

2838

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the civil service law, in relation to protection of employees against retaliatory action by employers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 740 of the labor law, as added by chapter 660 of
2 the laws of 1984, paragraph (g) of subdivision 1 as added and paragraph
3 (a) of subdivision 2 as amended by chapter 442 of the laws of 2006,
4 paragraph (d) of subdivision 4 as added by chapter 24 of the laws of
5 2002, is amended to read as follows:

6 S 740. Retaliatory personnel action by employers; prohibition. 1.
7 Definitions. For purposes of this section, unless the context specif-
8 ically indicates otherwise:

9 (a) "Employee" means an individual who performs services for and under
10 the control and direction of an employer for wages or other remunera-
11 tion.

12 (b) "Employer" means any person, firm, partnership, institution,
13 corporation, or association that employs one or more employees.

14 (c) "Law, rule or regulation" includes any duly enacted statute or
15 ordinance or any rule or regulation promulgated pursuant to any federal,
16 state or local statute or ordinance.

17 (d) "Public body" includes the following:

18 (i) the United States Congress, any state legislature, or any popular-
19 ly-elected local governmental body, or any member or employee thereof;

20 (ii) any federal, state, or local judiciary, or any member or employee
21 thereof, or any grand or petit jury;

22 (iii) any federal, state, or local regulatory, administrative, or
23 public agency or authority, or instrumentality thereof; or

24 (iv) any federal, state, or local law enforcement agency, prosecutori-
25 al office, or police or peace officer.

26 (e) "Retaliatory personnel action" means the discharge, suspension or
27 demotion of an employee, or other adverse employment action taken
28 against an employee in the terms and conditions of employment.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (f) "Supervisor" means any individual within an employer's organiza-
2 tion who has the authority to direct and control the work performance of
3 the affected employee; or who has managerial authority to take correc-
4 tive action regarding the [violation of the law, rule or regulation]
5 ACTIVITY, POLICY, OR PRACTICE of which the employee complains.

6 (g) "Health care fraud" means health care fraud as defined by article
7 one hundred seventy-seven of the penal law.

8 2. Prohibitions. An employer shall not take any retaliatory personnel
9 action against an employee because such employee, OR A PERSON ACTING ON
10 BEHALF OF SUCH EMPLOYEE, does any of the following:

11 (a) discloses, or threatens to disclose to a supervisor or to a public
12 body an activity, policy or practice of the employer that THE EMPLOYEE
13 REASONABLY BELIEVES is in violation of law, rule or regulation [which
14 violation creates and presents a substantial and specific danger to the
15 public health or safety], THAT POSES A SERIOUS DANGER TO PUBLIC HEALTH
16 OR SAFETY, or which constitutes health care fraud;

17 (b) provides information to, or testifies before, OR OTHERWISE COOPER-
18 ATES WITH any public body conducting an investigation, hearing or
19 inquiry into any [such] ACTIVITY, POLICY OR PRACTICE OF SUCH EMPLOYER
20 THAT THE EMPLOYEE REASONABLY BELIEVES IS IN violation of a law, rule or
21 regulation [by such employer] OR INTO ANY ACTIVITY, POLICY OR PRACTICE
22 OF SUCH EMPLOYER WHICH POSES A SERIOUS DANGER TO PUBLIC HEALTH OR
23 SAFETY; or

24 (c) objects to, or refuses to participate in any [such] activity,
25 policy or practice WHICH THE EMPLOYEE REASONABLY BELIEVES IS in
26 violation of a law, rule or regulation OR WHICH POSES AN IMMEDIATE AND
27 SERIOUS DANGER TO PUBLIC HEALTH OR SAFETY.

28 3. Application. The protection against retaliatory personnel action
29 provided by paragraph (a) of subdivision two of this section pertaining
30 to disclosure to a public body shall not apply to an employee who makes
31 such disclosure to a public body unless the employee has brought the
32 activity, policy or practice in violation of law, rule or regulation to
33 the attention of a supervisor of the employer and has afforded such
34 employer a reasonable opportunity to correct such activity, policy or
35 practice.

36 4. Violation; remedy. (a) An employee who has been the subject of a
37 retaliatory personnel action in violation of this section may institute
38 a civil action in a court of competent jurisdiction for relief as set
39 forth in subdivision five of this section within one year after the
40 alleged retaliatory personnel action was taken.

