

COURT OF APPEALS EMPHATICALLY REAFFIRMS NEW
YORK'S AT-WILL EMPLOYMENT DOCTRINE

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New York has steadfastly adhered to the “at-will” employment doctrine—the idea that, absent a statutory or contractual restriction, the employment relationship is terminable at any time and for any reason by either employer or employee—for over one hundred years.¹ Throughout that time, there have been numerous efforts to change or make exceptions to that doctrine.² Both the courts and the legislature in New York have largely resisted those efforts.³

Recently, in 2012, the Court of Appeals once again declined to add an exception to the at-will doctrine, and instead emphatically reaffirmed the doctrine as the law in New York State.⁴ In that case, *Sullivan v. Harnisch*, the court held that a hedge fund compliance officer could not state a claim for wrongful discharge based on the allegation that he was fired for speaking out about his employer’s improper trading practices.⁵ Given the extremely narrow scope of statutory protection for purported whistleblowers under New York law,⁶ the *Sullivan* decision underscores that, in most circumstances, there will be no state law remedy for employees who claim they have been fired in retaliation for engaging in whistleblowing activity. The *Sullivan* decision is of particular interest because it included a strong dissent from Chief Judge Lippman, perhaps indicating that change is afoot.⁷ For now, however, the at-will

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¹ See *Martin v. N.Y. Life Ins. Co.*, 148 N.Y. 117, 121, 42 N.E. 416, 417 (1895).

² *E.g.*, *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 300, 448 N.E.2d 86, 89, 461 N.Y.S.2d 232, 235 (1983).

³ *E.g.*, *id.* at 302, 488 N.E.2d at 89–90, 461 N.Y.S.2d at 235–36.

⁴ *Sullivan v. Harnisch*, 19 N.Y.3d 259, 261, 969 N.E.2d 758, 759, 946 N.Y.S.2d 540, 541 (2012).

⁵ *Id.* at 262, 265, 969 N.E.2d at 759, 761, 946 N.Y.S.2d at 541, 543.

⁶ See N.Y. LAB. LAW § 740(2) (McKinney 2013).

⁷ *Sullivan*, 19 N.Y.3d at 269–70, 969 N.E.2d at 764–65, 946 N.Y.S.2d at 546–47 (Lippman, C.J., dissenting).

doctrine remains firmly in place in New York.

This article will explain the development of the at-will doctrine in New York. Part I will touch on the landmark at-will decisions from the Court of Appeals. Part II will focus on the one exception to the at-will doctrine that has been articulated by the Court of Appeals, and discuss another instance where the court declined to expand the scope of that exception. Part III will discuss the Court of Appeals decision in *Sullivan*. Finally, Part IV will note legislative efforts to expand statutory whistleblower anti-retaliation protections in New York, all of which have been unsuccessful.

I. *MARTIN AND MURPHY*

The landmark at-will case in New York was decided in 1895.⁸ In *Martin v. New York Life Insurance Co.*, the Court of Appeals held that, in general, contracts of employment are at will and may be terminated by either party at any time.⁹ There, an employee was terminated by his employer and claimed that the employer was required to pay him for the rest of the year since his contract was yearly.¹⁰ The court disagreed, writing, “the contract may be put an end to by either party at any time, unless the time is fixed, and a recovery had, at the rate fixed for the services actually rendered.”¹¹ The at-will doctrine, as articulated by the Court of Appeals in *Martin*, has held firm for over one hundred years.¹²

The modern version of the at-will doctrine was detailed in a 1983 Court of Appeals case, *Murphy v. American Home Products Corp.* In that case, the plaintiff, Joseph Murphy, had worked for defendant company, American Home Products, for over twenty years before he was terminated.¹³ Murphy filed a complaint alleging that he was fired for two reasons—because of his disclosure of accounting improprieties and because of his age.¹⁴ One of Murphy’s causes of action was for breach of contract.¹⁵ He asserted that in all employment contracts there is an implied obligation on

⁸ *Martin v. New York Life Ins. Co.*, 148 N.Y. 117, 42 N.E. 416 (1895).

