SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2851-20

NICODEMO NORTON,

Plaintiff-Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Defendant-Respondent.

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Submitted November 2, 2022 – Decided December 28, 2022

Before Judges Firko and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-0397-19.

Jacobs & Barbone, PA, attorneys for appellant (Louis M. Barbone and Michael A. Ortiz, Jr., on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Suzanne Davies, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Nicodemo Norton appeals from a May 5, 2021 Law Division order denying without prejudice his motion to file a second amended complaint alleging defendant New Jersey Department of Corrections (DOC) violated New Jersey's Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8. Having considered the parties' arguments in light of the record and the applicable law, we conclude the court erred in determining plaintiff failed to sufficiently plead a cause of action under CEPA. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

I.

Plaintiff, a DOC corrections officer since 1997, was assigned to the Mid-State Correctional Facility at Fort Dix in April 2017. In September of that year, he was supervised by Lieutenant Zsuzsanna Miller and her husband, Lieutenant Patrick Miller,[1] both of whom he alleged mistreated him in violation of the DOC's "Rules and Regulations for Law Enforcement Personnel" (DOC manual) promulgated by the DOC Commissioner pursuant to N.J.S.A. 30:1B-6.

The forward to the DOC manual states "[t]his manual of [r]ules and [r]egulations shall apply solely to and is binding upon individuals employed in

[1] We refer to Lieutenant. Zsuzsanna Miller as Lt. Z. Miller, and Lieutenant Patrick Miller as Lt. P. Miller, to distinguish the two lieutenants who share the same last name. We intend no disrespect by these designations.

the [DOC] who hold law enforcement titles as enumerated in Addendum A of this document." Additionally, Article I, §1 of the manual provides that "officers who violate these rules of conduct may be subject to disciplinary action" in accordance with the DOC's policies and procedures. In his initial complaint, filed on February 27, 2019, plaintiff alleged he reported several violations of the DOC manual by Lts. Z. and P. Miller and faced retaliation because of his reporting.

First, plaintiff described a September 11, 2017 incident in which Lt. Z. Miller loudly and aggressively berated, cursed at, and forced him to leave her office. Plaintiff alleged this conduct violated Article III, §2(a)-(c) of the DOC manual, which provides that officers shall not: "(a) [e]ngage in threatening or assaultive conduct; (b) [u]se insulting language, or behave in a disrespectful manner while in the performance of their duty; or (c) [b]ehave in an insubordinate manner toward any competent authority." Plaintiff first reported the incident to the DOC and then, after failing to receive a response, he filed a complaint with the DOC's Equal Employment Division (EED).

Plaintiff next recounted a February 26, 2018 incident in which Lt. Z. Miller copied multiple command supervisors on an email to plaintiff documenting a purported act of insubordination, which plaintiff claimed was

inconsistent with the prison's regular practices. He further contended "Lt. Z. Miller . . . sought to publish plaintiff's alleged insubordination to supervisors directly because of and in retaliation for plaintiff's report of her illegal September 11, 2017 conduct."

Plaintiff also reported a hostile working environment to the EED on April 9, 2018. According to plaintiff, three days later, Lt. Z. Miller scolded him in front of multiple staff members for reasons unclear to him. Plaintiff informed the EED of this incident that same day and he refiled his complaint, which prompted an investigation into the alleged hostile work environment.

Plaintiff next met with an EED investigator in the facility's administrative offices on May 21, 2018. According to plaintiff, Lt. P. Miller entered the office during the interview and did so solely to intimidate him and obstruct his conscientious reporting. As a result, plaintiff added Lt. P. Miller to his complaint as a "harasser."

Plaintiff also alleged in his initial complaint Lt. P. Miller directed plaintiff's union representative on July 18, 2018, to instruct "all of his constituents" to keep their boots bloused and sleeves rolled down. Plaintiff claimed this demonstrated Lt. P. Miller's undue surveillance of him, as he was

the only sergeant who rolled up his sleeves during work. Plaintiff submitted additional reports of misconduct and harassment to the EED the next day.

