STATE OF NEW YORK

8397--A

IN SENATE

May 21, 2020

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to prohibiting health care employers from penalizing employees because of complaints of employer violations

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

Section 1. Subdivisions 1, 2 and 3 of section 741 of the labor law, as added by chapter 24 of the laws of 2002, paragraph (b) of subdivision 1 as amended by chapter 505 of the laws of 2003, are amended to read as follows:

1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "Employee" means any person who performs health care services for and under the control and direction of any public or private employer which provides health care services for wages or other remuneration.

(b) "Employer" means any partnership, association, corporation, the state, or any political subdivision of the state which: (i) provides health care services in a facility licensed pursuant to article twenty-eight or thirty-six of the public health law; (ii) provides health care services within a primary or secondary public or private school or public or private university setting; (iii) operates and provides health care services under the mental hygiene law or the correction law; or (iv) is registered with the department of education pursuant to section sixty-eight hundred eight of the education law.

(c) "Agent" means any individual, partnership, association, corporation, or group of persons acting on behalf of an employer.

(d) "Improper quality of patient care" means, with respect to patient care, any practice, procedure, action or failure to act of an employer which violates any law, rule, regulation or declaratory ruling adopted pursuant to law, where such violation relates to matters which may present a substantial and specific danger to public health or safety or a significant threat to the health of a specific patient.

(e) **"Improper quality of workplace safety" means, with respect to employees, any practice, procedure, action or failure to act of an**

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

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employer which violates any law, rule, regulation, or declaratory ruling adopted pursuant to law where such violation relates to matters which may present an unsafe workplace environment or risk of employee safety or a significant threat to the health of a specific employee.

(f) "Public body" means:

(1) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;

(2) any federal, state or local court, or any member or employee thereof, any grand or petit jury;

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

(4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer;

(5) any federal, state or local department of an executive branch of government; or

(6) any division, board, bureau, office, committee or commission of any of the public bodies described in subparagraph one, two, three, four or five of this paragraph.

[~~(f)~~] (g) "Retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

[~~(g)~~] (h) "Supervisor" means any person within an employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits a complaint.

2. Retaliatory action prohibited. Notwithstanding any other provision of law, no employer shall take retaliatory action against any employee because the employee does any of the following:

(a) discloses or threatens to disclose to a supervisor, [~~or~~] to a public body, to a news media outlet, or to a social media forum available to the public at large, an activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety; or

(b) objects to, or refuses to participate in any activity, policy or practice of the employer or agent that the employee, in good faith, reasonably believes constitutes improper quality of patient care or improper quality of workplace safety.

3. Application. The protection against retaliatory personnel action provided by subdivision two of this section shall not apply unless the employee has brought the improper quality of patient care or improper quality of workplace safety to the attention of a supervisor and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. This subdivision shall not apply to an action or failure to act described in paragraph (a) of subdivision two of this section where the improper quality of patient care or improper quality of workplace safety described therein presents an imminent threat to public health or safety or to the health of a specific patient or specific health care employee and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

§ 2. This act shall take effect immediately.