⁹ *Id.* at 121, 42 N.E. at 417.

¹⁰ *Id.* at 120, 42 N.E. at 417.

¹¹ *Id.* at 121, 42 N.E. at 417 (quoting H.G. WOOD, A TREATISE ON THE LAW OF MASTER AND SERVANT § 136, at 285 (Albany, John D. Parsons, Jr. 2d ed. 1886)).

¹² *See, e.g., Sullivan*, 19 N.Y.3d at 261, 969 N.E.2d at 759, 946 N.Y.S.2d at 541.

¹³ *Murphy v. Am. Home. Prods. Corp.*, 58 N.Y.2d 293, 297, 448 N.E.2d 86, 87, 461 N.Y.S.2d 232, 233 (1983).

¹⁴ *Id.* at 297–98, 448 N.E.2d at 87, 461 N.Y.S.2d at 233.

¹⁵ *Id.* at 304, 448 N.E.2d at 91, 461 N.Y.S.2d at 237.

the part of the employer to deal with employees fairly and in good faith.¹⁶ Since Murphy, himself serving in an accounting capacity at American Home Products, disclosed the alleged accounting improprieties and was subsequently fired, he argued that American Home Products was liable for breach of contract for a failure to deal in good faith.¹⁷ Essentially, Murphy asked the Court of Appeals to create an exception to the at-will doctrine for his situation—an employee serving in an accounting capacity who reports accounting illegalities or improprieties. The Court of Appeals declined to do so, noting, “under New York law as it now stands, absent a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer’s right at any time to terminate an employment at will remains unimpaired.”¹⁸

II. THE EXCEPTION

In the years since *Murphy* has been decided, the Court of Appeals has permitted an exception to the at-will doctrine in only one instance.¹⁹ In 1992, the Court of Appeals heard a case brought by a former associate of a law firm—*Wieder v. Skala*.²⁰ Wieder claimed that he was wrongfully terminated from his firm because he insisted “that the firm . . . report[] professional misconduct allegedly committed by another associate.”²¹ Specifically, Wieder determined that another associate “made several false and fraudulent material misrepresentations” and alerted two senior partners.²² The partners allegedly conceded that the firm knew the associate in question “was a pathological liar and that [he] had previously lied” about legal matters.²³ Ultimately, the other associate admitted the lies and, further, admitted to other acts of malpractice.²⁴ The firm at first refused Wieder’s repeated requests that they report the associate in question to the disciplinary committee.²⁵ Finally, the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 305, 448 N.E.2d at 91, 461 N.Y.S.2d at 237.

¹⁹ *Sullivan v. Harnisch*, 19 N.Y.3d 259, 263, 969 N.E.2d 758, 760, 946 N.Y.S.2d 540, 542 (2012) (discussing the exception recognized in *Wieder v. Skala*).

²⁰ *Wieder v. Skala*, 80 N.Y.2d 628, 631, 609 N.E.2d 105, 106, 593 N.Y.S.2d 752, 753 (1992).

²¹ *Id.* (internal quotation marks omitted).

²² *Id.* at 632, 609 N.E.2d at 106, 593 N.Y.S.2d at 753.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

firm did report the associate, but also allegedly “berated” Wieder for forcing them to do so.²⁶ Wieder alleged that he was kept on at the firm until he could file motion papers in an important case, “a few days after” which, he was terminated.²⁷

The court found that the at-will doctrine, as explained in *Murphy*, did not apply in this instance.²⁸ The court focused first on the nature of Wieder’s employment as an associate at a law firm, as compared to Murphy’s employment in the financial department of a large company.²⁹ They noted that although Murphy “performed accounting services [for his company], [he] did so in furtherance of [his] primary . . . responsibilities as” a corporate manager.³⁰ Conversely, in *Wieder*, “plaintiff’s performance of professional services for the firm’s clients as a duly admitted member of the Bar was at the very core and, indeed, the only purpose of his association with defendants.”³¹ The close, almost inseparable, relationship between Wieder’s employment as an associate at a law firm and his broader responsibilities as a member of the bar, created an “implied-in-law obligation” underpinning Wieder’s claim.³²