In addition, plaintiff asserted he reported to the EED on October 11, 2018 that Lt. P. Miller improperly utilized inmates to pass communications to other prison personnel regarding tasks to be completed. These communications allegedly included the location of where other inmates were presently working. Plaintiff contended such conduct blatantly violated the facility's security protocols and "created circumstances within the institution that posed a real and present danger to the frontline corrections officers as well as . . . plaintiff."

Plaintiff next described a November 30, 2018 incident in which Lt. Z. Miller mandated he submit special reports pertaining to group classes at the prison, and claimed such reporting was inconsistent with prior practices. According to plaintiff, Lt. Z. Miller similarly instructed him on December 20, 2018, to inform her before any inmate was placed in lock up, a mandate which he asserted was impossible to comply with due to the prison's administrative sanctioning policies.

Finally, plaintiff's initial complaint further alleged that, upon explaining the impossibility of the December 20th request, Lt. Z. Miller summarily and rudely dismissed him and instructed another lieutenant to inform him that she

was cutting off all communication with him. Plaintiff maintained Lts. Z. and P. Miller fostered a hostile working environment, and ultimately shunned him, because of his reporting to the EED.

The DOC moved to dismiss plaintiff's complaint on May 2, 2019. Following oral argument, the court entered a February 21, 2020 order dismissing plaintiff's complaint without prejudice pursuant to Rule 4:6-2(e) for failure to plead an adverse employment action under CEPA. Plaintiff then filed an amended complaint on March 16, 2020, and a motion to amend and reinstate on March 23, 2020.

In plaintiff's amended complaint, he alleged he "routinely availed himself of all overtime assignments, [but] was not permitted to accept [any] after his initial conscientious reports because the harassing lieutenants . . . would have been supervisors on his potential overtime details." Accordingly, he claimed he could only participate in overtime when Lts. Z. and P. Miller were out sick or on vacation. Plaintiff further asserted he used all of his allocated sick time and vacation days due to the stressful working environment. Additionally, plaintiff contended Lt. Z. Miller impaired his promotional opportunities by publicly reprimanding him, and the mistreatment led him to accept employment at a different prison, which is fifty miles further from his home.

The DOC did not oppose plaintiff's motion to amend and reinstate, and, on April 9, 2020, the court accordingly entered an order granting plaintiff's motion and reinstating his complaint. One week later, however, the DOC requested the court vacate its order and allow additional time to oppose plaintiff's motion pursuant to the Supreme Court's March 27, 2020 COVID-19 Order extending filing deadlines for certain qualifying motions. The court agreed with the DOC, vacated its April 9, 2020 order, heard oral argument, denied plaintiff's motion, dismissed his complaint without prejudice in a June 1, 2020 order, and placed its reasoning on the record.

On February 10, 2021, plaintiff filed and served a motion for leave to file a second amended complaint, in which he again alleged Lts. Z. and P. Miller violated specific provisions of the DOC manual. Specifically, plaintiff contended Lt. P. Miller's "disclosure and publication of information to inmates [was] in direct violation of the institution's security and operational concerns as mandated in Article IX, §8" of the DOC manual. That section provided, in part, that no officer shall "disclose to any person any information received or acquired in the course of and by reason of official duty and not generally available to the public" and officers must "[t]reat as confidential . . . matters or information pertaining to the [DOC], its operations, investigations or internal procedures."

Plaintiff also alleged, in addition to the provisions included in his initial complaint, Lts. Z. and P. Miller violated Article III, §5, which required officers to "[b]e civil, orderly, maintain decorum, control temper, be patient and use discretion in the performance of duty."

