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Supreme Court Declines to Expand Whistleblower Protection

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On February 21, the Supreme Court ruled that the Dodd-Franks Act's anti-retaliation provision only applies to individuals who have reported a violation to the Securities and Exchange Commission ("SEC"). The court found that the Dodd-Frank Act does not protect employees who make internal complaints of corporate wrongdoing.

In 2010, Congress enacted the Dodd-Frank Act in response to the financial crises of 2007-2008. The Act increased regulatory enforcement and remedies by rewarding individuals who provide the SEC with information that leads to enforcement action. Furthermore, the Act provides job protection for SEC whistleblowers and confidentiality.

In 2014, Paul Somers was terminated from Digital Realty Trust, Inc. ("Digital Realty"). Somers alleged that he was terminated after he reported to senior management suspected securities-law violations by the company. Consequently, Somers filed suit, alleging a claim of whistleblower retaliation under the Dodd-Frank Act. In response, Digital Realty moved to dismiss the claim because Somers was not a "whistleblower" under the Act since he did not file a report with the SEC. The District Court denied Digital Realty's motion and the Ninth Circuit affirmed. The Court of Appeals concluded that the Dodd-Frank Act does not require reporting to the SEC in order to gain "whistleblower" status.

The Supreme Court reversed the lower court's decisions, holding that the Dodd-Frank Act's anti-retaliation provision only protected individuals who reported a violation to the SEC. The Court focused on Congress' intent when creating the Act. Justice Ginsburg wrote for her colleagues that the statute provides an "unequivocal answer" of who qualifies as a whistleblower. The Act defines a "whistleblower" as "any individual who provides. . . information relating to a violation of the securities laws to the [SEC]." Furthermore, Justice Ginsburg wrote, "when a statute includes an explicit definition, we must follow that definition, even if it varies from a term ordinary meaning. This principle resolves the question before us."

Despite the fact that it is probable that the Dodd-Frank Act affords a long, 10-year statute of limitations period and two times back pay with interest, the ruling that Dodd-Frank only applies to employees who file reports to the SEC, will likely result in fewer Dodd-Frank retaliation claims. However, employees can still raise retaliation claims for internal complaints under the Sarbanes-Oxley Act or state whistleblower laws.

The Supreme Court's decision provides employers and employees with clarity on retaliation protection. We encourage employers to provide regular training to employees on how to properly handle and respond to allegations of corporate wrongdoing.

If you have any questions or concerns regarding employment or education-related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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