

LEGISLATIVE UPDATE

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CEPA NOTICES AMENDED BY NJDOL

In March 2005, the New Jersey Department of Labor and Workforce Development significantly revised its sample Employer Notice of employees' rights under the Conscientious Employee Protection Act, the state statute protecting whistleblowers.

As Jackson Lewis previously reported, the New Jersey legislature amended CEPA in September 2004, to require all employers to conspicuously post, and annually distribute, a notice of employees' protections, obligations, rights and procedures under CEPA. The Act requires the posting and annual notices be in English and Spanish, and, at the employer's discretion, any other language spoken by the majority of employees. The legislature also directed the Department to draft a sample notice to be used by employers for posting and distribution purposes. The NJDOL made the sample notice available to the public in September 2004. We have been advised that the NJDOL has just revised its sample notice in two significant respects:

First, the new notice now requires employers to indicate both a primary contact person and a secondary contact person designated by the employer to answer questions regarding CEPA. As we previously noted, however, the statute expressly refers to the employer's obligation to identify a management person to whom the employee may/should make a report when the employee believes a policy, practice or activity of the company is in violation of the law, is fraudulent, or otherwise is covered by CEPA. Jackson Lewis recommends that employers modify the NJDOL posting to expressly identify the management person to whom reports under the Act are to be made, in addition to designating one other contact person.

Second, the revised notice contains language regarding the employee's responsibilities under CEPA to give written notice to an employer in certain circumstances. Specifically, the notice explains that, under CEPA, "[t]he protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more

supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided the situation is emergent in nature."

Additionally, please note that the proposed NJDOL posting does not inform employees of the one-year statute of limitations, which applies to claims made under CEPA. In light of the statute's requirement that employers inform employees of their rights and obligations under CEPA, Jackson Lewis recommends at the least that the annual notice to employees include a reference to the applicable statute of limitations.

Employers should incorporate these changes into their current CEPA postings and annual distributions. While the NJDOL has not yet released its new sample notice, Jackson Lewis attorneys have prepared a notice to employees, in English and Spanish, which is consistent with the statute.