After hearing oral argument, the court again denied plaintiff's motion without prejudice in a May 5, 2021 order and placed its reasoning on the record. The court first determined plaintiff failed to plead facts to show he "reasonably believed . . . his employer's conduct was violating [a] rule [or] regulation pursuant to law or a clear mandate of public policy." The court explained the regulations "are merely internal standards of conduct," rather than an "extension of statute," and therefore do not constitute a source of law intended by the Legislature to support a CEPA claim. The court further concluded, "even if the [c]ourt d[id] find . . . plaintiff ha[d] a reasonable belief that his employer violated [a] law, rule or regulation, the aforementioned whistleblowing [does not] go beyond his own discomfort." Accordingly, the court held plaintiff's proposed amended complaint failed to establish a CEPA claim under Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015). This appeal followed.

II.

We review a decision on a motion to amend a pleading for abuse of discretion. Kernan v. One Washington Park Urb. Renewal Assoc., 154 N.J. 437, 457 (1998). Generally, motions to amend pleadings are liberally granted, but the determination is left to the sound discretion of the trial court. Bldg. Materials Corp. of Am. v. Allstate Ins. Co., 424 N.J. Super. 448, 484 (App. Div. 2012); R. 4:9-1. A court must analyze "'whether the non-moving party w[ould] be prejudiced[] and whether the amendment would . . . be futile' — that is, whether the claim as amended would nevertheless fail, thus making amendment a useless endeavor." Bustamonte v. Borough of Paramus, 413 N.J. Super. 276, 298 (App. Div. 2010) (alterations in original) (quoting Notte v. Merchs. Mut. Ins. Co., 185 U.S. 490, 501 (2006)).

An amendment will be considered futile if a motion to dismiss under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted would subsequently have to be granted. Notte, 185 N.J. at 501. Only in the "rare instances" where a cause of action is not even "suggested" by the pleadings is a Rule 4:6-2(e) motion to dismiss granted. Flinn v. Amboy Nat'l Bank, 436 N.J. Super. 274, 286 (App. Div. 2014) (first quoting Smith v. SBC Commc'ns, Inc.,

178 N.J. 265, 282 (2004); and then quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

III.

Plaintiff argues the court erred in denying his motion for leave to file a second amended complaint because he sufficiently pled a cause of action under N.J.S.A. 34:19-3(a)(1), (c)(1), and (c)(3). Specifically, he contends his second amended complaint contained allegations that he suffered retaliation after he reported violations of "rules and regulations promulgated pursuant to law, namely the [DOC manual]," see N.J.S.A. 34:19-3(a)(1) and (c)(1), and "a matter of New Jersey public policy," see N.J.S.A. 34:19-3(c)(3). Plaintiff further maintains the allegedly breached manual serves "not only . . . to regulate employees of the [DOC], but also to protect inmates," thereby implicating "the public health[,] safety[,] [and] welfare," as required under N.J.S.A. 34:19-3(c)(3).

"CEPA is a remedial statute that 'promotes a strong public policy of the State' and 'therefore should be construed liberally to effectuate its important social goal.'" Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 555 (2013) (quoting Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 431 (1994)). That social goal is "to 'protect and encourage employees to report illegal or

unethical workplace activities and to discourage public and private sector employers from engaging in such conduct.'" Dzwonar v. McDevitt, 177 N.J. 451, 461 (2003) (quoting Abbamont, 138 N.J. at 431). "Stated differently, CEPA is supposed to encourage, not thwart, legitimate employee complaints." Estate of Roach v. TRW, Inc., 164 N.J. 598, 610 (2000)).

CEPA prohibits an employer from taking "any retaliatory action against an employee" in certain circumstances. N.J.S.A. 34:19-3. One such circumstance, under N.J.S.A. 34:19-3(a)(1), is when the employee "[d]iscloses or threatens to disclose" to a supervisor or a public body an employer's "activity, policy or practice" that the employee "reasonably believes" violates "a law, or a rule or regulation promulgated pursuant to law." CEPA similarly protects an employee who:

> objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes: (1) is in violation of a law, or a rule or regulation promulgated pursuant to law . . . ; (2) is fraudulent or criminal . . . ; or (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
>
> [N.J.S.A. 34:19-3(c)(1)-(3).]

