

## **SOX Whistleblower Case Reflects Trend Toward Increased Protections**

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Employees who believe they've spotted fraud or other violations of the law at their workplaces are often afraid to report these violations to their supervisors or to government agencies. While they may know about legal protections for whistleblowing, it is often more challenging for employees to determine if they are observing true violations contrary to federal or state law. If an employee does report her observations and is fired, demoted or has another retaliatory action taken against her, the employee has to face the additional hurdle of proving that her report was a contributing factor to her employer's decision to terminate her.

In the context of the [Sarbanes-Oxley Act of 2002](#) ("SOX"), several courts have recognized that harsh standards against employees go against Congress's purpose in including anti-retaliation protections for whistleblowers in law. The Second Circuit Court of Appeals' Sept. 12 decision in Jennifer Sharkey's case against her former employer, JPMorgan Chase & Co., exemplifies in many ways the evolution of the courts on the standard for employees to prove their cases.

### **About *Sharkey v. J.P. Morgan***

Sharkey originally filed her complaint against JPMorgan in May 2010, alleging that she was fired one week after she raised concerns with management that one of the company's clients was engaged in international fraud and money laundering. Since then, Sharkey's case has ping-ponged between a federal trial court in New York City and the Second Circuit.

In the wake of the trial court originally dismissing Sharkey's claim in December 2013, the Second Circuit eased the formerly strict standard for an employee to prove she engaged in [protected activity](#). Under the new standard, an employee is protected for reporting information that she *reasonably believes* constitutes a violation of the federal provisions outlined in SOX. The Second Circuit sent Sharkey's case back to the trial court to determine if she met the new standard.

In October 2015, the trial court dismissed Sharkey's case again, holding this time that she failed to demonstrate that her managers considered her protected activity in making the decision to fire her. The Second Circuit again reversed the trial court, stating that Sharkey's claim survived. The court noted that Sharkey was terminated just one week after recommending that JPMorgan end its relationship with the client. It also affirmed the trial court's holding that Sharkey met the reasonable belief standard. The case now returns to the trial judge.

### **A Win for Whistleblowers**

The court's revival of Sharkey's claim is heartening for [SOX whistleblowers](#) and supports a trend toward giving employees the fullest protections possible under the law and to allow them to present their cases in full at the trial level, rather than dismissing them under strict evidentiary standards. While whistleblowers should not have to risk their jobs for raising concerns with their employers, the Second Circuit's decision will hopefully dissuade companies from persecuting its employees for speaking up.