Calif.: New Law Expands Protections for Whistle-Blowers

12/16/2013 By Laura Reathaford Keith A. Goodwin, © Proskauer

On Oct. 12, 2013, California Gov. Jerry Brown signed into law SB 496, which, along with two other new laws (SB 666 and AB 263), expands protections for whistle-blowers in California by significantly altering California Labor Code Section 1102.5, California's general whistle-blower statute. The amendments are effective Jan. 1, 2014.

Before it was amended, Section 1102.5 already prohibited employers from retaliating against employees who reported reasonably believed violations of state or federal laws, rules, or regulations to a government or law enforcement agency. SB 496 extends this protection to employees who report suspected illegal behavior: (1) internally to "a person with authority over the employee" or to another employee with the authority to "investigate discover, or correct" the reported violation; or (2) externally to any "public body conducting an investigation, hearing, or inquiry." Additionally, SB 496 declares unlawful any employer's rule, regulation, or policy that prevents the disclosure of reasonably believed violations of local (in addition to state and federal) laws, rules, or regulations.

The bill also imposes liability where any person acting on the employer's behalf retaliates against an employee who engages in protected whistle-blowing activity. In addition, employers and persons acting on their behalf may not retaliate against an employee for disclosing such information or because the employer believes the employee has disclosed or may disclose the information externally or internally.

SB 496 further provides that the protection of whistle-blowers applies regardless of whether disclosing such information is part of the employee's job duties. For example, a company's compliance officer is protected under section 1102.5 for disclosing purported illegal activity even though his job duties may require him to report such activity externally or internally.

Because a violation of California's general whistle-blower statute can have serious consequences for employers—not the least of which are civil penalties of up to $10,000 per violation—California employers would be well advised to update their whistle-blower protection policies to reflect the changes effected by SB 496 and to train managers and supervisors about the new retaliation provisions applicable to their conduct. Of particular concern to employers should be the fact that they can now be found liable for "anticipatory retaliation" if they, or any person acting on their behalf, take adverse action against an employee based on the mere belief that the employee has disclosed or might disclose information about a reasonably-believed violation of federal, state, or local law.

Although SB 496 creates new sources of liability for California employers, there is at least a clarification of a prior split of authority. As a result of SB 496, California employers no longer have to wrestle with how to handle the conflict that exists among federal courts about whether an individual must first report a reasonably believed violation of securities laws to the SEC to receive protection against retaliation under the Dodd-Frank Act. Regardless of whether a California employee first reports suspected illegal activity to a government or law enforcement agency, to a specified public body, or via an employer's internal reporting procedure, California whistle-blower retaliation laws will protect this activity.

Laura Reathaford is an attorney and Keith A. Goodwin is a law clerk in Proskauer's Los Angeles office.