2d 538, certification granted 136 N.J. 28, 641 A.2d 1039, affirmed 138 N.J. 405, 650 A.2d 958. Jury ☞14(1.4)

5. Defenses

In view of the important public policies served by the Law Against Discrimination (LAD) and the Conscientious Employee Protection Act (CEPA), employer ordinarily may not defeat a wrongful discharge claim under either of these statutes simply by showing that employee made misrepresentation on employment application which, if it had been discovered during employment, would have resulted in employee's discharge. *Cedeno v. Montclair State University*, 319 N.J.Super. 148, 725 A.2d 38 (A.D.1999), affirmed 163 N.J. 473, 750 A.2d 73. Civil Rights ☞144; Master And Servant ☞30(6.35)

*72091 6. Persons liable

Under New Jersey law, as predicted by the district court, supervisory employees who acted with authorization of employer could be held individually liable under Conscientious Employee Protection Act (CEPA) for retaliation against employee for engaging in whistleblowing activities. *Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc.*, D.N.J.1999, 68 F.Supp.2d 455. Master And Servant ☞34.1

City council members were not vicariously liable under New Jersey's Conscientious Employee Protection Act (CEPA) for mayor's alleged retaliatory discharge of director of city department, absent evidence that members recommended that director be fired, or at the very least, affirmatively approved his termination; moreover, failure of two-thirds of the council to disapprove termination decision did not rise to the level of an affirmative recommendation of that decision. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Municipal Corporations ☞218(10)

Individual supervisors who allegedly violated Conscientious Employee Protection Act (CEPA) could not be found personally liable; consistent with the summations and the jury instructions, verdict form directed jury to determine whether actions of the employer alone violated CEPA, verdict form did not instruct jury to consider the conduct of each individual supervisor, and following that form, jury found only employer liable under CEPA. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞34.1

Actions of school principal and superintendent of schools, in recommending that teacher's contract not be renewed, were within scope of their employment, as required for township board of education to be vicariously liable for their violations of Conscientious Employee Protection Act (CEPA). *Abbamont v. Piscataway Tp. Bd. of Educ.*, 269 N.J.Super. 11, 634 A.2d 538 (A.D.1993), certification granted 136 N.J. 28, 641 A.2d 1039, affirmed 138 N.J. 405, 650 A.2d 958. Schools ☞147.51

7. Presumptions and burden of proof

Once employee meets his or her prima facie burden under New Jersey's Conscientious Employee Protection Act (CEPA), burden of production shifts to employer to articulate some legitimate, nondiscriminatory reason for its actions, and, once employer does so, presumption of retaliatory discharge created by prima facie case disappears and burden shifts back to employee. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(1)

*72092 Once employer articulates some legitimate, nondiscriminatory reason for its adverse action, employee alleging retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA) must convince fact finder both that reason given by employer was false, and that retaliation was the real reason. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(1)

Employee seeking to rebut employer's proffered legitimate reasons for discharge in action under New Jersey's Conscientious Employee Protection Act (CEPA) must show weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the proffered reasons. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(4)

If plaintiff succeeds in establishing elements of prima facie case of discriminatory retaliation under New Jersey's Conscientious Employee Protection Act (CEPA), then burden shifts to employer to advance a legitimate, nondiscriminatory reason for making the adverse employment decision; once employer has proffered such a reason, plaintiff must raise an issue of fact regarding whether employer's proffered explanation is pretextual or whether retaliatory discrimination was more likely than not a determinative factor in the decision. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Master And Servant ☞40(1)

To prevail on whistleblower retaliation claim under the Conscientious Employee Protection Act (CEPA) on pretext theory, an employee must prove that retaliatory intent motivated his employer; however, the factfinder's disbelief of the reasons put forward by the employer for termination may, together with the elements of the employee's prima facie case of discrimination, suffice to show intentional retaliation, and thus, rejection of the employer's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional retaliatory action. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞30(6.35); Master And Servant ☞40(4)

Once employee establishes prima facie case of discriminatory retaliation under the Conscientious Employee Protection Act (CEPA), employer must come forward and advance legitimate, nondiscriminatory reason for making adverse action, and if such reasons are proffered, employee must raise genuine issue of material fact regarding whether employer's proffered explanation is pretextual or whether the retaliatory discrimination was more likely than not determinative factor in the decision. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Master And Servant ☞30(6.35)

***72093 8. Admissibility of evidence**

Testimony that a father and son worked for employer was not relevant to employee's claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), where father and son worked for employer over 20 years before employee was terminated and before employer's antinepotism plan was in place. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(2)

Employee's testimony that coemployee informed him that two other coemployees were brothers-in-law, and that one of the brothers-in-law himself had confirmed such relationship to employee, was not admissible as admission by party-opponent's agent to support employee's claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), in absence of evidence that declarants were speaking for employer on matter within scope of agency or employment. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Evidence ☞244(7)

Testimony that employer's interviewer told employee's sister-in-law about coemployees who were related to each other was not admissible as admission of party-opponent's agent in employee's action alleging that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA). *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Evidence☞244(7)

Testimony by employee's sister-in-law that she was told during her initial interview about coemployees who were related to each other was not relevant in employee's action alleging that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy through failing to reveal his relationship to his sister-in-law, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA); employee failed to supply details regarding alleged relationships and employer's alleged failure to act on them. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(2)

***72094** Employee failed to establish foundation for admission of evidence, under rule allowing admission of reputation in community, that two coemployees were related, so as to support his claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), where employee could not state how they were related, and admitted that basis of his information was something he was told by someone he worked with. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81.

