

## Supreme Court Recognizes that the Michigan Anti-Discrimination Statute Protects Against Associational Retaliation

By Caroline A. Grech

May 13, 2024

Plaintiffs in *Miller v Department of Corrections*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2024) (Docket No. 164862) filed a lawsuit against their employer alleging retaliatory termination due to their close association with other employees who filed a formal complaint with the Michigan Department of Corrections (MDOC). These Plaintiffs were involved in some of the investigations targeting their friends, and they were then fired. Plaintiffs alleged that they were terminated because of their personal relationship with their friends/co-workers. In this case, the Plaintiffs alleged that they had a close relationship with their friends/co-workers, and their employer took adverse action against them in response to their co-workers' protected acts.

Plaintiffs' friend/coworker filed an internal complaint with her supervisor at the Michigan Department of Corrections (MDOC). After she made the complaint, her working conditions worsened. She voluntarily transferred offices but found her new workplace just as hostile. She discovered that her previous supervisor had warned her new co-workers that she filed harassment complaints. Eventually, she filed a civil action alleging that the MDOC had violated the Elliott-Larsen Civil Rights Act (ELCRA) by treating her differently than her white coworkers, subjecting her to a racially hostile work environment and retaliating against her after she complained. She shared the details of her harassment with her husband, who also worked for the MDOC and was close friends with the Plaintiffs. Following her complaint, her husband became involved in several internal MDOC investigations. Her husband became so concerned that he then elected to retire.

The Plaintiffs were employees of MDOC and were involved in one of the MDOC investigations. Plaintiffs contended that these were sham investigations. Both Plaintiffs were fired and filed this lawsuit alleging that they had been fired in retaliation against their friends/co-workers. Plaintiffs alleged that they were close friends with the husband and that the relationship was common knowledge. Plaintiffs also alleged that there was a culture of retaliation in the MDOC against employees who embarrassed the organization.

### SECRET WARDLE NOTES

If an employee complains of discrimination, the employer cannot fire the employee's friends, family, or associates who also work at the same place to further retaliate against the complaining employee. Employers must be vigilant when conducting investigations and not act against others who are closely associated with the complaining employee.

The MDOC moved for summary disposition arguing that because Plaintiffs did not allege that they had personally engaged in any protected conduct, they failed to state a claim under ELCRA.

In a unanimous opinion, the Michigan Supreme Court held:

MCL 37.2701(a) provides a cause of action for associational or “third party” retaliation claims. All that is required to state a claim of retaliation under the ELCRA are allegations that (1) the defendant took an adverse action against the plaintiff and (2) there is a causal link between the adverse action and a protected act. When a person takes adverse action against someone who has engaged in protected conduct, the necessary causal link between the adverse action and the protected conduct is clear. Although MCL 37.2701(a) prohibits retaliation against “a person,” it does not specify that the person must be the plaintiff. If retaliation or discrimination under the act is alleged to have occurred, then a violation of the act has been stated. Moreover, MCL 37.2801 does not limit recovery of damages to the person who was directly retaliated against.

The question that the Michigan Supreme Court addressed, was whether a third-party retaliation claim, i.e. where one person claims that they were subjected to retaliation as an indirect attack against someone who engaged in protected activity, is actionable under the Elliott-Larsen Civil Rights Act, and, if so, precisely where the basis for that right is found in the act. The Court concluded that ELCRA prohibits such retaliation and makes no distinction between direct and third-party retaliation claims, so a plaintiff may state a claim of either direct or third-party retaliation under the provision of any other provision that applies to the facts of their case.

**Please click below to sign up for Secret Wardle newsletters  
pertinent to other areas of the law**

**SIGN UP**

**We welcome your questions – please contact:**

**Employment Practice Group Chair**

[Bruce A. Truex](mailto:btruex@secretwardle.com) | [btruex@secretwardle.com](mailto:btruex@secretwardle.com) or 248-539-2818

**For questions pertaining to this article**

[Caroline A. Grech](mailto:cgrech@secretwardle.com) | [cgrech@secretwardle.com](mailto:cgrech@secretwardle.com) or 248-539-2859



Website



LinkedIn



Twitter



YouTube



Email



**Troy** | 248-851-9500  
**Grand Rapids** | 616-285-0143

[www.secretwardle.com](http://www.secretwardle.com)

**Contributors**  
**Employment Practice Group**

**Chair**

Bruce A. Truex

**Editors**

Sandie Vertel

Sue Willcock

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secret Wardle.

*Copyright © 2024 Secret Wardle. All rights reserved.*