

## Michigan Supreme Court Holds No Preemption When WPA Claim Is Based On Reporting Alleged Criminal Conduct

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The Michigan Supreme Court has issued yet another opinion regarding the scope of Michigan's Whistleblower Protection Act, MCL 15.361, et seq. (the WPA). This time, the Court considered whether certain claims asserted under the WPA are preempted by the National Labor Relations Act (NLRA) and the Labor-Management Reporting and Disclosure Act (LMRDA). In *Henry v. Laborers' Local 1191* (No. 145631, 5/5/14), the Court held that when an employee asserts a WPA claim premised on his/her reporting of suspected criminal activity, that claim is not preempted by the NLRA or the LMRDA. But, the NLRA does preempt an employee's WPA claim ([remember, that's only a current employee, not prospective](#)) if the employee alleges retaliation for reporting improper wages or unsafe work conditions. Here, four employees of the union alleged that the union's business manager and other officials had engaged in criminal activity, including fraud, an illegal kickback scheme, and misappropriation of union funds. The employees further alleged that the union was requiring members to work in unsafe conditions and without receiving union wages. After bringing these concerns to the attention of the U.S. Department of Labor, among others, the employees were terminated. The employees then filed a lawsuit against the union and two union officials asserting that they had been wrongfully terminated in violation of the WPA. Upon considering the case, the Supreme Court held, as noted above, that the LMRDA does not preempt a WPA claim premised on the reporting of suspected criminal activity. Indeed, while the LMRDA gives discretion to a "union leader to choose a staff whose views are compatible with his own", that discretion is not "unfettered" with respect to employment matters. Allowing employees to assert a WPA claim premised on their reporting alleged criminal activity achieves the purposes of the LMRDA, which is "to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officials and representatives." With respect to the NLRA, the Court found that the employees' allegations that their union and its officials had engaged in criminal activities were not preempted by the NLRA because those allegations did not relate to the employer's labor practices. But, even assuming the allegations did, the Court found that it could not "infer that Congress intended when it enacted the NLRA to relieve states from enforcing [ ] well-established criminal law or protecting from retaliation employees who report allegations of criminal wrongdoing." In other words, employees who report alleged criminal activity may pursue a wrongful discharge claim under the WPA. Fortunately, WPA claims must be brought within 90 days from the date of the alleged violation or those claims are time barred. See M.C.L. 15.363(1). Thus, while a WPA claim premised on the reporting of alleged criminal activity may not be preempted, that claim may be ripe for dismissal if an employee does not file his/her claim shortly after the alleged violation.

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