The Court of Appeals also focused on the self-regulatory function of lawyers.³³ Lawyers admitted to the bar have a duty to report unethical behavior on the part of other admitted attorneys to the Disciplinary Committee of the Appellate Division.³⁴ Failure to comply with this rule can lead to disbarment.³⁵ Wieder argued that the firm’s refusal to report the repeated unethical conduct by the other associate “place[d] him in the position of having to choose between” potential disbarment and potential termination.³⁶ The court accepted Wieder’s argument and held that the self-regulatory function of the legal profession made “the relationship of an associate to a law firm employer intrinsically different from that of the financial manager[] to the corporate employer[] in

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 635, 609 N.E.2d at 108, 593 N.Y.S.2d at 755.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 635–36, 609 N.E.2d at 108–09, 593 N.Y.S.2d at 755–56.

³⁴ See N.Y. RULES OF PROF’L CONDUCT R. 8.3(a) (2009) (codified at N.Y. COMP. CODES R. & REGS. tit. 22, § 1200.0 (2013)).

³⁵ *Weider*, 80 N.Y.2d at 636, 609 N.E.2d at 109, 593 N.Y.S.2d at 756 (citing *In re. Dowd*, 160 A.D.2d 78, 80, 559 N.Y.S.2d 365, 366–67 (App. Div. 2d Dep’t 1990)).

³⁶ *Weider*, 80 N.Y.2d at 636–37, 609 N.E.2d at 109, 593 N.Y.S.2d at 756.

Murphy . . . ”³⁷

The self-regulation of lawyers, combined with the nature of the employment relationship between an associate and her law firm, led the Court of Appeals to decide that there was an implied-in-law obligation of good faith and fair dealing in the employment relationship between an associate and a law firm.³⁸ The court found that the law firm “[i]nsist[ed] that as an associate in their employ plaintiff must act unethically and in violation of one of the primarily professional rules,” which constituted “nothing less than a frustration of the only legitimate purpose of the employment relationship.”³⁹ By contrast, in *Murphy*, the plaintiff was not “required to act in a way that subverted the core purpose of the employment.”⁴⁰ Therefore, the court determined that Wieder adequately stated a claim for breach of contract based on the implied-in-law obligation in his contract with defendants.⁴¹

The Court of Appeals has heard cases from other parties seeking similar exceptions to the at-will doctrine.⁴² To this date, *Wieder*'s holding providing an exception for attorneys practicing at law firms remains the only recognized exception to the at-will doctrine in New York State.⁴³

For instance, in 2003, the Court of Appeals rejected a proposed exception to the at-will doctrine for doctors employed by nonmedical employers.⁴⁴ The plaintiff, Sheila E. Horn, was employed as Associate Medical Director of the Medical Department of the *New York Times*.⁴⁵ Her responsibilities included determining whether injuries to *Times* employees were work related and therefore

³⁷ *Id.* at 637, 609 N.E.2d at 109, 593 N.Y.S.2d at 756.

³⁸ *Id.* at 637–38, 609 N.E.2d at 109–10, 593 N.Y.S.2d at 756–57.

³⁹ *Id.* at 638, 609 N.E.2d at 110, 593 N.Y.S.2d at 757.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *See, e.g.*, *Horn v. N.Y. Times*, 100 N.Y.2d 85, 86, 96–97, 790 N.E.2d 753, 753, 759, 760 N.Y.S.2d 378, 378, 384 (2003).

⁴³ The court has also recognized a constraint on the at-will doctrine based upon an express, written limitation in the employer's handbook on the employer's right to fire an employee at will. *See Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458, 460–62, 465–66, 443 N.E.2d 441, 442–43, 445, 457 N.Y.S.2d 193, 194–95, 197 (1982). There, the employment handbook, signed by Weiner, stated that the employer would “resort to dismissal for just and sufficient cause only, and only after all practical steps toward rehabilitation or salvage of the employee have been taken and failed.” *Id.* at 460, 443 N.E.2d at 442, 457 N.Y.S.2d at 194 (internal quotation marks omitted). When Weiner was dismissed without just cause or an opportunity for rehabilitation, the court found that Weiner had stated a cause of action for breach of contract. *Id.* at 465–66, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

⁴⁴ *Horn*, 100 N.Y.2d at 96–97, 790 N.E.2d at 759, 760 N.Y.S.2d at 384.

