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## CLIENT ADVISORY

### Court Of Appeals Limits Coverage of New York's Health Care Whistleblower Law

On July 1, 2008, the New York Court of Appeals issued its decision in Reddington v. Staten Island University Hospital, which held that plaintiffs who file claims under New York's Whistleblower Law, Labor Law § 740, do not waive their rights to file claims under New York's Health Care Whistleblower Law, Labor Law § 741. Significantly, the Court also ruled that the Health Care Whistleblower's Law remedies are available only to those health care employees who actually render medical treatment.

First, the Court considered whether the "waiver" provision in the general Whistleblower Law applied to claims under the Health Care Law. In order to prevent whistleblower employees from "duplicative recovery," Labor Law § 740(7) provides in part, "that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law." However, according to the Court, this provision does not prevent a person from instituting claims under both Whistleblower Laws. The Court explained that § 741 enforces its provisions through a § 740 civil suit, regardless of whether someone files a separate and specific claim under the general Whistleblower Law. The Court reasoned that there is no risk of duplicative recovery because the Health Care Whistleblower Law does not provide an independent remedy.

Second, the Court considered the meaning of the term “employee,” as used in the Health Care Whistleblower Law. Unlike the general statute, the Health Care Whistleblower Law defines “employee” more specifically as follows: “any person who performs healthcare services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.” The Court explained that this definition limits both the type of covered employer and the type of covered employee. First, “employer” is limited to those “providing health care services.” Second, the definition of employee is limited to those who “perfor[m] health care services.” Thus most administrative and clerical job titles in health care facilities are excluded from coverage under the law, as the Court interpreted this limitation to exclude employees who do not directly render medical treatment. The Court explained that the protections of the Health Care Whistleblower Law were intended: “to safeguard only those employees who are qualified by virtue of training and/or experience to make knowledgeable judgments as to the quality of patient care, and whose jobs require them to make these judgments.”

We invite any questions that you may have on New York’s Whistleblower Laws.

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