



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### Court Recognizes Employee's Internal Report of Unlawful Activity as Protected Conduct Supporting a Claim for Wrongful Termination in Violation of Public Policy

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On December 1, 2014, a California Court of Appeals ruled in *Ferrick v. Santa Clara University* that an employee's report of suspected ongoing commercial bribery by her supervisor was sufficient to support a claim for termination in violation of public policy. The plaintiff, a senior administrator in the Real Estate Department of Santa Clara University (SCU), filed a complaint alleging extensive wrongdoing and inappropriate behavior by her supervisor, SCU's Director of Real Estate. The plaintiff alleged witnessing and reporting numerous instances of her supervisor embezzling funds, engaging in kickback schemes, evading taxes, misdirecting public monies, making false representations in real estate deals, violating state laws controlling licensed realtors, and threatening public health and safety. The plaintiff claims that shortly thereafter, she was terminated by her supervisor in retaliation for reporting this misconduct.

A California statute, Labor Code § 1102.5, prohibits retaliation against an employee for reporting reasonably suspected unlawful activity to a government or law enforcement agency, but does not mention internal reports of such activity to the employer. The Court nevertheless found that the statute expresses a "broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation" and that internal complaints affect not only the employer's interests, but also the interests of the public in deterring crime. While dismissing most of the plaintiff's allegations of unlawful conduct as insufficiently pled, the Court concluded that one of the plaintiff's allegations of reported ongoing commercial bribery – whereby her supervisor was purportedly receiving a 3% placement fee for himself in return for placing SCU tenants with a private landlord – was a sufficient basis for a cause of action for wrongful termination in violation of public policy.

**Client Tip:** *Under the California Court's reasoning, even internal complaints regarding a co-worker's unlawful workplace conduct can implicate a policy protecting the public, and therefore a subsequent termination of the whistleblower could give rise to a claim of wrongful termination in violation of public policy. Institutions should develop and maintain procedures for handling internal complaints of employee misconduct, as well as prohibiting retaliatory behavior following*

*such complaints.*