Witnesses ☞37(4)

Employee failed to establish foundation for admission of evidence, under rule allowing admission of reputation in community, that various coemployees were related, so as to support his claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA); employee did not appear to be familiar with persons named, failed to identify community involved, and did not establish any basis for information he was offering. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Witnesses ☞37(4)

9. Prima facie case

Employee seeking to establish retaliatory discharge claim under New Jersey's Conscientious Employee Protection Act (CEPA) first must make out prima facie case by demonstrating: (1) he or she reasonably believed that employer's conduct was violating either a law or a rule or regulation promulgated pursuant to law; (2) he or she performed whistle-blowing activity described in CEPA; (3) adverse employment action was taken against him or her; and (4) causal connection exists between whistle-blowing activity and adverse employment action. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

In order to establish a prima facie case of discriminatory retaliation under New Jersey's Conscientious Employee Protection Act (CEPA) plaintiff must show: (1) that he engaged in protected activity; (2) that his employer took adverse action against him; and (3) that a causal link exists between the protected activity and employer's action. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Master And Servant ☞30(6.35)

Plaintiff asserting discriminatory retaliation under New Jersey's Conscientious Employee Protection Act (CEPA) may proceed under a "mixed-motive" theory of discrimination; if plaintiff is able to adduce direct evidence of discrimination, and evidence permits conclusion that both permissible and impermissible considerations played role in employer's decision, plaintiff need only show that unlawful motive was substantial motivating factor in that decision; if that is accomplished, burden of persuasion then shifts to employer to prove discrimination was not "but-for cause" of unfavorable employment action. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Master And Servant ☞30(6.35)

***72095** More than temporal proximity alone is required to satisfy prima facie element of causal connection of claim of retaliatory discharge brought under New Jersey's Conscientious Employee Protection Act (CEPA) except in those rare cases where decision to discharge takes place so rapidly after discovery of participation in protected conduct that inference of discrimination is impossible to ignore. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Master And Servant ☞40(4)

Former city employee established element of causal connection of prima facie case of retaliatory discharge under New Jersey's Conscientious Employee Protection Act (CEPA); in addition to temporal proximity between protected conduct and discharge, plaintiff pointed to absence of documented record of dissatisfaction with his performance and inconsistency of after-the-fact explanations for his firing. *Bowles v. City of Camden*, D.N.J.1998, 993 F.Supp. 255. Municipal Corporations ☞218(3)

Assuming that Conscientious Employee Protection Act otherwise applied, discharged employee failed to adduce any evidence to demonstrate prima facie case that whistle-blowing may have played part in decision to fire him, in violation of the Act, in face of showing that decision to fire him was made before employee sent letter alleging fraudulent activities by other employees and that delay in actual firing until some two months after that letter resulted from employer's policy of affording employee chance to respond to negative evaluation and obtaining personnel manager's concurrence in discharge decision. *Littman v. Firestone Tire & Rubber Co.*, 1989, 715 F.Supp. 90. Master And Servant ☞40(4)

Under the Conscientious Employee Protection Act (CEPA), once a plaintiff establishes a prima facie case of retaliatory discharge, the defendant must then come forward and advance a legitimate reason for discharging plaintiff. *Zappasodi v. State, Dept. of Corrections, Riverfront State Prison*, 335 N.J.Super. 83, 761 A.2d 96 (A.D.2000). Master And Servant ☞40(1)

The prima facie case of discrimination in employment requires a plaintiff to show he or she was (1) a member of a protected class; (2) performing his or her job in a satisfactory manner; (3) discharged; and (4) replaced by someone else after he or she left the job; the burden of production but not proof then shifts to the employer to articulate a legitimate, non discriminatory reason for its action. *Zappasodi v. State, Dept. of Corrections, Riverfront State Prison*, 335 N.J.Super. 83, 761 A.2d 96 (A.D.2000). Civil Rights ☞144; Civil Rights ☞453

To establish prima facie case of discriminatory retaliation under Title VII and under Conscientious Employee Protection Act (CEPA), employee must show that she engaged in protected activity, that employer took adverse action against her, and that causal link exists between the protected activity and employer's action. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Master And Servant ☞30(6.10); Master And Servant ☞30(6.35)

***72096** Teacher established prima facie case of discriminatory retaliation under Conscientious Employee Protection Act (CEPA); she engaged in protected activity by testifying before a public body investigating whether board of education violated the law by failing to provide disabled child with appropriate public education, and board admitted causal relationship between employee's testimony before public body and its decision to withhold her salary increment. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Schools ☞147.12

Bank employee who alleged that she was terminated in retaliation for disclosing to her supervisors that coemployee was soliciting bank's customers did not establish prima facie case under Conscientious Employee Protection Act (CEPA) since the conduct that employee disclosed was not that of her employer or another employer and she could not cite a law, or even a clear mandate of public policy, violated by coemployee's behavior. *Demas v. National Westminster Bank*, 313 N.J.Super. 47, 712 A.2d 693 (A.D.1998), certification denied 161 N.J. 151, 735 A.2d 575. Banks And Banking ☞51

10. Questions of law

Before considering whether employee has established a prima facie case of whistleblower retaliation under New Jersey's Conscientious Employee however, the court must determine, as a matter of law, whether there exists a clear expression of law, either in a statute or rule or in a regulation promulgated pursuant to a statute, that would be violated if the facts as alleged by employee concerning employer's conduct are true. *Blackburn v. United Parcel Service, Inc.*, D.N.J.1998, 3 F.Supp.2d 504, affirmed 179 F.3d 81. Master And Servant ☞30(6.35)

Whether employee has adequately established existence of clear mandate of public policy is issue of law for purposes of Conscientious Employee Protection Act (CEPA) claim and at-will employee's wrongful discharge claim. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Master And Servant ☞43

If action is brought under portions of Conscientious Employee Protection Act (CEPA) prohibiting retaliatory action against employee for refusing to participate in violation of law or activity incompatible with clear mandate of public policy, judge must first find and enunciate specific terms of statute or regulation of clear expression of public policy which would be violated if facts as alleged are true. *Fineman v. New Jersey Dept. of Human Services*, 272 N.J.Super. 606, 640 A.2d 1161 (A.D.1994), certification denied 138 N.J. 267, 649 A.2d 1287. Master And Servant ☞30(1.10)

***72097 11. Questions of fact**

For summary judgment purposes in action under New Jersey's Conscientious Employee Protection Act (CEPA) in which employer has proffered a legitimate reason for its adverse action, court must determine whether employee has offered sufficient evidence for reasonable jury to find that employer's proffered reason for discharge was pretextual and that retaliation for whistleblowing was the real reason for the discharge. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Federal Civil Procedure ☞2497.1

Typically, the types of evidence that employee must point to, in order to defeat summary judgment in action under New Jersey's Conscientious Employee Protection Act (CEPA) in which employer has proffered a legitimate reason for its adverse action, are inconsistencies or anomalies that could support inference that the employer did not act for its stated reasons. *Blackburn v. United Parcel Service, Inc.*, C.A.3 (N.J.)1999, 179 F.3d 81. Federal Civil Procedure ☞2497.1

The fundamental question in disposing of claims under the Conscientious Employee Protection Act (CEPA) is whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Master And Servant ☞43

