

Ninth Circuit Clarifies Elements of Whistleblower Retaliation Claims Under the NDAA

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Written by:

Daniel M. McElhinney
Partner
San Luis Obispo

Taylor Frea
Associate
Fresno

In a recent opinion, the U.S. Court of Appeals for the Ninth Circuit spelled out what an employee must prove to establish whistleblower retaliation under the federal grant and whistleblower statute. In *Krzesni v. Wellpinit School District* (9th Cir. 2026) 182 F.4th 1147, the Court affirmed the federal District Court's order granting summary judgment, holding that a routine grant report describing a questionable expenditure (without suggestion of misconduct), among other statements, did not rise to the level of a protected disclosure. Further, the Court of Appeals agreed that an adverse employment action set in motion before disclosure cannot be retaliation.

Krzesni is a case involving a whistleblower retaliation claim under the National Defense Authorization Act (NDAA), and Washington state law, brought by David Krzesni. Mr. Krzesni alleged his employment contract was not renewed in retaliation for disclosing Wellpinit School District's (District) use of federal grant money without obtaining the required federal authorization.

Background

Mr. Krzesni was hired by the District to serve as Project Director in connection with the District's Native Youth Community Project Grant to "help prepare American Indian students for college and careers." The District planned to use grant funds for a group of students and staff to participate in a program in Hawaii, believing it would further the grant's objectives.

On May 1, 2023, the District Superintendent contacted the District's general counsel regarding Mr. Krzesni to discuss not renewing his employment contract. On May 8, 2023, the District made the decision not to renew Mr. Krzesni's contract.

Separately, that same day, Mr. Krzesni spoke with the District's federal contact for grant-related matters at the Department of Education's Office of Indian Education, who told Mr. Krzesni that drawing down grant funds for the Hawaii trip without authorization constituted "fraud." In June 2023, the District sent the government a check to reimburse them for the expenses incurred in connection with the Hawaii trip.

Mr. Krzesni filed an action against the District in federal District Court under the NDAA and Washington state law alleging whistleblower retaliation. Mr. Krzesni challenged the District Court's grant of summary judgment on both his federal whistleblower claim and his state law claim for wrongful termination.

Opinion

The Ninth Circuit Court of Appeals concluded that, to make a whistleblower claim under the NDAA, an employee must:

- 1) be covered by the statute,
- 2) communicate to a qualified person or body,
- 3) make a protected disclosure, and
- 4) suffer an adverse employment action as a reprisal for making that disclosure.

To be “covered by the statute” under prong #1, the plaintiff must be an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor.

Under prong #2, a “qualified person” includes federal employees responsible for contract or grant oversight and management officials or other employees of the contractor, subcontractor, grantee, etc. who have the responsibility to investigate, discover, or address misconduct.

A “protected disclosure” under prong #3 must include information that the employee reasonably believes is evidence of gross mismanagement, waste, or abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract or grant. The Court of Appeals interpreted the language in two separate federal whistleblower statutes and clarified that a whistleblower’s belief in misconduct must be objectively reasonable.

Lastly, under prong #4, the employee must suffer an adverse employment action (i.e., termination, demotion, or discrimination) as a result of making the protected disclosure.

Here, the Court of Appeals focused its review on prong #3 and #4.

Mr. Krzesni’s claim was founded on three alleged “protected disclosures.” The Court of Appeals found that the first two did not convey any information relating to misconduct. As to the third alleged protected disclosure, Mr. Krzesni’s telephone call on May 8, 2023, with the Department of Education contact, the Court of Appeals did not explicitly address whether this was a protected disclosure because Mr. Krzesni failed to establish prong #4.

The Court of Appeals clarified that, for an adverse employment action to constitute retaliation for a protected disclosure, the adverse action must occur after the disclosure. Here, the process to terminate Mr. Krzesni (more particularly, by not renewing Mr. Krzesni’s contract) began May 1, 2023, and the call occurred on May 8, 2023. In this case, the Court of Appeals concluded that the adverse employment action came prior to the disclosure, and, therefore, could not have been in retaliation for making the disclosure.

Takeaways

This Ninth Circuit opinion clarifies the requirements that must be met to make a whistleblower claim under the NDAA, serving as a reminder that whistleblower retaliation claims are fact specific and all of the elements must be met for an employee to make a successful claim under the NDAA. This is also a good reminder to document all employment decisions contemporaneously.

If you have any questions regarding this case, whistleblower retaliation, or any of the issues discussed in this Client News Brief, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#) or download our [mobile app](#).

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