⁴⁵ *Id.* at 89, 790 N.E.2d at 754, 760 N.Y.S.2d at 379.

eligible for workers' compensation.⁴⁶ Horn alleged that personnel at the *Times* directed her to provide them with employees' medical records without the knowledge or consent of the employees.⁴⁷ She consulted with the New York State Department of Health and was allegedly told that providing medical information without the consent of the patient was in violation of several provisions of state law.⁴⁸ As a result, Horn refused to provide such information to her employers.⁴⁹ Thereafter, the *Times* restructured the medical department and Horn was ultimately transitioned out.⁵⁰ She claimed that the restructuring was a pretext to terminate her employment for refusal to comply with directives.⁵¹ Horn asked the Court of Appeals to find that an exception to the at-will doctrine applied to physicians employed by nonmedical entities.⁵²

The court ultimately held that Horn's situation was more akin to the accounting executive in *Murphy* than to the law firm associate in *Wieder*.⁵³ The court noted that when Horn made assessments about potential workers' compensation liability, "she was applying her professional expertise in furtherance of her responsibilities as a part of corporate management, much like Murphy . . . and unlike *Wieder*."⁵⁴ In other words, Horn's treatment of *Times* employees was not the core or main purpose of her employment at the *New York Times*.⁵⁵ The Court of Appeals made a further distinction between the lawyer's professional obligation to report unethical conduct to the bar and the rule of doctor-patient confidentiality.⁵⁶ Physician-patient confidentiality is not a self-regulatory rule and, further, the *Times* and Horn were not engaged in a common professional enterprise that created obligations on both parties.⁵⁷ Thus, the court declined to apply the *Wieder* exception to doctors employed by nonmedical employers.⁵⁸

The Court of Appeals has also declined to expand the *Wieder*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 89–90, 790 N.E.2d at 754, 760 N.Y.S.2d at 379.

⁵⁰ *Id.* at 90, 790 N.E.2d at 754, 760 N.Y.S.2d at 379.

⁵¹ *Id.*

⁵² *Id.* at 89, 790 N.E.2d at 753–54, 760 N.Y.S.2d at 378–79.

⁵³ *See id.* at 95, 790 N.E.2d at 758–59, 760 N.Y.S.2d at 383–84.

⁵⁴ *Id.* at 95, 790 N.E.2d at 758, 760 N.Y.S.2d at 383.

⁵⁵ *Id.*

⁵⁶ *Id.* at 96, 790 N.E.2d at 759, 760 N.Y.S.2d at 384.

⁵⁷ *Id.*

⁵⁸ *Id.* at 97, 790 N.E.2d at 759, 760 N.Y.S.2d at 384.

exception for several other employment situations, including: when employees accepted and continued employment with a company because they were promised that no merger would occur and then when the merger occurred, the employees were terminated;⁵⁹ when employees were allegedly discharged for refusal to participate in illegal financial activities;⁶⁰ and when “a minority shareholder [of] a close[ly] [held] corporation” was fired, but argued that he, as a minority shareholder, should have a fiduciary protection against termination.⁶¹

III. *SULLIVAN V. HARNISCH*

In 2012, the Court of Appeals heard *Sullivan v. Harnisch*, which concerned a plaintiff, Joseph Sullivan, who served as “Executive Vice President, Treasurer, Secretary, Chief Operating Officer, and Chief Compliance Officer” of a hedge fund.⁶² Sullivan alleged that he was terminated for raising objections “to certain sales of stock,” which Sullivan claimed were “front-running” transactions by the defendant.⁶³ Essentially, Sullivan asked the court to recognize an exception to the at-will doctrine for compliance officers fired for reporting misconduct.⁶⁴ The court refused to do so, noting that Sullivan’s ethical responsibilities as a compliance officer and his duties as an employee of the hedge fund were not as inextricably intertwined as the duties of the associate in *Wieder* as an employee and as a member of the bar.⁶⁵ The court also made note of the fact that Sullivan held four other titles at the hedge fund and found that his function as a compliance officer simply could not have been the core purpose of his job.⁶⁶

