

8371

2011-2012 Regular Sessions

I N A S S E M B L Y

June 15, 2011

Introduced by M. of A. CAHILL -- read once and referred to the Committee on Energy

AN ACT to amend the public service law, in relation to certain call centers

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

1 Section 1. Section 65 of the public service law is amended by adding a
2 new subdivision 14 to read as follows:

3 14. (A) REPORTING REQUIREMENT. EVERY PUBLIC UTILITY UNDER THIS SUBDI-
4 VISION SHALL PROVIDE THE COMMISSIONER AN AFFIDAVIT, QUARTERLY, THAT NO
5 CALL CENTERS OR OTHER FACILITIES PROVIDING CUSTOMER ASSISTANCE SET FORTH
6 IN PARAGRAPH (A) OF SUBDIVISION THIRTEEN OF THIS SECTION HAVE BEEN
7 CLOSED WITHOUT NOTICE AND HEARING BEFORE THE COMMISSION AND THAT THE
8 UTILITY HAS NOT RELOCATED SUCH CUSTOMER ASSISTANCE TO ANOTHER AREA OF
9 NEW YORK STATE OR OUTSIDE OF NEW YORK STATE WITHOUT NOTICE AND HEARING
10 BEFORE THE COMMISSION. THE AFFIDAVIT SHALL BE SUBMITTED IN SUCH FORM AND
11 AT SUCH TIMES AND SHALL CONTAIN INFORMATION AS THE COMMISSIONER, BY RULE
12 OR REGULATION, MAY PRESCRIBE.

13 (B) RETALIATORY ACTION BY EMPLOYERS PROHIBITED. AN EMPLOYEE WHO
14 PERFORMS SERVICES FOR AND UNDER THE DIRECTION AND CONTROL OF A PUBLIC
15 UTILITY OR AN AGENT ACTING ON BEHALF OF THE EMPLOYER SHALL NOT TAKE
16 RETALIATORY PERSONAL ACTION SUCH AS DISCHARGE, SUSPENSION, DEMOTION,
17 PENALIZATION OR DISCRIMINATION AGAINST AN EMPLOYEE FOR REPORTING,
18 DISCLOSING, OR TESTIFYING BEFORE, ANY PUBLIC BODY CONDUCTING AN INVESTI-
19 GATION, HEARING OR INQUIRY INTO SUCH VIOLATION OF SUBDIVISION THIRTEEN
20 OF THIS SECTION.

21 (C) APPLICATION. THE PROTECTION AGAINST RETALIATORY ACTION SHALL APPLY
22 TO ANY EMPLOYEE WHO IN GOOD FAITH REASONABLY BELIEVES THAT A UTILITY
23 COMPANY IS IN VIOLATION OF SUBDIVISION THIRTEEN OF THIS SECTION, BASED
24 ON INFORMATION THAT THE EMPLOYEE IN GOOD FAITH REASONABLY BELIEVES TO BE
25 TRUE.

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

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1 (D) VIOLATION; REMEDY. (I) AN EMPLOYEE WHO HAS BEEN THE SUBJECT OF A
2 RETALIATORY PERSONNEL ACTION IN VIOLATION OF THIS SECTION MAY INSTITUTE
3 A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION FOR RELIEF WITHIN
4 TWO YEARS AFTER THE ALLEGED RETALIATORY PERSONNEL ACTION WAS TAKEN. (II)
5 ANY ACTION AUTHORIZED BY THIS SECTION MAY BE BROUGHT IN THE COUNTY IN
6 WHICH THE ALLEGED RETALIATORY PERSONNEL ACTION OCCURRED, IN THE COUNTY
7 IN WHICH THE COMPLAINANT RESIDES, OR IN THE COUNTY IN WHICH THE EMPLOYER
8 HAS ITS PRINCIPAL PLACE OF BUSINESS.

9 IN ADDITION TO THE RELIEF SET FORTH IN THIS SECTION, THE COURT, IN ITS
10 DISCRETION, BASED UPON A FINDING THAT THE EMPLOYER ACTED IN BAD FAITH IN
11 THE RETALIATORY ACTION, MAY ASSESS THE EMPLOYER A CIVIL PENALTY OF AN
12 AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS, TO BE PAID TO THE ORGANIZED
13 LABOR BARGAINING UNIT'S HEALTH AND WELFARE FUND.

14 (E) RELIEF. IN ANY ACTION BROUGHT PURSUANT TO THIS SUBDIVISION, THE
15 COURT MAY ORDER RELIEF AS FOLLOWS: (I) THE REINSTATEMENT OF THE EMPLOYEE
16 TO THE SAME POSITION HELD BEFORE THE RETALIATORY PERSONNEL ACTION, OR TO
17 AN EQUIVALENT POSITION; (II) THE REINSTATEMENT OF FULL FRINGE BENEFITS
18 AND SENIORITY RIGHTS; (III) THE COMPENSATION FOR LOST WAGES, BENEFITS
19 AND OTHER REMUNERATION; AND COMPENSATORY DAMAGES FOR ECONOMIC LOSS; (IV)
20 THE PAYMENT BY THE EMPLOYER OF REASONABLE COSTS, DISBURSEMENTS, AND
21 ATTORNEY'S FEES; (V) AN INJUNCTION TO RESTRAIN THE EMPLOYER'S CONTINUED
22 VIOLATION OF THIS SECTION WITH RESPECT TO THE EMPLOYEE; (VI) A CIVIL
23 PENALTY OF AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS, IF THE COURT,
24 IN ITS DISCRETION, FINDS THAT THE EMPLOYER ACTED IN BAD FAITH IN THE
25 RETALIATORY ACTION.

26 (F) EMPLOYER RELIEF. A COURT, IN ITS DISCRETION, MAY ALSO ORDER THAT
27 REASONABLE ATTORNEYS' FEES AND COURT COSTS AND DISBURSEMENTS BE AWARDED
28 TO AN EMPLOYER IF THE COURT DETERMINES THAT AN ACTION BROUGHT BY AN
29 EMPLOYEE UNDER THIS SECTION WAS WITHOUT REASONABLE BASIS IN LAW OR IN
30 FACT. THE EMPLOYER SHALL RESERVE THE RIGHT TO DISMISS AN EMPLOYEE WHO
31 HAS ACTED IN BAD FAITH WITHOUT REASONABLE BASIS IN LAW OR IN FACT,
32 REGARDLESS OF ANY GRIEVANCE PROCESS THAT MAY BE IN PLACE AS A RESULT OF
33 A COLLECTIVE BARGAINING AGREEMENT.

34 (G) PUBLICATION. EVERY EMPLOYER SHALL INFORM EMPLOYEES OF THEIR
35 PROTECTIONS, RIGHTS AND OBLIGATIONS UNDER THIS SECTION, BY POSTING A
36 NOTICE THEREOF. SUCH NOTICES SHALL BE POSTED CONSPICUOUSLY IN EASILY
37 ACCESSIBLE AND WELL-LIGHTED PLACES CUSTOMARILY FREQUENTED BY EMPLOYEES
38 AND APPLICANTS FOR EMPLOYMENT.

39 S 2. This act shall take effect on the thirtieth day after it shall
40 become a law.