Accordingly, to state a claim under CEPA, a plaintiff must plead facts to show:

> (1) [they] reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) [they] performed a "whistle-blowing" activity described in [N.J.S.A. 34:19-3(a) or (c)]; (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.
>
> [Lippman, 222 N.J.at 380 (quoting Dzwonar, 77 N.J. at 463).]

Against this legal background, we turn to a consideration of each of the four prongs a plaintiff must satisfy to state a claim under CEPA.

A.

"The goal of CEPA . . . is 'not to make lawyers out of conscientious employees but rather to prevent retaliation against those employees who object to employer conduct that they reasonably believe to be unlawful or indisputably dangerous to the public health, safety or welfare.'" Dzwonar, 177 N.J. at 464 (quoting Mehlman v. Mobil Oil Corp., 153 N.J. 163, 193-94, (1998)). Accordingly, to satisfy the first prong of a CEPA claim, a plaintiff "must identify a law, rule, or regulation promulgated pursuant to law," if pursuing a claim under either N.J.S.A. 34:19-3(a)(1) or (c)(1), "or a clear mandate of public policy," if pursuing a claim under N.J.S.A. 34:19-3(c)(3), "that [they] believed" their employer violated. Ibid.

Our Supreme Court has drawn a clear distinction between laws, rules, and regulations, as described in N.J.S.A. 34:19-3(a)(1) and (c)(1), and clear mandates of public policy, as described in N.J.S.A. 34:19-3(c)(3), as an absence of such distinction would amount to surplusage. Maw v. Advanced Clinical Commc'ns, 179 N.J. 439, 444 (2004). "[A] clear mandate of public policy conveys a legislative preference for a readily discernible course of action that is recognized to be in the public interest" and that may be viewed as "an analog" to a constitutional provision, statute or rule so there may be "a high degree of public certitude" with respect to what is acceptable and unacceptable workplace conduct. Ibid.

Accordingly, when a plaintiff claims the employer's conduct was incompatible with public policy concerning the public's health, safety or welfare or the protection of the environment under N.J.S.A. 34:19-3(c)(3), "the complained of activity must have public ramifications, and . . . the dispute between employer and employee must be more than a private disagreement." Id. at 445. Additionally, "that . . . mandate of public policy [must] be clearly identified and firmly grounded." Mehlman, 153 N.J. at 181 (quoting MacDougall v. Weichert, 144 N.J. 380, 391-92 (1996)).

"A vague, controversial, unsettled, and otherwise problematic public policy does not constitute a clear mandate." Ibid. (quoting MacDougall, 144 N.J. at 391-92). "We look generally to the federal and state constitutions, statutes, administrative rules and decisions, judicial decisions, and professional codes of ethics to inform our determination whether specific corrupt, illegal, fraudulent or harmful activity violates a clear mandate of public policy, but those sources are not necessarily exclusive." Id. at 188.

Once identified, we "must make a threshold determination that there is a substantial nexus between the complained-of conduct and [the] law or public policy." Dzwonar, 177 N.J. at 464. To establish a substantial nexus, the law or policy identified must "provide[] a standard against which the conduct of the defendant may be measured." Hitesman v. Bridgeway, Inc., 218 N.J. 8, 33, 36-37 (2014) (holding the plaintiff failed to establish a substantial nexus between a professional code of ethics and the complained-of conduct, as such conduct was not specifically addressed in the code).