Chief Judge Lippman issued a strong dissent to the majority’s opinion.⁶⁷ He expressed particular concern regarding the message

⁵⁹ *Smalley v. Dreyfus Corp.*, 10 N.Y.3d 55, 57–58, 882 N.E.2d 882, 883, 853 N.Y.S.2d 270, 271 (2008).

⁶⁰ *Sabetay v. Sterling Drug, Inc.*, 69 N.Y.2d 329, 332, 506 N.E.2d 919, 920, 514 N.Y.S.2d 209, 210 (1987).

⁶¹ *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 187, 535 N.E.2d 1311, 1312–13, 538 N.Y.S.2d 771, 773 (1989).

⁶² *Sullivan v. Harnisch*, 19 N.Y.3d 259, 261, 969 N.E.2d 758, 759, 946 N.Y.S.2d 540, 541 (2012) (internal quotation marks omitted).

⁶³ *Id.* at 261–62, 969 N.E.2d at 759, 946 N.Y.S.2d at 541 (internal quotation marks omitted).

⁶⁴ *See id.* at 262, 969 N.E.2d at 759, 946 N.Y.S.2d at 541.

⁶⁵ *Id.* at 263–64, 969 N.E.2d at 760–61, 946 N.Y.S.2d at 542–43.

⁶⁶ *Id.* at 264, 969 N.E.2d at 761, 946 N.Y.S.2d at 543.

⁶⁷ *Id.* at 265–70, 969 N.E.2d at 762–65, 946 N.Y.S.2d at 544–47 (Lippman, C.J.,

sent by the *Sullivan* opinion, noting, “if compliance officers . . . wish to keep their jobs, they should keep their heads down and ignore good-faith suspicions or evidence they may have that their employers have engaged in illegal and unethical behavior”⁶⁸ The Chief Judge focused on the recent scandals the financial world has weathered, including the Madoff Ponzi scheme, and worried that the *Sullivan* decision would give employers free reign “to fire [their] compliance officer[s] simply for doing [their] job[s]”⁶⁹ Lippman was equally unmoved by the majority’s emphasis on the fact that Sullivan held four other titles at the hedge fund, in addition to Chief Compliance Officer.⁷⁰ He wrote: “If that were a valid distinction, then an unscrupulous employer wishing to avoid the application of the *Wieder* exception in a case in which it would otherwise apply would shield itself by giving any person potentially subject to the exception additional job titles and/or functions.”⁷¹

Of import in this case, according to Chief Judge Lippman, was the fact that it was Sullivan’s sole responsibility as Chief Compliance Officer to ensure compliance with the laws and, moreover, the hedge fund was similarly bound to comply with those laws.⁷² Unlike *Horn*, where the doctor’s primary role was not the provision of medical care to employees, here, Sullivan’s primary role as Chief Compliance Officer was to certify compliance with the applicable laws and regulations.⁷³ For Chief Judge Lippman, this made Sullivan’s role more akin to that of the attorney-plaintiff in *Wieder*, than that of the doctor-plaintiff in *Horn*.

Finally, Chief Judge Lippman addressed the majority’s point that Sullivan was not a compliance officer in a firm of compliance officers, as the plaintiff in *Wieder* was an attorney in a firm of attorneys.⁷⁴ Chief Judge Lippman found that the key issue was that *Wieder* was an employee in a business that was bound to follow ethical and legal rules, writing: “Similarly, Sullivan was an employee of a business that was subject to certain legal and ethical

dissenting).

⁶⁸ *Id.* at 265, 969 N.E.2d at 762, 946 N.Y.S.2d at 544.

