
Employment Law Planning Series

USE OF CONFIDENTIAL INFORMATION BY EMPLOYEES TO SUPPORT LAWSUITS

In *Quinlan v. Curtiss-Wright Corporation*, decided on December 2, 2010, the New Jersey Supreme Court ruled in favor of plaintiff-employee, who copied confidential information and turned it over to her attorney to support her sex discrimination and retaliation case. The court ruled that the plaintiff-employee was wrongfully terminated in retaliation for her taking confidential documents to support her sex discrimination lawsuit against her employer and upheld a verdict in the employee's favor in excess of \$10.5 million.

The employee claimed she was overlooked for a promotion in favor of a less-qualified male co-worker. During the time of her employment, she copied numerous documents, some of which contained confidential personnel information, to support of her sex discrimination claim. After filing the sex discrimination suit, the employee gave her attorney copies of the confidential information which supported her sex discrimination claim. When the company learned of the disclosure, the employee was terminated. She then added a retaliation claim to her lawsuit.

The court found in favor of the employee on the retaliation claim. In its opinion, the court used a seven factor test in determining if an employee's copying of documents is protected:

1. How the employee obtained the documents.
2. What the employee did with the documents.
3. The nature and content of the documents.
4. Whether the company has a policy and if the employee violated that policy.
5. Whether disclosure of the documents is unduly disruptive to the employer's business.
6. The employee's rationale for copying or accessing the documents.
7. The balance between the employer's legitimate right to conduct its business, including its right to safeguard its confidential documents, and the employee's right to be free from discrimination or retaliation.

In applying the test, the court noted that the employee only gave the documents to her attorneys, the documents were directly related to the employee's claims, there was a colorable basis to believe the documents would not have been disclosed during valid discovery, and although the documents contained personal and confidential information, they did not in any way disrupt or threaten the operation of the company.

The court noted that its decision may open the floodgates by granting protected status to plaintiffs who misappropriate confidential documents. In this case, however, the court held that in considering the strong remedial purposes of LAD, an employee's right to be free from discrimination or retaliation outweighed the employer's legitimate right to safeguard its confidential documents.

The decision has broad implications to employers. Employers should exercise extreme caution in taking an adverse employment action against an employee who has complained of discrimination (and also an employee who raised a whistleblower action) against the employer either through internal procedures or a formal complaint. The ruling permits an employee to copy an employer's confidential documents if the employee acquires the documents in the normal course of his or her responsibilities, delivers them only to counsel or law enforcement and does not unduly disrupt the employer's business in the process. To address this issue employers, among other things, should consider implementing a company policy specifically prohibiting copying company confidential information to limit access of confidential information to specific employees.



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