41 (b) Any action authorized by this section may be brought in the county
42 in which the alleged retaliatory personnel action occurred, in the coun-
43 ty in which the complainant resides, or in the county in which the
44 employer has its principal place of business.

45 (c) It shall be a defense to any action brought pursuant to this
46 section that the personnel action was predicated upon grounds other than
47 the employee's exercise of any rights protected by this section. It
48 shall also be a defense that the individual was an independent contrac-
49 tor.

50 (d) Notwithstanding the provisions of paragraphs (a) and (c) of this
51 subdivision, a health care employee who has been the subject of a retal-
52 iatory action by a health care employer in violation of section seven
53 hundred forty-one of this article may institute a civil action in a
54 court of competent jurisdiction for relief as set forth in subdivision
55 five of this section within two years after the alleged retaliatory
56 personnel action was taken. In addition to the relief set forth in that

1 subdivision, the court, in its discretion, based upon a finding that the
2 employer acted in bad faith in the retaliatory action, may assess the
3 employer a civil penalty of an amount not to exceed ten thousand
4 dollars, to be paid to the improving quality of patient care fund,
5 established pursuant to section ninety-seven-aaaa of the state finance
6 law.

7 5. Relief. In any action brought pursuant to subdivision four of this
8 section, the court may order relief as follows:

9 (a) an injunction to restrain continued violation of this section;

10 (b) the reinstatement of the employee to the same position held before
11 the retaliatory personnel action, or to an equivalent position;

12 (c) the reinstatement of full fringe benefits and seniority rights;

13 (d) [the compensation for] DAMAGES, lost wages, benefits and other
14 remuneration; and

15 (e) the payment by the employer of reasonable costs, disbursements,
16 and attorney's fees.

17 6. Employer relief. A court, in its discretion, may also order that
18 reasonable attorneys' fees and court costs and disbursements be awarded
19 to an employer if the court determines that an action brought by an
20 employee under this section was without basis in law or in fact.

21 7. Existing rights. Nothing in this section shall be deemed to dimin-
22 ish the rights, privileges, or remedies of any employee under any other
23 law or regulation or under any collective bargaining agreement or
24 employment contract[; except that the institution of an action in
25 accordance with this section shall be deemed a waiver of the rights and
26 remedies available under any other contract, collective bargaining
27 agreement, law, rule or regulation or under the common law].

28 S 2. Subdivision 1 of section 75-b of the civil service law is amended
29 by adding a new paragraph (e) to read as follows:

30 (E) "NEWS MEDIA" SHALL MEAN NEWSPAPER, MAGAZINE, NEWS AGENCY, PRESS
31 ASSOCIATION, WIRE SERVICE, PROFESSIONAL JOURNALIST OR NEWSCASTER AS SUCH
32 TERMS ARE DEFINED IN SUBDIVISION (A) OF SECTION SEVENTY-NINE-H OF THE
33 CIVIL RIGHTS LAW.

34 S 3. Paragraph (a) of subdivision 2 of section 75-b of the civil
35 service law, as amended by chapter 899 of the laws of 1986, is amended
36 to read as follows:

37 (a) A public employer shall not dismiss or take other disciplinary or
38 other adverse personnel action against a public employee regarding the
39 employee's employment because the employee discloses to a governmental
40 body OR THE NEWS MEDIA information: (i) regarding a violation of a law,
41 rule or regulation which violation creates and presents a substantial
42 and specific danger to the public health or safety; or (ii) which the
43 employee reasonably believes to be true and reasonably believes consti-
44 tutes an improper governmental action, PROVIDED, HOWEVER, THAT IN THE
45 CASE OF DISCLOSURE OF INFORMATION TO THE NEWS MEDIA, SUCH DISCLOSURE OF
46 INFORMATION IS NOT OTHERWISE PROHIBITED BY LAW. "Improper governmental
47 action" shall mean any action by a public employer or employee, or an
48 agent of such employer or employee, which is undertaken in the perform-
49 ance of such agent's official duties, whether or not such action is
50 within the scope of his employment, and which is in violation of any
51 federal, state or local law, rule or regulation.

52 S 4. This act shall take effect on the first of September next
53 succeeding the date on which it shall have become a law and shall apply
54 to any retaliatory personnel action taken on or after such date.