Material issues of fact as to whether board of education's proffered reasons for withholding teacher's salary increment were pretextual precluded summary judgment for board on Conscientious Employee Protection Act (CEPA) claim brought by teacher, who alleged that board retaliated against her by withholding salary increment after she testified before public body investigating whether board had violated the law by failing to provide disabled child with education. *Kolb v. Burns*, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Judgment ☞181(21)

Punitive damages against public employer in action brought under Conscientious Employee Protection Act (CEPA) should be determined by jury as fact finder. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 138 N.J. 405, 650 A.2d 958 (1994). Damages ☞208(8)

***72098** Where judge has, as matter of law, identified statute, regulation, or other clear source of expression of public policy, suit under Conscientious Employee Protection Act (CEPA) may go to jury for determination of any disputed questions of fact and for finding as to whether there has been retaliatory action against at-will employee for either objecting or refusing to participate in activity reasonably and objectively believed to violate statute or regulation or to be incompatible with clear mandate of policy. *Fineman v. New Jersey Dept. of Human Services*, 272 N.J.Super. 606, 640 A.2d 1161 (A.D.1994), certification denied 138 N.J. 267, 649 A.2d 1287. Master And Servant ☞43

12. Instructions

Jury instruction on retaliatory discharge under Conscientious Employee Protection Act (CEPA) adequately informed jury that it had to determine whether state employee made persuasive showing of unlawful discharge, despite omission of instruction on burden shifting and pretext analysis, where trial court permitted employee to present evidence of pretext and to argue pretext to jury, and instruction was virtually verbatim from model jury charge. *Zappasodi v. State, Dept. of Corrections, Riverfront State Prison*, 335 N.J.Super. 83, 761 A.2d 96 (A.D.2000). States ☞53

Trial court did not commit reversible error by failing to instruct jury that it could find employer liable for employee's Conscientious Employee Protection Act (CEPA) claim only if it first found that employer was complicit in coemployees' misconduct; CEPA protects employee who complains to employer about misconduct of coemployees, even in the absence of employer complicity in the misconduct. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Appeal And Error ☞1067

Trial court's failure to instruct jury in Conscientious Employee Protection Act (CEPA) case that it had to find clear mandate of public policy as matter of law was harmless, given that jury found as a fact existence of clear mandate of public policy. *Mehlman v. Mobil Oil Corp.*, 153 N.J. 163, 707 A.2d 1000 (1998). Appeal And Error ☞1068(5)

Jury instructions given on employee's Conscientious Employee Protection Act (CEPA) claim, alleging retaliation by employer for employee's complaints of co-worker misconduct, were erroneous to extent that they appeared to tell jury that violation of law or policy by employee's co-worker, in and of itself, was enough to establish CEPA liability, without distinguishing between co-workers' conduct and handling of employee's complaints by employer, and did not focus jury's attention upon what action on part of supervisors would implicate hospital for purposes of imposing responsibility for CEPA damages. *Higgins v. Pascack Valley Hosp.*, 307 N.J.Super. 277, 704 A.2d 988 (A.D.1998), certification granted 156 N.J. 405, 719 A.2d 637, affirmed in part, reversed in part 158 N.J. 404, 730 A.2d 327. Master And Servant ☞44

***72099** On employee's claim against employer under Conscientious Employee Protection Act (CEPA), alleging that employer retaliated against her for complaining about illegal activity by nonsupervisory co-workers, jury should have been instructed to determine not only whether employer's investigation of employee's complaint led to what it perceived was right result, but also whether investigation was conducted in bad faith and was sham or cover-up of misconduct, such that master/servant or principal/agent liability evolved between hospital and its supervisors. *Higgins v. Pascack Valley Hosp.*, 307 N.J.Super.

277, 704 A.2d 988 (A.D.1998), certification granted 156 N.J. 405, 719 A.2d 637, affirmed in part, reversed in part 158 N.J. 404, 730 A.2d 327. Master And Servant ☞44

13. Weight and sufficiency of evidence

Employee's alleged actions of commuting and entering building with his sister-in-law, meeting her for lunch and breaks, and prominently displaying wedding picture showing her in wedding party did not support his claim that employer's proffered reason for terminating employee, i.e., his violation of antinepotism policy through failing to reveal that his sister-in-law worked for same employer, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA). Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

Alleged actions by employee's sister-in-law of telling colleagues that she was related to employee, and inquiring about it at her initial interview, did not establish that employer's proffered reason for terminating employee, i.e., his violation of antinepotism policy through failing to reveal that his sister-in-law worked for same employer, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), absent indication that terminating officials were aware of alleged comments at initial interview. Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

Evidence that two coemployees were somehow related did not support employee's claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), in absence of evidence of actual relationship between coemployees, whether it was one that was covered by policy, and whether employer addressed any violation of policy by discharging one of coemployees. Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(4)

Evidence that coemployee stated that his wife worked for employer did not support employee's claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), where coemployee left employer at some point after he got married, and there was no indication that coemployee and his wife were allowed to remain at employer in violation of policy. Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(4)

***72100** Evidence that two employees were brothers-in-law did not support employee's claim that employer's proffered reason for terminating him, i.e., his violation of antinepotism policy, was pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA), absent evidence that employer knew of such relationship but did nothing about it. Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞40(4)

Employer's proffered reason for terminating employee, i.e., his violation of antinepotism policy through failing to reveal that his sister-in-law also worked for employer, was not pretext for retaliation in violation of New Jersey's Conscientious Employee Protection Act (CEPA); although employee introduced evidence that two coemployees were generally known to be brothers, and that sister-in-law informed employer's interviewer of her relationship to employee, employer terminated numerous employees for violating its antinepotism policy. Blackburn v. United Parcel Service, Inc., C.A.3 (N.J.)1999, 179 F.3d 81. Master And Servant ☞30(6.35)

Board of education articulated nondiscriminatory reasons for its adverse action, namely withholding salary increment after teacher testified before public body investigating whether board had violated the law, thereby rebutting presumption of discrimination established by teacher's prima facie case under Conscientious Employee Protection Act (CEPA); board stated that teacher's testimony demonstrated that she had disobeyed school directive. Kolb v. Burns, 320 N.J.Super. 467, 727 A.2d 525 (A.D.1999). Schools ☞147.40(1)

