

Employee Theft of Confidential Documents

RELATED ATTORNEYS

Louis Pashman

RELATED PRACTICE AREAS

Employment Law

6.18.14

In 2010, the NJ Supreme Court issued an opinion in the case of *Quinlan v. Curtis-Wright*. Quinlan had filed a sex discrimination claim against Curtis-Wright after being passed over for promotion. While an employee, Quinlan copied a large number of confidential documents to support her claim. She gave those documents to her attorney who turned them over to defense counsel in discovery. Quinlan, at that point, was still an employee. She then copied a confidential performance evaluation. During a deposition of a representative of defendant, Quinlan's counsel used that document. At that point Quinlan's employment was terminated and she added a retaliation claim to her complaint. The NJ Supreme Court upheld a jury verdict in favor of Quinlan for 8.7 million dollars, holding that the taking and use of confidential documents in support of her claim was protected activity. The court laid out a seven part test to determine whether an employer can terminate such an employee.

Along came the case of *State v. Saavedra*. Saavedra was an employee of the North Bergen Board of Education who filed a claim for gender, ethnic and sex discrimination and retaliation. During discovery, her attorney produced many confidential documents she took, including some originals, while an employee. Many of those documents <http://wiseadmin.net/wise2/fckeditor/editor/images/spacer.gif>ts seemed to have no relevance to her claims.

Subsequently, she was indicted for Official Misconduct and Theft. Saavedra moved to dismiss the indictment, arguing that *Quinlan* legalized her conduct. Both the trial and appellate courts disagreed with that proposition and refused to dismiss the indictment.

There are several obvious differences between *Quinlan* and *Saavedra*. Saavedra was a public employee, Quinlan was not. Many of the documents Saavedra took were unrelated to her claims, not the case with Quinlan. Saavedra was a criminal matter, Quinlan civil.

Because of Saavedra, employers can exhale, but just a little. There are many unanswered questions. The Supreme Court had agreed to hear the case so, hopefully, those questions will be answered.