

1115

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. CAHILL -- Multi-Sponsored by -- M. of A. ABBATE, ABINANTI, BENEDETTO, BRENNAN, BROOK-KRASNY, COLTON, CRESPO, ENGLE-BRIGHT, GUNTHER, HOOPER, MAGNARELLI, MARKEY, RAIA, ROSENTHAL, RUSSELL, SCHIMEL -- read once and referred to the Committee on Corporations, Authorities and Commissions

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 16 to read as follows:

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

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

20 (C) THE PROTECTION AGAINST RETALIATORY ACTION SHALL APPLY TO ANY
21 EMPLOYEE WHO IN GOOD FAITH REASONABLY BELIEVES THAT A UTILITY COMPANY IS

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

LBD06317-01-5

1 IN VIOLATION OF SUBDIVISION THIRTEEN OF THIS SECTION, BASED ON INFORMA-
2 TION THAT THE EMPLOYEE IN GOOD FAITH REASONABLY BELIEVES TO BE TRUE.

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

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

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

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

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

41 S 2. This act shall take effect on the thirtieth day after it shall
42 have become a law.