Evidence supported determination that superintendent and principal engaged in retaliatory action against nontenured industrial arts teacher and, thus, under theory of respondeat superior, board of education was vicariously liable to teacher for compensatory damages under Conscientious Employee Protection Act (CEPA); teacher was not rehired with tenure after he complained about air quality of metal shop based on his reasonable and objective belief that conditions at work were contrary to law and violated administrative rules and regulations and were incompatible with a clear mandate of public policy, and

recommendation not to rehire teacher was within scope of authority of superintendent and principal. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 138 N.J. 405, 650 A.2d 958 (1994). Schools ☞147.52

14. Findings

Court erred in failing to consider whether animus by police officer's supervisor related to his investigation of racial incident involving another employee persisted and was evidence of retaliation which pervaded supervisor's decision not to promote officer for purposes of officer's claim under Conscientious Employee Protection Act (CEPA), even though officer did not claim that incident itself formed basis of CEPA violation. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Municipal Corporations ☞184.1

***72101** Judge considering Conscientious Employee Protection Act (CEPA) claim must first, as matter of law, find and enunciate the specific terms of statute or regulation or clear expression of public policy which would be violated if the facts alleged are true. *Falco v. Community Medical Center*, 296 N.J.Super. 298, 686 A.2d 1212 (A.D.1997), certification denied 153 N.J. 405, 709 A.2d 798. Master And Servant ☞30(6.35)

15. Compensatory damages

Discharged employee's spouse had no per quod action for loss of consortium under New Jersey Law Against Discrimination (NJLAD) or Conscientious Employee Protection Act (CEPA). *Jones v. Jersey City Medical Center*, D.N.J.1998, 20 F.Supp.2d 770. Husband And Wife ☞209(4)

Although terminated superintendent of schools was and continued to be paid that which was due and owing to him under his contract with township board of education, superintendent was not precluded from seeking compensatory damages for alleged violation of New Jersey Conscientious Employee Protection Act (CEPA); superintendent asserted pecuniary damages in excess of that paid to him by township, and all remedies available in common-law tort actions were available to prevailing party under CEPA. *Harrington v. Lauer*, D.N.J.1995, 888 F.Supp. 616, on reconsideration in part 893 F.Supp. 352. Schools ☞63(1)

Decision whether to impose monetary liability for alleged violation of either the Law Against Discrimination (LAD) or the Conscientious Employee Protection Act (CEPA) is influenced by considerations of public policy. *Cedeno v. Montclair State University*, 319 N.J.Super. 148, 725 A.2d 38 (A.D.1999), affirmed 163 N.J. 473, 750 A.2d 73. Civil Rights ☞454; Master And Servant ☞30(6.35)

For employee to be entitled to compensatory damages on her claim against employer-hospital under Conscientious Employee Protection Act (CEPA), alleging that employer retaliated against her for complaining about misconduct by co-workers, employee was required to demonstrate that employer, through its supervisors, condoned and ratified allegedly illegal conduct by nonsupervisory employees, such as by whitewashing investigation into alleged misconduct. *Higgins v. Pascack Valley Hosp.*, 307 N.J.Super. 277, 704 A.2d 988 (A.D.1998), certification granted 156 N.J. 405, 719 A.2d 637, affirmed in part, reversed in part 158 N.J. 404, 730 A.2d 327. Master And Servant ☞30(6.35)

***72102 16. Punitive damages**

Punitive damages of \$300,000 for violation of the Conscientious Employee Protection Act (CEPA) were not disproportionate to the harm suffered by teacher for retaliation by principal after teacher reported incident related to check for program in which she had not participated; teacher went on medical leave as a result of persistent severe headaches and other physical symptoms and never returned to teaching. *Green v. Jersey City Bd. of Educ.*, 177 N.J. 434, 828 A.2d 883 (2003). Schools ☞147.54

Testimony of custodian that he complained to principal of school and facilities manager of district that toilets at elementary schools overflowed and that light in exit sign was out, that he tried to schedule meetings with superintendent and business administrator to discuss such concerns when he became frustrated at the lack of response, and that co-worker warned him to keep his mouth shut or he would get fired, testimony by wife of custodian who was also employed by district that she left notes for district officials, and testimony by district officials denying that the alleged conversations and attempted contacts with them

occurred, raised fact issue for jury whether punitive damages should be awarded to custodian, in custodian's Conscientious Employee Protection Act (CEPA) action against school district. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Schools ☞123

Punitive damages, which are available under the Conscientious Employee Protection Act (CEPA) against public entities, should be determined by a jury as the trier of fact. *Hernandez v. Montville Tp. Bd. of Educ.*, 354 N.J.Super. 467, 808 A.2d 128 (A.D.2002), certification granted 175 N.J. 433, 815 A.2d 479. Municipal Corporations ☞743

Whether teacher was entitled to punitive damages under Conscientious Employee Protection Act (CEPA) presented question for jury. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Schools ☞147.51

***72103** Compensatory damages were not necessary for award of punitive damages for violation of Conscientious Employee Protection Act (CEPA), where employee was severely harmed by employer's conduct inasmuch as loss of his job resulted in a substantial reduction in his income and his ensuing emotional distress. *Mehlman v. Mobil Oil Corp.*, 291 N.J.Super. 98, 676 A.2d 1143 (A.D.1996), certification granted 147 N.J. 264, 686 A.2d 764, affirmed 153 N.J. 163, 707 A.2d 1000. Master And Servant ☞41(5)

A greater threshold than mere negligence should be applied to measure employer liability for punitive damages in Conscientious Employee Protection Act (CEPA) actions; punitive damages are to be awarded when the wrongdoer's conduct is especially egregious, but only in the event of actual participation by upper management or willful indifference. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 138 N.J. 405, 650 A.2d 958 (1994). Master And Servant ☞41(5)

17. Injunction

There is no presumption of irreparable injury by employee seeking preliminary injunction based upon alleged retaliatory discharge under Conscientious Employee Protection Act. *Smith v. Travelers Mortg. Services*, D.N.J.1988, 699 F.Supp. 1080. Injunction ☞147

Employee bringing action under Conscientious Employee Protection Act was not entitled to preliminary injunction, notwithstanding employee's assertion that retaliatory discharge would have chilling affect on third parties, where employee failed to make affirmative showing of third party chilling. *Smith v. Travelers Mortg. Services*, D.N.J.1988, 699 F.Supp. 1080. Injunction ☞138.69

18. Reinstatement

As in Law Against Discrimination (LAD) case, employer found to have violated Conscientious Employee Protection Act (CEPA) is strictly liable for equitable relief in the nature of reinstatement. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Master And Servant ☞47