⁶⁹ *Id.* at 265–66, 969 N.E.2d at 762, 946 N.Y.S.2d at 544.

⁷⁰ *Id.* at 268, 969 N.E.2d at 763, 946 N.Y.S.2d at 545.

⁷¹ *Id.*

⁷² *Id.* at 268, 969 N.E.2d at 764, 946 N.Y.S.2d at 546.

⁷³ *Id.*

⁷⁴ *Id.* at 264, 969 N.E.2d at 761, 946 N.Y.S.2d at 543 (majority opinion) (“Sullivan was not associated with other compliance officers in a firm where all were subject to self-regulation as members of a common profession.”).

obligations to its clients and his reason for being, as a compliance officer, was to ensure that in providing services to those clients, those rules were followed at all times.”⁷⁵ Thus, Chief Judge Lippman found that the majority “unwisely limit[ed] the exception to the at-will employment doctrine that we identified in *Wieder*.”⁷⁶

IV. LEGISLATIVE SOLUTIONS

The Court of Appeals has consistently refused to recognize the tort of abusive or wrongful discharge.⁷⁷ Even in *Wieder*, the court rejected plaintiff's argument that recognition of the tort was warranted in that case.⁷⁸ Throughout, the Court of Appeals has insisted that it should be up to the legislature to determine whether to create a cause of action for wrongful discharge.⁷⁹ For instance, in *Murphy*, when the plaintiff asked the court to adopt the tort of abusive or wrongful discharge of an employee, the court declined and noted that any tort remedy for “abusive or wrongful discharge should await legislative action.”⁸⁰ The court specifically pointed out the legislature's

infinitely greater resources and procedural means to discern the public will, to examine the variety of pertinent considerations, to elicit the views of the various segments of the community that would be directly affected and in any event critically interested, and to investigate and anticipate the impact of imposition of such liability.⁸¹

Ultimately, “[i]f the rule of nonliability for termination of at-will employment is to be tempered, it should be accomplished through a principled statutory scheme . . . rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants.”⁸²

New York does have a whistleblower statute—section 740 of the

⁷⁵ *Id.* at 269, 969 N.E.2d at 764, 946 N.Y.S.2d at 546 (Lippman, C.J., dissenting).

⁷⁶ *Id.* at 270, 969 N.E.2d at 765, 946 N.Y.S.2d at 547.

⁷⁷ *See, e.g., id.* at 261, 969 N.E.2d at 759, 946 N.Y.S.2d at 541 (majority opinion); *Wieder v. Skala*, 80 N.Y.2d 628, 633, 609 N.E.2d 105, 107, 593 N.Y.S.2d 752, 754 (1992).

⁷⁸ *Wieder*, 80 N.Y.2d at 638–39, 609 N.E.2d at 110, 593 N.Y.S.2d at 757.

⁷⁹ *See, e.g., Horn v. N.Y. Times*, 100 N.Y.2d 85, 93, 790 N.E.2d 753, 757, 760 N.Y.S.2d 378, 382 (2003).

⁸⁰ *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 302, 448 N.E.2d 86, 90, 461 N.Y.S.2d 232, 236 (1983).

⁸¹ *Id.* at 302, 448 N.E.2d at 89–90, 461 N.Y.S.2d at 236.

⁸² *Id.* at 302, 448 N.E.2d at 90, 461 N.Y.S.2d at 236.

New York Labor Law.⁸³ The statute provides that “[a]n employer shall not take any retaliatory personnel action against an employee because such employee . . . (a) discloses, or threatens to disclose . . . ,” an illegal practice that creates “a substantial and specific danger to the public health or safety,” (b) provides information or testifies before any public body conducting an investigation into such a violation, or (c) “objects to, or refuses to participate in,” such violation.⁸⁴ The requirement that the employee’s protected activity must concern a practice that is both in violation of a law *and* presents a substantial danger to the public health or safety has served to limit severely the potential applicability of the New York whistleblower statute. In most workplace contexts, it simply will not be relevant.

