

# STATE OF NEW YORK

4396--A

Cal. No. 1116

2019-2020 Regular Sessions

## IN SENATE

March 11, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to retaliatory personnel actions by employers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1 of section 740 of the labor  
2 law, as added by chapter 660 of the laws of 1984, is amended to read as  
3 follows:  
4 (a) "Employee" means an individual who performs services for and under  
5 the control and direction of an employer for wages or other remuneration  
6 or natural persons employed as independent contractors to carry out work  
7 in furtherance of an employer's business enterprise who are not them-  
8 selves employers.  
9 § 2. The opening paragraph and paragraph (a) of subdivision 2 of  
10 section 740 of the labor law, the opening paragraph as added by chapter  
11 660 of the laws of 1984 and paragraph (a) as amended by chapter 442 of  
12 the laws of 2006, is amended to read as follows:  
13 An employer shall not take any retaliatory personnel action against an  
14 employee, whether or not within the scope of the employee's job duties,  
15 because such employee does any of the following:  
16 (a) discloses, or threatens to disclose to a supervisor or to a public  
17 body an activity, policy or practice of the employer [~~that~~] which the  
18 employee reasonably believes is in violation of law, rule or regulation  
19 [~~which violation creates and presents~~] or which the employee reasonably  
20 believes poses a substantial and specific danger to the public health or  
21 safety, or which constitutes health care fraud;

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

LBD00918-02-9

1 § 3. Paragraph (c) of subdivision 4 of section 740 of the labor law,  
2 as added by chapter 660 of the laws of 1984, is amended to read as  
3 follows:

4 (c) It shall be a defense to any action brought pursuant to this  
5 section that the personnel action was predicated upon grounds other than  
6 the employee's exercise of any rights protected by this section. [~~It~~  
7 ~~shall also be a defense that the individual was an independent contrac-~~  
8 ~~tor.~~]

9 § 4. Paragraphs (b), (d) and (e) of subdivision 5 of section 740 of  
10 the labor law, as added by chapter 660 of the laws of 1984, are amended  
11 to read as follows:

12 (b) the reinstatement of the employee to the same position held before  
13 the retaliatory personnel action, or to an equivalent position, or front  
14 pay in lieu thereof;

15 (d) the compensation for lost wages, benefits and other remuneration;  
16 [~~and~~]

17 (e) the payment by the employer of reasonable costs, disbursements,  
18 and attorney's fees; and

19 (f) the payment by the employer of punitive damages, if the violation  
20 was willful, malicious or wanton.

21 § 5. This act shall take effect on the thirtieth day after it shall  
22 have become a law; provided, however, that effective immediately, the  
23 addition, amendment and/or repeal of any rule or regulation necessary  
24 for the implementation of this act on its effective date are authorized  
25 to be made by the commissioner of labor of the state of New York on or  
26 before such effective date.