School board was not required to immediately offer industrial arts teacher, who had prevailed on his Conscientious Employee Protection Act (CEPA) claim, reinstatement since reinstatement would require displacement of another tenured teacher and since industrial arts teacher now had tenured position in another school district at higher salary; however, board was required to offer teacher appointment to the next available position in the industrial arts department. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Schools ☞147.51

***72104** In urging court to deny reinstatement of employee who has been wrongfully terminated, employer may not rely upon animosity between the parties which is solely the product of employer's violations of Conscientious Employee Protection Act (CEPA) and employee's efforts to vindicate her rights under this legislation. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Master And Servant ☞47

Reinstatement should be granted, where feasible, upon finding of violation of Conscientious Employee Protection Act (CEPA). *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746

A.2d 997. Master And Servant ☞47

19. Waiver or release

Former employees of bistate agency, which was created by interstate compact between Pennsylvania and New Jersey for purpose of maintaining bridges and which was not subject to Conscientious Employee Protection Act (CEPA), did not waive their right to pursue both statutory and common law retaliatory discharge claims upon asserting unavailable CEPA claim; waiver provisions of CEPA could not be invoked since former employees of bistate agency lacked right to make CEPA claim. *Ballinger v. Delaware River Port Authority*, 311 N.J.Super. 317, 709 A.2d 1336 (A.D.1998), affirmed 172 N.J. 586, 800 A.2d 97. Officers And Public Employees ☞66; States ☞6

Former employee's assertion in complaint of claim under Conscientious Employee Protection Act (CEPA) did not bar her, under CEPA's waiver provision, from bringing common law wrongful discharge claim against former employer, where any CEPA claim was barred by CEPA's statute of limitations. *Crusco v. Oakland Care Center, Inc.*, 305 N.J.Super. 605, 702 A.2d 1363 (A.D.1997). Master And Servant ☞35

Although Conscientious Employee Protection Act (CEPA) does not require that employee be given 45 days to review release before executing the document, that period is relevant in an evaluation of the broader question of whether employee voluntarily and knowingly executed release. *Keelan v. Bell Communications Research*, 289 N.J.Super. 531, 674 A.2d 603 (A.D.1996). Labor Relations ☞26.5

20. Review

Decision holding that cause of action for wrongful discharge under Conscientious Employee Protection Act (CEPA) accrues on date of discharge would be applied prospectively, and for suits already commenced or on appeal, cause of action for wrongful discharge under CEPA would be considered to have accrued on employee's first day of unemployment. *Alderiso v. Medical Center of Ocean County, Inc.*, 167 N.J. 191, 770 A.2d 275 (2001). Courts ☞100(1)

***72105** Because the lower court improperly treated employment discrimination case as one in which employee's violation of employer's chain-of-command, in submitting complaints under the Conscientious Employee Protection Act (CEPA), was a valid basis for discharge for insubordination, matter would be remanded to determine whether employee stated an actionable claim for retaliatory discharge. *Fleming v. Correctional Healthcare Solutions, Inc.*, 164 N.J. 90, 751 A.2d 1035 (2000). Appeal And Error ☞1178(1)

Court's failure to consider police officer's allegations regarding his belief that innocent defendant had been charged with crimes and that his report to his superior officers with regard to his belief led to retaliation by employer in decision not to promote him when determining whether decision violated public policy under Conscientious Employee Protection Act (CEPA) required remand, where incident regarding defendant was included in officer's complaint and statement of facts in response to summary judgment. *Regan v. City of New Brunswick*, 305 N.J.Super. 342, 702 A.2d 523 (A.D.1997). Municipal Corporations ☞184.1

*72106 N.J.S.A. 34:19-6

NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION

Current through L.2003, c. 1 to 191

34:19-6. Award of attorney's fees and costs to employer; action without basis in law or fact

A court, upon notice of motion in accordance with the Rules Governing the Courts of the State of New Jersey, may also order that reasonable attorneys' fees and court costs be awarded to an employer if the court determines that an action brought by an employee under this act was without basis in law or in fact. However, an employee shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing a suit, the employee files a voluntary dismissal concerning the employer, within a reasonable time after determining that the employer would not be found to be liable for damages.

CREDIT(S)

L.1986, c. 105, § 6, eff. Sept. 5, 1986.

REFERENCES

RESEARCH REFERENCES

2000 Main Volume

Forms

New Jersey Pleading and Practice Forms § 83:115, Award Of Attorney Fees And Costs To Employer.

Treatises and Practice Aids

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

ANNOTATIONS

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Employee's state court action alleging claims under New Jersey Conscientious Employee Protection Act (CEPA) and Law Against Discrimination (LAD) was improperly removed, and employee was entitled to recover just costs and actual expenses, including attorney fees, to limited extent they were incurred due to removal itself. *Patterson v. Exxon Mobil Corp.*, D.N.J.2003, 262 F.Supp.2d 453. Removal Of Cases ☞ 107(11)

One of the factors that court should consider in determining amount of attorney fee award is the degree of success that

plaintiff has achieved in the litigation. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Costs ☞194.18

*72107 Neither Conscientious Employee Protection Act (CEPA) nor frivolous claims statute authorized award of attorney fees and costs against employee, given that employer conceded, for purposes of trial, that employee acted in good faith in bringing CEPA suit and given that there was no finding that suit was either frivolous or without basis in law or fact. *Buccinna v. Micheletti*, 311 N.J.Super. 557, 710 A.2d 1019 (A.D.1998). Costs ☞2; Costs ☞194.44; Master And Servant ☞46

2. Review

Appellate review of issues relating to award of attorney fees in Conscientious Employee Protection Act (CEPA) case would be postponed until there had been final determination of all issues at the trial level. *Abbamont v. Piscataway Tp. Bd. of Educ.*, 314 N.J.Super. 293, 714 A.2d 958 (A.D.1998), affirmed 163 N.J. 14, 746 A.2d 997. Appeal And Error ☞843(2)

*72108 N.J.S.A. 34:19-7

**NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION**

Current through L.2003, c. 1 to 191

34:19-7. Informing employees of protections and obligations under act; name of person designated to receive notices

An employer shall conspicuously display notices of its employees' protections and obligations under this act, and use other appropriate means to keep its employees so informed. Each notice posted pursuant to this section shall include the name of the person or persons the employer has designated to receive written notifications pursuant to section 4 of this act. [FN1]

CREDIT(S)

L.1986, c. 105, § 7, eff. Sept. 5, 1986.