We first address plaintiff's claims under N.J.S.A. 34:19-3(a)(1) and (c)(1). In his second amended complaint, plaintiff relied upon several sections of the DOC manual to allege he reasonably believed Lts. Z. and P. Miller violated "a law, rule, or regulation promulgated pursuant to law." N.J.S.A. 34:19-3(a)(1)

and (c)(1). The DOC manual explicitly states it was "adopted in accordance with the provisions of N.J.S.A. 30:1B-6," which require the DOC commissioner to "[f]ormulate, adopt, issue and promulgate, in the name of the department such rules and regulations for the efficient conduct of the work and general administration of the department, the institutions or noninstitutional agencies within its jurisdiction, its officers and employees as may be authorized by law." N.J.S.A. 30:1B-6(e).

Additionally, pursuant to N.J.S.A. 30:1B-6(f), the DOC commissioner shall "[d]etermine all matters of policy and regulate the administration of the institutions or noninstitutional agencies within his jurisdiction." As the DOC Commissioner promulgated the DOC manual pursuant to this authority, it constitutes "a rule or regulation promulgated pursuant to law" under CEPA's plain language. See N.J.S.A. 34:19-3(a)(1) and (c)(1).

The DOC contends plaintiff cannot ground his N.J.S.A. 34:19-3(a)(1) and (c)(1) claims on violations of the manual because it is not a "statute[] enacted by the Legislature, Court Rule[] promulgated by the Supreme Court, or regulation[] within the New Jersey Administrative Code." Our courts, however, have not read CEPA so narrowly.

For example, in Roach, 164 N.J. at 613, the plaintiff based his claims on alleged violations of the defendant's code of conduct, which it was required to enforce as a federal defense contractor. The Court noted "[w]ith regard to [N.J.S.A. 34:19-3(a)(1) and (c)(1)], CEPA does not require . . . the activity complained of . . . be an actual violation of a law or regulation, only that the employee 'reasonably believes' that to be the case." Ibid.

The Court held the alleged violations of defendant's code of conduct "could form the basis of a reasonable belief that unlawful conduct had occurred within the meaning of CEPA." Ibid. In doing so, it explained, the defendant held a "sensitive position as a federal defense contractor," its "code of conduct stressed the importance of the highest ethical conduct on the part of its employees," and "plaintiff reasonably could have believed that the allegations against [his co-employees] rose to the level of significant improprieties consistent with CEPA sections 3(c)(1) and 3(c)(2)." Ibid.

Additionally, in Abbamont, 269 N.J. Super. at 16, the plaintiff based his claim on the "New Jersey Industrial Arts Education Safety Guide," which referred to and reproduced State safety regulations from the New Jersey Administrative Code but was not itself codified. Because the safety guide was specific and binding, we held plaintiff sufficiently identified a "law, rule or

regulation" to support his claims under N.J.S.A. 34:19-3(a)(1) and (c)(1). Id. at 23-24. See also Hitesman, 218 N.J. 8, 15 ("[A] professional code of ethics governing an employer's activities may constitute authority for purposes of N.J.S.A. 34:19-3(a)(1), (c)(1) and (c)(3) in an appropriate setting.").

Relying on Dzwonar, defendant also argues the DOC manual is only an internal code of ethics and therefore cannot serve as the basis of plaintiff's N.J.S.A. 34:19-3(a)(1) and (c)(1) claims. In Dzwonar, the plaintiff, a paid arbitration officer for a hotel and restaurant employees' union, alleged the objected-to behavior of her employer violated federal labor law and the union's internal bylaws. 177 N.J. at 456. The Court rejected the plaintiff's CEPA claim for two reasons. First, it held there was not a substantial nexus between the complained-of conduct and the federal statute. Id. at 465-68. Second, it held "bylaws are not a 'law, rule or regulation' pursuant to [N.J.S.A. 34:19-3(a)(1) and (c)(1)], but rather 'a contract between the union and its members,'" Id. at 469 (quoting Ackley v. W. Conference of Teamsters, 958 F.2d 1463, 1476 (9th Cir. 1992)).