Numerous attempts have been made to amend the whistleblower statute to broaden its applicability.⁸⁵ Bills have been introduced and repeatedly died. For instance, in 2007, New York Senate Bill 5655, sponsored by former Senator Vincent Leibell, would have amended section 740 by expanding the definition of employer misconduct beyond that which created a substantial and significant threat to public health and safety and eliminating the notice requirement in section 3.⁸⁶ That bill was referred to the Labor Committee, but was never enacted.⁸⁷ As New York State Attorney General, Elliott Spitzer also called for expanded protection for whistleblowers under state law.⁸⁸

Several bills are in fact currently pending in both the New York State Assembly and Senate that would address the whistleblower law.⁸⁹ For example, New York Assembly Bill 5696-A, which passed the assembly on June 20, 2013, and was delivered to the Senate that same day, would, among other things, “specify[] that an employee will be protected against retaliatory action for disclosure of employer activity that the employee in good faith reasonably believes has occurred or will occur and in good faith reasonably

⁸³ N.Y. LAB. LAW § 740 (McKinney 2013).

⁸⁴ *Id.* § 740(2)(a)–(c).

⁸⁵ *See, e.g.*, Assemb. B. A5696-A, 236th Sess. (N.Y. 2013); S.B. S5655, 231st Sess. (N.Y. 2007).

⁸⁶ *See* S.B. S5655, 231st Sess. (N.Y. 2007).

⁸⁷ *See id.*; LAB. LAW § 740.

⁸⁸ *See* Editorial, *Getting Tough Spitzer Wants More Protection for Whistle-Blowers, Donors, Investors*, BUFF. NEWS, Jan. 29, 2003, at B8.

⁸⁹ *See* Assemb. B. A5696-A, 236th Sess. (N.Y. 2013); S.B. S4453, 236th Sess. (N.Y. 2013).

believes constitutes illegal business activity.”⁹⁰ New York Assembly Bill 5696-A would also amend section 3 by limiting prior notification to employer requirements.⁹¹ In addition, New York Senate Bill 4453, which was committed to rules on June 21, 2013, would amend section 740 to “prohibit[] employer retaliation against employees in the financial services industry.”⁹² This bill would, presumably, address Chief Judge Lippman’s concerns, articulated in *Sullivan*, about alleged corruption in the financial industry. These bills will likely be considered either later in 2013, after the summer recess, or in 2014.

V. CONCLUSION

The at-will doctrine articulated over one hundred years ago by the Court of Appeals in *Martin v. New York Life Ins. Co.* remains largely unchanged in New York State. The Court of Appeals has recognized only one exception to the at-will doctrine, and, with the result in *Sullivan v. Harnisch* strongly affirming the at-will doctrine, it appears that the bench remains committed to that position.⁹³ Moreover, while there has been some legislative movement on this issue over the years, the legislature has yet to seriously amend or expand Labor Law section 740 to provide further protection for purported whistleblowers. And yet, Chief Judge Lippman’s strident dissent in *Sullivan*, arguing that recent, real world financial scandals demonstrate the need for greater protection for whistleblowers,⁹⁴ may breathe new life into efforts to expand such protection under New York law. Time, and the next session of the New York Assembly, will tell.

⁹⁰ Assemb. B. A5696-A, 236th Sess. (N.Y. 2013).

⁹¹ *Id.*

⁹² S.B. S4453, 236th Sess. (N.Y. 2013).

⁹³ See *Sullivan v. Harnisch*, 19 N.Y.2d 259, 261, 969 N.E.2d 758, 759, 946 N.Y.S.2d 540, 541 (2012); *Wieder v. Skala*, 80 N.Y.2d 628, 635, 609 N.E.2d 105, 108, 593 N.Y.S.2d 752, 755 (1992). But see *Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458, 460–62, 465–66, 443 N.E.2d 441, 442–43, 445, 457 N.Y.S.2d 193, 194–95, 197 (1982) (considered by some to be a constraint on the at-will doctrine); *supra* note 43 (explaining the holding in *Weiner*).

⁹⁴ *Id.* at 265–66, 969 N.E.2d at 762, 946 N.Y.S.2d 540.