

ROLAND|STOCK

ATTORNEYS AT LAW

John W. Roland
Edwin L. Stock
S. Whitney Rahman*
Robert R. Kreitz
John E. Muir
Deborah A. Sottosanti
Dante C. Cutrona
Gregory A. Shantz
Joseph P. Bradica
Victoria G. Schutt

A Limited Liability Company

Firm@RolandStock.com
www.RolandStock.com

Of Counsel
David H. Roland
Mary M. Bertolet
Jerry R. Richwine

Raymond C. Schlegel (2004)
D. Frederick Muth (2006)

October 24, 2011

* Also Member of New York Bar

****EMPLOYMENT LAW ALERT****

COURT REINFORCES PROTECTION UNDER THE CRIME VICTIMS' EMPLOYMENT PROTECTION ACT

By: S. Whitney Rahman

Many employers are not aware of the protections provided to employees by the Crime Victims' Employment Protection Act ("CVEPA"), 18 Pa. C.S.A. § 4957. This Act, which was passed in 1986 and amended in 2002, but has never received much publicity, and many employers remain unaware of its existence.

Under the CVEPA, "An employer shall not deprive an employee of his employment, seniority position or benefits, or threaten or otherwise coerce him with respect thereto, because the employee attends court by reason of being a victim of, or a witness to, a crime or a member of such victim's family. Nothing in this section shall be construed to require the employer to compensate the employee for employment time lost because of such court attendance." 18 Pa. C.S.A. § 4957(a). The statute provides a civil remedy, allowing aggrieved employees to recover lost wages and benefits. It also allows for reinstatement. A prevailing employee will be granted reasonable attorney fees.

In a recent case, Rogers v. Lorenz, 25 A.3d 1229 (Pa. Super. 2011), the Pennsylvania Superior Court arguably broadened the reach of the CVEPA, holding that an employee's claim under the CVEPA could proceed to discovery. The Rogers case involved a workplace disagreement, where one employee was threatened by a coworker. In March 2005, the employees worked together, and one threatened the other that he would choke him and "thump [his] skull." The employer then separated the employees, so they did not work together. However, they were again scheduled to work at the same jobsite about six months later. The employee who threatened Rogers allegedly harassed him during this time, and then threatened to kill him.

Copyright 2011 S. Whitney Rahman. All rights reserved.
No portion of this publication may be reproduced without prior written permission

The employee who had been threatened told management he was going to report the matter to the police. The manager told the employee not to call the police. The following day, however, the employee first told several people at work that he was going to call the police about the incident, and then made the call. He was fired later that day.

In his complaint, the employee argued that it was understood that, if the employee called the police, then he would need to attend a criminal hearing. The court held that the employee had stated a claim under the CVEPA, even though he was fired before he attended any court hearing, and even though there was no court date set, no indication of a proposed court date, and there was the possibility that the matter might have been resolved absent any need of a court hearing. The court held that a claim for wrongful discharge under the CVEPA was cognizable under these circumstances. The court also held that a claim under the CVEPA was not preempted by the Pennsylvania Workers' Compensation Act.

Practical Considerations:

Employers need to be aware of the CVEPA, and need to be aware that it may extend, not only to circumstances where the employee is fired for attending court, but also to circumstances where the employee is fired or otherwise disciplined for calling the police on a matter that the employer would rather handle in-house without police intervention. While the Rogers case involved egregious threats that the employer appears not to have handled in an appropriate manner, the holding of this case would extend to situations that involve less severe threats of violence. Employers should be cautious in taking action against employees complaining of threats of violence during the course of the employer's investigation of an act of violence or threat of violence in the workplace.

If you have any questions about the CVEPA or any other aspect of employment or labor law, please call S. Whitney Rahman or John Roland for further information.