

Jury Awards Pharma Whistleblower Over \$760k in Retaliation Case

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A federal district court in Massachusetts recently ordered Minneapolis based Coloplast to pay over \$760,000 to Plaintiff, Amy Lestage, for retaliating against her after she and others filed a whistleblower complaint against the company. In December 2011, pharmaceutical whistleblower, Lestage, along with two former Coloplast employees filed a False Claims Act (FCA) qui tam action against the company, Byram Healthcare, and other large distributors of medical devices and services related to medical conditions and surgeries such as incontinence and ostomy. The qui tam action alleged that Coloplast and some of its distributors engaged in an illegal kickback scheme to inflate their Medicare and Medicaid reimbursements and thereby defraud the federal government. The qui tam action was unsealed on November 20, 2014, and the names of the relators, including Lestage, became public knowledge.

Pharmaceutical Whistleblower Placed on Administrative Leave

Eventually, Byram Healthcare's Chief Executive Officer requested that Lestage be removed from managing its account and replaced by another employee. Coloplast complied with the request and then placed Lestage on indefinite, fully paid, administrative leave from December 23, 2014, through December 2015. Lestage filed an FCA retaliation claim against Coloplast on June 1, 2015, alleging it violated the FCA's anti-retaliation provision, 31 U.S.C. § 3730(h), which prohibits retaliation against employees who file qui tam lawsuits or seek to stop a company from engaging in practices which defraud the federal government.

Proving Retaliation against a Whistleblower

To prove that a company retaliated against an employee in violation of 31 U.S.C. § 3730(h), an individual must demonstrate that (a) she engaged in protected activity; (b) the defendant knew of her protected conduct and (c) the defendant retaliated against her because of her protected activity. One of the remedies available to a successful plaintiff is compensatory damages—which Lestage sought. The jury found in Lestage's favor and awarded her \$762,525 in compensatory damages. Coloplast moved for judgment as a matter of law.

In evaluating Coloplast's motion, the district court held that Lestage engaged in protected activity by filing a qui tam claim; the trial testimony proved the defendant became aware of her protected activity when the qui tam action was unsealed; and defendant retaliated by placing Lestage on administrative leave for over 360 days and removing key accounts when she returned from leave. Coloplast argued that neither action had any adverse economic consequences because she was paid while on leave and the new accounts to which she was assigned upon her return did not impact her compensation.

Retaliation Despite Administrative Paid Leave

The court upheld the jury's verdict based on the evidence Lestage provided of the harm she had suffered, which the jury was entitled to credit. Lestage testified about the less lucrative accounts she was assigned upon her return, and provided a detailed account of the anxiety and emotional distress caused by the leave, as well as expert testimony to support her calculation of damages. The court thus determined that Lestage was retaliated against, suffered damages, and that her award was appropriate.

Coloplast has since filed an appeal, but the decision in Lestage still demonstrates that administrative leave is not a risk free proposition for employers even if they fully compensate an employee on leave. Employees facing paid leave should not assume they will be unable to prove such an employment action was retaliatory and caused real harm.