Defendant's reliance on Dzwonar is unavailing, as the internal bylaws in that case were not implemented pursuant to any statutory mandate. Rather, we find the DOC manual more akin to the regulations relied upon in Abbamont and

Roach as sufficient to constitute "a law, rule or regulation promulgated pursuant to law" under N.J.S.A. 34:19-3(a)(1) and (c)(1). Like the regulations in those cases, the DOC manual is binding on all DOC enforcement officers and it provides that "officers who violate these rules of conduct may be subject to disciplinary action." Additionally, DOC enforcement officers occupy a similarly "sensitive position" as the federal defense contractors in Roach, which is recognized in Article III, §3 of the manual which states "[o]fficers are public servants twenty-four hours a day and will be held to the law enforcement higher standard both on and off-duty."

As to the substantial nexus requirement, plaintiff's second amended complaint clearly contained allegations sufficient to demonstrate a nexus between his employer's alleged mistreatment of him and the specified provisions of the DOC manual governing professional conduct. For example, plaintiff specifically alleged Lt. Z. Miller's threatening and aggressive conduct on September 11, 2017 violated Article III, §2 which provides that "[n]o officer shall [e]ngage in threatening or assaultive conduct." Plaintiff's second amended complaint therefore contained allegations sufficient to satisfy the first prong of a CEPA claim under N.J.S.A. 34:19-3(a)(1) and (c)(1).

Regarding plaintiff's claim under N.J.S.A. 34:19-3(c)(3), we also disagree with the court that plaintiff failed to allege he reasonably believed his employer violated "a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment." Although we acknowledge not all of plaintiff's allegations regarding Lts. Z. and P. Miller's alleged mistreatment of him address the requisite public ramifications contemplated by Maw to serve as the basis of a claim under N.J.S.A. 34:19-3(c)(3), the court failed to consider plaintiff's allegations in his second amended complaint that he reported Lt. P. Miller breached the prison's safety protocols. In this regard, plaintiff allegedly reported activity by Lt. P. Miller, which he reasonably believed "posed a real and present danger to the frontline corrections officers as well as the plaintiff" and "breach[ed] . . . security protocols in place at the institution."

The Legislature has recognized prison safety and security are important public policy concerns. In passing the Department of Corrections Act, N.J.S.A. 30:1B-1 to -52, the Legislature declared the purpose of the DOC is "to protect the public and to provide for the custody, care, discipline, training and treatment of adult offenders committed to State correctional institutions or on parole." N.J.S.A. 30:1B-3. The Legislature also declared, "incarcerated offender[s]

should be protected from victimization within [State correctional] institutions." N.J.S.A. 30:1B-3(c).

Our courts have similarly recognized the public's substantial interest in prison security. See e.g., In re Warren, 117 N.J. 295, 299 (1989) (recognizing "implied legislative policies regarding prison security"); DeCamp v. N.J. Dep't of Corr., 386 N.J. Super. 631, 638 (App. Div. 2006) ("[P]rison security and the reduction of violence are certainly legitimate penological interests."); Jackson v. Dep't of Corr., 335 N.J. Super. 227, 234-35 (App. Div. 2000) (balancing a prisoner's privacy interest against the government's substantial interest in institutional security); Allen v. Passaic County, 219 N.J. Super. 352, 372 (App. Div. 1986) ("[T]here is a legitimate penological imperative 'of maintaining prison security and preserving internal order and discipline.'" (quoting Sec. & L. Enf't Emps. v. Carey, 737 F.2d 187, 203 (2d Cir. 1984)).

In light of the aforementioned authority, we find the public's interest in maintaining prison security is "clearly identified and firmly grounded," Mehlman, 153 N.J. at 163, and provides a "high degree of public certitude" with respect to what is acceptable and unacceptable workplace conduct, Maw, 179 N.J. at 439. Plaintiff therefore adequately pled the DOC violated a "clear

mandate of public policy concerning the public health, safety, or welfare or protection of the environment" under N.J.S.A. 34:19-3(c)(3).