[FN1] N.J.S.A. § 34:19-4.

REFERENCES

RESEARCH REFERENCES

2000 Main Volume

Forms

New Jersey Pleading and Practice Forms § 83:332, Notice To Employee Of Protections And Obligations.

Treatises and Practice Aids

41 N.J. Prac. Series § 19.32, Employment Law In New Jersey-Conscientious Employee Protection Act.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

***72109 N.J.S.A. 34:19-8**

**NEW JERSEY STATUTES ANNOTATED
TITLE 34. LABOR AND WORKMEN'S COMPENSATION
CHAPTER 19. EMPLOYMENT PROTECTION**

Current through L.2003, c. 1 to 191

34:19-8. Effect of act on rights, privileges, or remedies of employees under other laws, regulations, or agreements

Nothing in this act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or State law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this act shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, State law, rule or regulation or under the common law.

CREDIT(S)

L.1986, c. 105, § 8, eff. Sept. 5, 1986.

REFERENCES

RESEARCH REFERENCES

2000 Main Volume

ALR Library

77 ALR 5th 595, Visual Impairment As Handicap Or Disability Under State Employment Discrimination Law.

52 ALR 5th 405, Wrongful Discharge Based On Public Policy Derived From Professional Ethics Codes.

16 ALR 5th 239, In-House Counsel's Right To Maintain Action For Wrongful Discharge.

Forms

New Jersey Pleading and Practice Forms § 81:6, Procedural Guide.

New Jersey Pleading and Practice Forms § 83:331, In General.

Treatises and Practice Aids

18 N.J. Prac. Series § 5.7, Waiver.

18 N.J. Prac. Series § 2.27, Preclusion Of Remedies.

18 N.J. Prac. Series § 3.34, State Law Statutory Preemption.

35 N.J. Prac. Series § 12.20, The "Whistleblower" Statute.

UNITED STATES SUPREME COURT

Collective bargaining agreements, presumption of arbitrability, employment discrimination claims, see *Wright v. Universal Maritime Service Corp.*, 1998, 119 S.Ct. 391.

*72110

ANNOTATIONS

NOTES OF DECISIONS

Arbitration 3

Contract and tort claims 2

Defense 5

Federal law 1

Tort and contract claims 2

Waiver 4

1. Federal law

District court declined to exercise supplemental jurisdiction over assistant prosecutor's state-law claims against county prosecutor for violation of New Jersey Conscientious Employee Protection Act, denial of benefits, and breach of promise of continued employment, arising from county prosecutor's termination of assistant for commenting to judge on county prosecutor's strict policy on plea bargains, after federal claims alleging violations of First Amendment, due process, and equal protection were dismissed on summary judgment; no extraordinary circumstances, such as substantial investment of time, warranted retaining jurisdiction. *Johnson v. Yurick*, D.N.J.2001, 156 F.Supp.2d 427, affirmed 39 Fed.Appx. 742, 2002 WL 1378047. Federal Courts ☞18

New Jersey's Conscientious Employee Protection Act (CEPA) did not preclude claim under CEPA on ground that whistleblower had also filed claim for recovery under Federal Claims Act (FCA) for same conduct. *Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc.*, D.N.J.1999, 68 F.Supp.2d 455. Master And Servant ☞30(6.35); States ☞18.49

Complaint for defamation in violation of the New Jersey Conscientious Employee Protection Act (CEPA) was not preempted by ERISA even though complaint alleged that adverse employment action had been taken against employee for questioning valuation of properties in real estate trusts which were invested in by employee benefit plans. *Jorgensen v. Prudential Ins. Co. of America*, D.N.J.1994, 852 F.Supp. 255. Libel And Slander ☞10(6); States ☞18.15

Older Workers Benefit Protection Act (OWBPA), by its own terms, does not govern validity of releases of claims under New Jersey's Conscientious Employee Protection Act (CEPA); OWBPA states that "individual may not waive any right or claim under this chapter unless the release meets the listed criteria" and the act referred to in the OWBPA is the ADEA, not New Jersey's CEPA. *Keelan v. Bell Communications Research*, 289 N.J.Super. 531, 674 A.2d 603 (A.D.1996). Release ☞2

*72111 Former employee's retaliatory discharge claim against employer under Conscientious Employee Protection Act (CEPA) was subject to compulsory arbitration, pursuant to Federal Arbitration Act (FAA), notwithstanding contention that CEPA provisions authorizing jury trials, injunctive relief, punitive damages, and civil fines indicated legislative intent to require judicial resolution of CEPA claims and to preclude their arbitration; FAA preempts any state law or policy which would restrict arbitrability, and all remedies available from court under CEPA were also available from arbitrator given arbitrator's broad equitable powers. *Bleumer v. Parkway Ins. Co.*, 277 N.J.Super. 378, 649 A.2d 913 (L.1994). Arbitration ☞4.1

State law whistleblower claim by former railroad signalman was not preempted by Railway Labor Act; signalman did not rely on rights established in collective bargaining agreement to assert claim and resolution of claim did not depend on

interpretation of terms of agreement. *Maier v. New Jersey Transit Rail Operations, Inc.*, 125 N.J. 455, 593 A.2d 750 (1991). Master And Servant ☞30(6.35); States ☞18.49

2. Tort and contract claims

Investigator's initiation of retaliation claim against acting county prosecutor under New Jersey's Conscientious Employee Protection Act (CEPA) effected waiver of his state law claims for tortious violation of his state constitutional right to freedom of speech and tortious interference with economic advantage, inasmuch as latter claims arose from same set of facts surrounding his retaliation claim, that is, his termination allegedly resulting from speech he exercised in connection with his investigation of fellow law enforcement officers. *Baldassare v. State of N.J.*, C.A.3 (N.J.)2001, 250 F.3d 188. Election Of Remedies ☞15

Waiver provision in New Jersey Conscientious Employee Protection Act did not preclude employee from also bringing state law contract claims and tort claims for infliction of emotional distress, replevin, and conversion. *Casper v. Paine Webber Group, Inc.*, D.N.J.1992, 787 F.Supp. 1480. Action ☞35

Conscientious Employee Protection Act (CEPA) permits employee to pursue common-law tort or contract claim that is distinct from CEPA claim. *Higgins v. Pascack Valley Hosp.*, 158 N.J. 404, 730 A.2d 327 (1999). Master And Servant ☞30(6.35)

