CLIENT ALERT: Supreme Court Extends Sarbanes-Oxley Whistleblower Protection

The Sarbanes-Oxley Act ("SOX") was enacted in 2002, in response to several high-profile corporate scandals, most notably the collapse of Enron Corporation in 2001. The law provides protection to "whistleblowers"; employees who provide information as to unlawful or fraudulent corporate practices occurring at publicly-traded companies. On March 4, 2014, the United States Supreme Court held in *Lawson v. FMR LLC*, that the whistleblower protections of SOX extend to employees of private contractors and subcontractors who provide services to publicly-traded companies. The *Lawson* decision is significant because it expands the categories of employees who may bring a claim under the SOX whistleblower provision.

In *Lawson,* the two plaintiffs were former employees of FMR, LLC ("FMR"), a privately held company which provides advisory and management services to Fidelity Investments, a public company. Each employee filed a separate complaint against FMR, alleging retaliation for raising concerns about accounting irregularities at Fidelity's mutual funds. FMR argued that neither plaintiff was entitled to relief under SOX because the statute protects only employees of publicly-traded entities. The Supreme Court disagreed, holding that SOX's protection of whistleblowers extends to employees of private companies that contract with public companies.

In reaching this conclusion, the Court looked to both the language and purpose of the law. The statute, 18 U.S.C. §1514A, prohibits retaliation "because of any lawful act done by the employee." The Court noted that this language is not limited to an employee of a public corporation.

The Court also discussed the purpose behind the enactment of SOX, which was to uncover fraudulent activities in public corporations. The Court expressed concern that a more narrow reading of the statute would not provide protection to those who reported fraud from retaliation by their employers. The Court reasoned that based on the "mischief" Congress was responding to at the time SOX was enacted, and the fact that the mutual fund industry generally has no employees of its own, FMR's "narrower" interpretation was an attempt to insulate itself from Congress' intent to protect any employee who exposes fraudulent or unlawful activities relating to publicly-held companies.

Justice Sotomayor (joined by Justices Kennedy and Alito) dissented, criticizing the majority for the "stunning reach" of its interpretation of §1514A. The dissent argued that the majority's decision is inconsistent with the statute's titles and its context, and that it would lead to "absurd results" in which private business employees, such as household employees who have little interaction with mutual fund activities, would fall within §1514A simply because they are employed by someone who happens to work for a public employer.

As a result of the Court's expansion of SOX's whistleblower protection to employees of private companies that contract with publicly-traded companies, employers are encouraged to contact their MBJ attorneys with questions regarding how this will impact their anti-retaliation policies and procedures.

Laurence J. Donoghue and Rosaline Valcimond are attorneys with Morgan, Brown & Joy, LLP and may be reached at (617) 523-6666 or ldonoghue@morganbrown.com and rvalcimond@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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