



SUPREME COURT RULING EXPANDS WHISTLEBLOWER PROTECTIONS

A recent ruling by the U.S. Supreme Court has strengthened protections for whistleblowers, making it easier for employees to pursue legal action against employers who retaliate against them for exposing misconduct. The decision, issued February 8, 2024, stemmed from a case involving Trevor Murray, a former bond strategist at UBS Group. Murray alleged that he was unlawfully terminated for refusing to publish misleading research reports and raising concerns about unethical practices within the company.

Murray v. UBS Securities, LLC, et al. was brought under the anti-retaliation provisions of the Sarbanes-Oxley Act, which “prohibit publicly traded companies from retaliating against employees who report what they reasonably believe to be instances of criminal fraud or securities law violations.” The crux of the case before the Supreme Court was whether the Sarbanes-Oxley Act’s anti-retaliation provisions require a plaintiff to prove that an employer acted with “retaliatory intent” against them because of their whistleblowing activity.

In a unanimous decision, the Supreme Court sided with Murray, rejecting UBS's argument that the Sarbanes-Oxley Act requires a showing of retaliatory intent. Justice Sotomayor, writing for the Court, emphasized that federal law only requires whistleblowers to demonstrate that their employer treated them differently from other employees due to their whistleblowing: “When an employer treats a whistleblower differently, and worse, ‘because of’ his protected whistleblowing activity, that is actionable discrimination, and the employer’s lack of ‘animosity’ is ‘irrelevant.’” Actions against an employee that constitute differential treatment include “firing them, demoting them, or imposing some other unfavorable change in the terms and conditions of employment.”

The Court also clarified that “[s]howing that an employer acted with retaliatory animus is one way of proving that the protected activity was a contributing factor in the adverse employment action, but it is not the only way.”

This ruling effectively lowers the burden of proof for whistleblowers under the Sarbanes-Oxley Act, potentially leading to increased success rates in lawsuits alleging retaliation. And, contrary to UBS’s position, the Court found that this ruling is unlikely to penalize employers for innocent mistakes, because the inquiry mandated by the anti-retaliation provisions simply “asks whether the employer would have taken the same action against an otherwise identical employee who had not engaged in protected activity.”

It is important to note, however, that this decision does not necessarily impact the legal standards for other types of employment discrimination cases. The Court in the case only interpreted the anti-retaliation provisions of the Sarbanes-Oxley Act; statutes such as Title VII of the Civil Rights Act of 1964 still typically require plaintiffs to demonstrate retaliatory intent, setting a higher bar for legal action.

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