

Employment Practices Liability Reform (CEPA, LAD, etc):

In the past few years, the New Jersey has seen an explosion of employment practices liability suits under the whistle blowers act (CEPA) and New Jersey's law against discrimination (LAD) in state court because New Jersey rules with respect to attorney fee shifting are substantially more favorable than in Federal Court. Further, it is substantially more difficult to receive a summary judgment (SJ) dismissal in New Jersey State Court than in Federal Court, and New Jersey's standards concerning what constitutes whistle blowing and an adverse employment action are far more expansive than under Federal practice.

Fee Shifting:

In most liability cases, the claimant's attorney is paid from the award and the fee is capped at between 25% and 33%, depending on the size of the judgment. However, in employment liability cases, the defendant must pay the prevailing plaintiff's fees as determined by the court, and there is no cap. In other states and in Federal court, the fee runs between \$300 and \$350 per hour. New Jersey goes a step further and awards an "enhancement", ordinarily up to an additional 50% to compensate the claimant's attorney for the risk that the case is unsuccessful. Further, while in the other 49 states and in federal court, judges take into consideration the relationship between the requested fee and the award to the plaintiff, not in New Jersey. In one recent lawsuit, a retired police officer rejected a settlement offer of \$75,000 and was subsequently awarded only \$20,000 by the jury. However, the judge awarded the plaintiff's attorney a fee of \$450,000!

This system encourages attorneys to waste time in endless depositions and to make unreasonable demands to stretch out the proceedings and build up legal fees, especially if the case has any merit. This is taxpayer's money. It is time to at least limit fees to the level awarded in Federal court.

The MEL supports legislation to cap fee applications as follows:

- For awards (damages and punitive awards) of \$50,000 or less, the maximum award shall be \$50,000 subject to considerations of reasonableness (i.e. *Rendine v. Pantzer*)
- For awards over \$50,000, the fee cap shall equal the award, again subject to considerations of reasonableness (*Rendine v. Pantzer*)

Direct Right of Appeal

The MEL also supports adding provisions that would grant public entities a "direct right of appeal" on all lower court rulings involving immunities and notice provisions. Currently, a public entity may only apply to the appellate court through a so called interlocutory appeal which is seldom granted. As a result, public entities are forced to

either try the case or settle without the benefit of an appellate decision or court ruling with respect to immunities and other protections under Title 59.

Conform New Jersey's rule on Offers of Judgment to Federal Practice

Under the U.S. Supreme Courts ruling in *Marek v. Chesney*, when a defendant in a fee shifting case offers a sum certain plus fees and costs to date and the award to the plaintiff is ultimately lower than the amount offered, the plaintiff's counsel's fees are frozen as of the date of the offer. New Jersey adopted a convoluted rule that is more difficult to use. The MEL supports adoption of the Federal practice.

Conform New Jersey's CEPA to Federal Practice:

Under the Federal version of CEPA, only true violations of law or public policy trigger the statute. However, New Jersey's CEPA law is now being triggered by personal grievances and other minor squabbles. New Jersey's CEPA statute has been interpreted so broadly that even teasing by fellow employees has been held to be an adverse employment action. New Jersey's CEPA should amended to require that alleged wrongful conduct of the employer represents a "public harm" and New Jersey should conform to Federal standards to prevent every employment squabble from being tried as a CEPA case.