Former employee's claims for severance pay allegedly due and owing under employer's personnel policies and common-law damage claims under theory of defamation, slander and malicious interference with prospective employment opportunities did not fall under waiver provision of Conscientious Employee Protection Act (CEPA) as they are substantially unrelated to retaliatory discharge claims. *Young v. Schering Corp.*, 141 N.J. 16, 660 A.2d 1153 (1995). Election Of Remedies ☞2; Master And Servant ☞34.1; Master And Servant ☞80(1); Master And Servant ☞341

*72112 Former employee's decision to bring action against employer under the Conscientious Employee Protection Act did not preclude action against former employer claiming wrongful discharge in violation of contractual provision of employee handbook; handbook violation proofs could be different from those under Act. *Flaherty v. Enclave*, 255 N.J.Super. 407, 605 A.2d 301 (L.1992). Master And Servant ☞34.1

3. Arbitration

Arbitration provision of employee handbook, listing claims arising under numerous federal statutes by name as falling within its purview, in addition to "any other federal, state, or local statute, regulation, or common-law doctrine, regarding employment discrimination, conditions of employment, or termination of employment," reflected an unambiguous intention to arbitrate a state law Conscientious Employee Protection Act (CEPA) claim, as element for enforcing the arbitration provision. *Leodori v. CIGNA Corp.*, 175 N.J. 293, 814 A.2d 1098 (2003), certiorari denied 124 S.Ct. 74, 2003 WL 21229262. Arbitration ☞6.2

Exception from National Association of Securities Dealers (NASD) rules requiring arbitration of disputes between securities brokers and employees, for "disputes involving the insurance business of any member which is also an insurance company," permitted employee otherwise required to arbitrate to sue for violation of state Conscientious Employee's Protection Act; essence of his claim was that employer, in its capacity as insurer, was encouraging agents to "churn" or "twist" insurance coverage, by inducing insureds to acquire additional insurance on deceptive promise that premiums would be paid out of income from existing policies, and that insurer was covering up past churning and twisting activities by other actions. *Young v. Prudential Ins. Co. of America, Inc.*, 297 N.J.Super. 605, 688 A.2d 1069 (A.D.1997), certification denied 149 N.J. 408, 694 A.2d 193. Exchanges ☞11(12)

Rule that retaliatory discharge claims, arising under Conscientious Employee Protection Act (CEPA), commonly known as whistleblower statute, are not subject to compulsory arbitration is confined to claims for arbitration arising under collective bargaining agreements and does not extend to similar claims arising under private employment agreements. *Bleumer v. Parkway Ins. Co.*, 277 N.J.Super. 378, 649 A.2d 913 (L.1994). Arbitration ☞4.1

4. Waiver

Although some of the many defamation claims involved factual scenarios that also formed the substantive basis of his retaliation claim under New Jersey's Conscientious Employee Protection Act (CEPA), high school band director's defamation claims were independent of, and not related to, his CEPA claim and therefore were not waived under CEPA. *Kadetsky v. Egg Harbor Tp. Bd. of Educ.*, D.N.J.2000, 82 F.Supp.2d 327. Schools ☞147.12

***72113** Township police officer's New Jersey state law claims including constructive discharge and infliction of emotional distress, which alleged that township, police department, and police chief investigated him and secured his resignation in retaliation for criticizing department's reward system, were waived by fact that officer also filed claim under New Jersey's Conscientious Employee Protection Act (CEPA) based on same alleged retaliatory conduct. *Boody v. Township of Cherry Hill*, D.N.J.1997, 997 F.Supp. 562. Municipal Corporations ☞185(15)

Under New Jersey law, former employee's institution of retaliatory discharge claim under Conscientious Employee Protection Act (CEPA) constituted waiver of her intentional infliction of emotional distress claim against her former employer and company executives, though former employee's retaliatory discharge claim had been dismissed for failure to comply with statute of limitations, where former employee alleged that her discharge and manner in which it had been conducted caused her emotional distress. *Lynch v. New Deal Delivery Service Inc.*, D.N.J.1997, 974 F.Supp. 441. Master And Servant ☞35

Under New Jersey law, waiver provision of Conscientious Employee Protection Act (CEPA) only applies to those causes of action relating to retaliatory discharge and not to causes of action that are substantially independent of CEPA claim. *Lynch v. New Deal Delivery Service Inc.*, D.N.J.1997, 974 F.Supp. 441. Master And Servant ☞35

Under New Jersey law, claim of intentional infliction of emotional distress in conjunction with retaliatory discharge claim falls within waiver provision of Conscientious Employee Protection Act (CEPA). *Lynch v. New Deal Delivery Service Inc.*, D.N.J.1997, 974 F.Supp. 441. Master And Servant ☞35

Former employee's election to sue under New Jersey Conscientious Employee Protection Act waived claim for violation of New Jersey Racketeer Influenced and Corrupt Organizations Act (RICO), where only injury alleged from RICO claim was retaliatory discharge. *Casper v. Paine Webber Group, Inc.*, D.N.J.1992, 787 F.Supp. 1480. Election Of Remedies ☞7(1); Election Of Remedies ☞15

Former employee's election to sue under New Jersey Conscientious Employee Protection Act did not waive employee's claims under Equal Pay Act and New Jersey Law Against Discrimination. *Casper v. Paine Webber Group, Inc.*, D.N.J.1992, 787 F.Supp. 1480. Election Of Remedies ☞7(1)

Former employee's ineffective attempt to bring claim against Delaware River Port Authority (DRPA) under New Jersey Conscientious Employee Protection Act (CEPA) did not constitute a waiver of common law causes of action. *Ballinger v. Delaware River Port Authority*, 172 N.J. 586, 800 A.2d 97 (2002). Navigable Waters ☞14(2)

***72114** Conscientious Employee Protection Act (CEPA) waiver provision, stating that institution of action under CEPA is deemed waiver of rights and remedies available under any other contract, does not preclude career civil service employee who has filed CEPA action from appealing disciplinary action to Merit System Board simply because employee alleges that his employer instituted disciplinary charges against him for the same retaliatory reasons alleged in CEPA action. *Scouler v. City of Camden*, 332 N.J.Super. 69, 752 A.2d 828 (A.D.2000). Officers And Public Employees ☞72.22