B.

Under the second prong of a CEPA claim, plaintiff must plead "[he] performed a 'whistle-blowing' activity described in N.J.S.A. 34:19-3(c)." Lippman, 222 N.J. at 380. "[W]histle-blowing" activity "refers to notification, or threatened notification, to an outside agency or supervisor . . . and also permits a claim to be supported by evidence that the employee objected to or refused to participate in the employer's conduct." Tartaglia v. UBS PaineWebber Inc., 197 N.J. 81, 106 (2008). In his second amended complaint, plaintiff described a series of reports he filed to the EED pertaining to Lts. Z. and P. Miller's alleged misconduct. Plaintiff's amended pleading clearly contained allegations sufficient to satisfy the second prong of a CEPA claim.

C.

To satisfy the third prong of a CEPA claim, plaintiff must plead he was subject to a "retaliatory action," which "means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." N.J.S.A. 34:19-2(e). "Terms and conditions of employment 'refer[] to those matters which are the

essence of the employment relationship,' and include further serious intrusions into the employment relationship beyond those solely affecting compensation and rank." Beasley v. Passaic Cnty., 377 N.J. Super. 585, 608 (App. Div. 2005) (alteration in original) (quoting Twp. of W. Windsor v. Pub. Emp. Rels. Comm'n, 78 N.J. 98, 110 (1978)).

The phrase encompasses "length of the workday, increase or decrease of salaries, hours, and fringe benefits, physical arrangements and facilities, and promotional procedures." Ibid. (citations omitted). Additionally, retaliation under CEPA need not be a single discrete action, but rather, can include "many separate . . . relatively minor instances of behavior directed against an employee that may not be actionable individually but . . . combine to make up a pattern of retaliatory conduct." Green v. Jersey City Bd. of Educ., 177 N.J. 434, 448 (2003).

In his second amended complaint, plaintiff alleged a pattern of retaliatory behavior, which included publicly reprimanding him, subjecting him to reporting procedures inconsistent with regular institutional practices, and ultimately discontinuing all communication with him. Plaintiff also specifically claimed Lts. Z. and P. Miller impaired his promotional opportunities, precluded him from overtime work, impacted his salary, and forced him to accept a

position at a different facility. We are satisfied under Rule 4:9-1's liberal pleading standard, see Kernan, 154 N.J. at 457, plaintiff sufficiently pled adverse action taken against him relative to the terms and conditions of his employment.

D.

To satisfy the fourth prong of a CEPA claim, plaintiff must plead "a causal connection . . . between the whistle-blowing activity and the adverse employment action." Lippman, 222 N.J. at 380. A causal connection "can be satisfied by inferences that the trier of fact may reasonably draw based on circumstances surrounding the employment action." Maimone v. City of Atlantic City, 188 N.J. 221, 237 (2006). The plaintiff therefore need not show a "direct causal link" between the whistle-blowing activity and the retaliation. Battaglia, 214 N.J. at 558. "The temporal proximity of employee conduct protected by CEPA and an adverse employment action is one circumstance that may support an inference of a causal connection." Maimone, 188 N.J. at 237.

In his second amended complaint, plaintiff described a pattern of retaliatory conduct, which he maintained was a direct consequence of his continued reporting to the EED. We recognize there remain factual disputes in the record regarding whether the alleged adverse employment actions taken

against plaintiff were causally connected to plaintiff's reporting to the EED. We are satisfied, however, again in light of the "liberal treatment" ordinarily afforded Rule 4:9-1 motions to amend, Verni v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 195 (App. Div. 2006) (quoting Bonczek v. Carter-Wallace, Inc., 304 N.J. Super. 593, 602 (App. Div. 1997)), plaintiff's second amended complaint contained allegations sufficient to satisfy the fourth prong of a CEPA claim.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.