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### California Supreme Court Broadens Whistleblower Protections



The California Supreme Court (the Court) issued a unanimous decision on May 22, 2023, in the case of *People ex rel. Garcia-Brower v. Kolla's, Inc.* The ruling broadened the interpretation of "disclose" under California Labor Code Section 1102.5, which protects employees from retaliation for "disclosing information" the employee has reasonable cause to believe is a violation of a state or federal statute. The Court held that whistleblowers are protected against retaliation even when the employer to whom they report alleged misconduct is already aware of it. This protection extends to instances where an employee reports to their employer about a violation committed by the employer themselves.

#### **DLSE's Investigation**

The Court's ruling in *People ex rel. Garcia-Brower v. Kolla's Inc.* results from a Division of Labor Standards Enforcement (DLSE) (a division of California's Department of Industrial Relations) enforcement action brought by Labor Commissioner Lilia Garcia-Brower on behalf of the employee. The Court referred to the employee as "A.C.R." throughout the opinion due to immigration concerns.

A.C.R. was employed as a bartender at Kolla's, Inc., a nightclub located in Orange County, California. In April 2014, she complained to the nightclub's owner about unpaid wages for her previous three shifts. Rather than address her complaint, the owner responded by terminating her employment, threatening to report her to immigration authorities, and telling her never to return to the nightclub.

A month later, A.C.R. filed a complaint with the DLSE, leading them to investigate her claims. The DLSE's investigation concluded that the owner had violated California law by making immigration-related threats and

terminating A.C.R.'s employment. As potential remedies, the DLSE proposed compensating A.C.R. for lost wages, reinstating A.C.R. to her former position, and paying civil penalties to both A.C.R. and the DLSE. After Kolla's refused to agree to these terms, Commissioner Garcia-Brower sued Kolla's and its owner. The lawsuit cited multiple violations of the Labor Code, including whistleblower retaliation under Labor Code section 1102.5(b). S

## **Lower Courts Dismiss Claim**

The trial court dismissed the section 1102.5(b) claim, ruling that Commissioner Garcia-Brower had failed to establish a viable cause of action because A.C.R. had lodged her complaint with her employer, not a governmental agency.

On appeal, the California Court of Appeals, Fourth District, upheld the decision, rejecting Commissioner Garcia-Brower's claim under section 1102.5(b). In analyzing the statute's use of the word "disclose," the court interpreted disclosure to mean "the revelation of something new, or at least believed by the discloser to be new, to the person or agency to whom the disclosure is made." According to the court, because the owner of Kolla's was "at least aware of — if not responsible for — the non-payment of wages," A.C.R.'s report did not constitute a "disclosure" under the statute and therefore did not amount to protected whistleblowing activity. Noting the discord regarding the meaning of "disclose" among the California courts of appeal, the Supreme Court granted review and appointed a law firm to represent Kolla's on a pro bono basis.

## **California Supreme Court Interprets Meaning of "Disclosure"**

The Court disagreed with the lower courts' interpretations. Diving into the statute's legislative history, the Court found that California's legislature intended to include under Section 1102.5(b) an employee's disclosure made "to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance." It also found that the legislature intended the term "disclose" to mean "report," "inform," or "complain."

The Court then analyzed the meaning of the word "disclose" in various contexts, including its dictionary definitions and as used in other California legislation. Pairing the definition of the word with the statute's text, which allows protections for disclosures made to "another employee who has the authority to investigate ... or correct the violation," the Court found a "disclosure" may "reasonably encompass an employee's report or complaint that calls attention to a legal violation or potential violation in the workplace." Siding with Commissioner Garcia-Brower, it found that "disclose" need not mean only the revelation of information previously unknown to the recipient.

Amicus curiae argued against the Court's ultimate reading of the word "disclose," warning it "threatens to convert everyday workplace disputes into whistleblower cases." The Court rejected this argument. According to the Court, employers are protected from disagreements over discretionary decisions, policy choices, and interpersonal issues by virtue of the statute's requirement for "objective reasonableness." Employers are further protected against meritless whistleblower cases by their ability to rebut allegations of retaliation using clear and

convincing evidence of legitimate, nonretaliatory reasons for any adverse employment actions they take.

## **Implications for Employers**

The Court's broad interpretation of the word "disclose" results in a potential expansion of liability for employers. Employers should ensure their internal reporting procedures include considerations for investigating and elevating suspected violations of law, including those of which the employer was already aware. Employers should contact experienced counsel if they have any questions before taking any adverse action against an employee who has reported such violations.

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