Conscientious Employee Protection Act (CEPA) waiver provision, stating that institution of action under CEPA is deemed a waiver of the rights and remedies available under any other contract, does not require the exclusion of evidence of retaliation in a civil service disciplinary hearing. *Scouler v. City of Camden*, 332 N.J.Super. 69, 752 A.2d 828 (A.D.2000). Officers And Public Employees ☞72.62

Neither waiver provision of the Conscientious Employee Protection Act (CEPA), stating that institution of action under

CEPA is deemed a waiver of the rights and remedies available under any other contract, nor any other section of CEPA precludes an employee who alleges a retaliatory motive for the institution of a civil service disciplinary charge from subsequently filing a CEPA action. *Scouler v. City of Camden*, 332 N.J.Super. 69, 752 A.2d 828 (A.D.2000). *Officers And Public Employees* 69.7

Career civil service employee who files Conscientious Employee Protection Act (CEPA) action is not precluded from pursuing an appeal of a related disciplinary charge to Merit System Board, and employee may present evidence of retaliation at the hearing on the charge consistent with the intent of CEPA waiver provision only to prevent an employee from pursuing both statutory and common-law retaliatory discharge causes of action. *Scouler v. City of Camden*, 332 N.J.Super. 69, 752 A.2d 828 (A.D.2000). *Officers And Public Employees* 72.22; *Officers And Public Employees* 72.62

Former employee's assertion in complaint of claim under Conscientious Employee Protection Act (CEPA) did not bar her, under CEPA's waiver provision, from bringing common law wrongful discharge claim against former employer, where any CEPA claim was barred by CEPA's statute of limitations. *Crusco v. Oakland Care Center, Inc.*, 305 N.J.Super. 605, 702 A.2d 1363 (A.D.1997). *Master And Servant* 35

Former employee's claim, that former employer was vicariously liable for former supervisor's alleged tortious acts, was not subject to waiver provision of Conscientious Employee Protection Act (CEPA); claim did not resemble CEPA violations alleged in former employee's complaint, and claim required different proofs than those needed to substantiate CEPA claim. *Crusco v. Oakland Care Center, Inc.*, 305 N.J.Super. 605, 702 A.2d 1363 (A.D.1997). *Master And Servant* 325

***72115** Employee's causes of action for common-law retaliatory discharge, intentional infliction of emotional distress, constitutional tort, negligent infliction of emotional distress, intentional infliction of emotional distress, and discharge in violation of public policy were waived under the Conscientious Employee Protection Act (CEPA) waiver provision. *Falco v. Community Medical Center*, 296 N.J.Super. 298, 686 A.2d 1212 (A.D.1997), certification denied 153 N.J. 405, 709 A.2d 798. *Master And Servant* 35

Discharged employee's prima facie tort claim was simply a claim for retaliatory discharge based upon the common law, thereby avoiding Conscientious Employee Protection Act (CEPA) requirement of clear mandate of public policy; thus, employee's institution of CEPA action waived his prima facie tort claim. *Mehlman v. Mobil Oil Corp.*, 291 N.J.Super. 98, 676 A.2d 1143 (A.D.1996), certification granted 147 N.J. 264, 686 A.2d 764, affirmed 153 N.J. 163, 707 A.2d 1000. *Master And Servant* 30(6.35); *Master And Servant* 34.1

Employee who was discharged for objecting to distribution in Japan of gasoline with excessive benzene content by employer's subsidiary did not waive his defamation claim by filing a claim under Conscientious Employee Protection Act (CEPA); claim that employer defamed and slandered his personal and professional reputation by broadcasting to professional community, including coemployees, that employee had been terminated for wrongdoing required different proofs than those required for CEPA claim. *Mehlman v. Mobil Oil Corp.*, 291 N.J.Super. 98, 676 A.2d 1143 (A.D.1996), certification granted 147 N.J. 264, 686 A.2d 764, affirmed 153 N.J. 163, 707 A.2d 1000. *Master And Servant* 34.1

Provision in employment contract stating that California law governed contract and all collateral matters did not preclude application of arbitration clause to claim under New Jersey Conscientious Employee Protection Act (CEPA), commonly known as whistleblower statute; contract clauses purporting to exclude certain disputes from arbitration must be clear and unambiguous, and choice of law provision could not sensibly be construed as gearing upon or as barring arbitration of statutory claims. *Bleumer v. Parkway Ins. Co.*, 277 N.J.Super. 378, 649 A.2d 913 (L.1994). *Arbitration* 2.2

Plaintiff's institution of an action under the Conscientious Employee Protection Act (CEPA) constitutes waiver of rights and remedies available to plaintiff under any other contract, collective bargaining agreement, state law, rule or regulation or under the common law; causes of action which fall within waiver provision are those causes of action that are directly related to employee's termination due to disclosure of employer's wrongdoing. *Young v. Schering Corp.*, 275 N.J.Super. 221, 645 A.2d 1238 (A.D.1994), certification denied 139 N.J. 184, 652 A.2d 172, certification granted 139 N.J. 184, 652 A.2d 172, affirmed 141 N.J. 16, 660 A.2d 1153. *Master And Servant* 35

*72116 Conscientious Employee Protection Act (CEPA) barred former employee's public policy claim that he was dismissed in retaliation for his threats of whistleblowing where employee asserted similar claim seeking same remedies under CEPA. *Catalane v. Gilian Instrument Corp.*, 271 N.J.Super. 476, 638 A.2d 1341 (A.D.1994), certification denied 136 N.J. 298, 642 A.2d 1006. Master And Servant ☞34.1

Provision in Conscientious Employee Protection Act, that institution of action thereunder would result in waiver of "rights and remedies" available under contract, state law, or common law, constituted waiver only of rights and remedies available for wrongful discharge as a result of disclosure activities. *Flaherty v. Enclave*, 255 N.J.Super. 407, 605 A.2d 301 (L.1992). Master And Servant ☞10.5

5. Defense

Cause of action at a civil service disciplinary hearing is not the employee's claim that the employer has taken retaliatory action, but, rather, the employer's claim that the employee was guilty of misconduct, and any claim that the disciplinary charge was brought in retaliation for conduct protected by Conscientious Employee Protection Act (CEPA) is solely a matter of defense, which the employee has no burden to prove in order to be exonerated. *Scouler v. City of Camden*, 332 N.J.Super. 69, 752 A.2d 828 (A.D.2000). Officers And Public Employees ☞72.10; Officers And Public Employees ☞72.61