

# STATE OF NEW YORK

5144--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 11, 2021

Introduced by M. of A. BENEDETTO, ABINANTI, AUBRY, JACKSON, STECK, FORREST -- read once and referred 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 retaliatory actions 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, and subdivision 7 as amended by chapter 684 of the laws of 2019,  
6 is amended to read as follows:

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

10 (a) "Employee" means an individual who performs services for and under  
11 the control and direction of an employer for wages or other  
12 remuneration, including former employees, or natural persons employed as  
13 independent contractors to carry out work in furtherance of an employ-  
14 er's business enterprise who are not themselves employers.

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

17 (c) "Law, rule or regulation" includes: (i) any duly enacted federal,  
18 state or local statute or ordinance or executive order; (ii) any rule or  
19 regulation promulgated pursuant to [~~any federal, state or local~~] such  
20 statute or ordinance or executive order; or (iii) any judicial or admin-  
21 istrative decision, ruling or order.

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

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

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1 (i) the United States Congress, any state legislature, or any [~~popu-~~  
2 ~~larly-elected~~] elected local governmental body, or any member or employ-  
3 ee thereof;

4 (ii) any federal, state, or local [~~judiciary~~] court, or any member or  
5 employee thereof, or any grand or petit jury;

6 (iii) any federal, state, or local regulatory, administrative, or  
7 public agency or authority, or instrumentality thereof; [~~or~~]

8 (iv) any federal, state, or local law enforcement agency, prosecutori-  
9 al office, or police or peace officer[~~r~~];

10 (v) any federal, state or local department of an executive branch of  
11 government; or

12 (vi) any division, board, bureau, office, committee, or commission of  
13 any of the public bodies described in subparagraphs (i) through (v) of  
14 this paragraph.

15 (e) "Retaliatory [~~personnel~~] action" means [~~the discharge, suspension~~  
16 ~~or demotion of an employee, or other adverse employment action taken~~  
17 ~~against an employee in the terms and conditions of employment~~] an  
18 adverse action taken by an employer or his or her agent to discharge,  
19 threaten, penalize, or in any other manner discriminate against any  
20 employee or former employee exercising his or her rights under this  
21 section, including (i) adverse employment actions or threats to take  
22 such adverse employment actions against an employee in the terms of  
23 conditions of employment including but not limited to discharge, suspen-  
24 sion, or demotion; (ii) actions or threats to take such actions that  
25 would adversely impact a former employee's current or future employment;  
26 or (iii) threatening to contact or contacting United States immigration  
27 authorities or otherwise reporting or threatening to report an employ-  
28 ee's suspected citizenship or immigration status or the suspected citi-  
29 zenship or immigration status of an employee's family or household  
30 member, as defined in subdivision two of section four hundred fifty-  
31 nine-a of the social services law, to a federal, state, or local agency.

32 (f) "Supervisor" means any individual within an employer's organiza-  
33 tion who has the authority to direct and control the work performance of  
34 the affected employee; or who has managerial authority to take correc-  
35 tive action regarding the violation of the law, rule or regulation of  
36 which the employee complains.

37 [~~(g) "Health care fraud" means health care fraud as defined by article~~  
38 ~~one hundred seventy-seven of the penal law.~~]

39 2. Prohibitions. An employer shall not take any retaliatory [~~person-~~  
40 ~~nel~~] action against an employee, whether or not within the scope of the  
41 employee's job duties, because such employee does any of the following:

42 (a) discloses, or threatens to disclose to a supervisor or to a public  
43 body an activity, policy or practice of the employer that the employee  
44 reasonably believes is in violation of law, rule or regulation [~~which~~  
45 ~~violation creates and presents~~] or that the employee reasonably believes  
46 poses a substantial and specific danger to the public health or safety[~~r~~  
47 ~~or which constitutes health care fraud~~];

48 (b) provides information to, or testifies before, any public body  
49 conducting an investigation, hearing or inquiry into any such [~~violation~~  
50 ~~of a law, rule or regulation~~] activity, policy or practice by such  
51 employer; or

52 (c) objects to, or refuses to participate in any such activity, policy  
53 or practice [~~in violation of a law, rule or regulation~~].

54 3. Application. The protection against retaliatory [~~personnel~~] action  
55 provided by paragraph (a) of subdivision two of this section pertaining  
56 to disclosure to a public body shall not apply to an employee who makes

1 such disclosure to a public body unless the employee has [~~brought~~] made  
2 a good faith effort to notify his or her employer by bringing the activ-  
3 ity, policy or practice [~~in violation of law, rule or regulation~~] to the  
4 attention of a supervisor of the employer and has afforded such employer  
5 a reasonable opportunity to correct such activity, policy or practice.  
6 Such employer notification shall not be required where: (a) there is an  
7 imminent and serious danger to the public health or safety; (b) the  
8 employee reasonably believes that reporting to the supervisor would  
9 result in a destruction of evidence or other concealment of the activ-  
10 ity, policy or practice; (c) such activity, policy or practice could  
11 reasonably be expected to lead to endangering the welfare of a minor;  
12 (d) the employee reasonably believes that reporting to the supervisor  
13 would result in physical harm to the employee or any other person; or  
14 (e) the employee reasonably believes that the supervisor is already  
15 aware of the activity, policy or practice and will not correct such  
16 activity, policy or practice.

17 4. Violation; remedy. (a) An employee who has been the subject of a  
18 retaliatory [~~personnel~~] action in violation of this section may insti-  
19 tute a civil action in a court of competent jurisdiction for relief as  
20 set forth in subdivision five of this section within [~~one year~~] two  
21 years after the alleged retaliatory [~~personnel~~] action was taken.

22 (b) Any action authorized by this section may be brought in the county  
23 in which the alleged retaliatory [~~personnel~~] action occurred, in the  
24 county in which the complainant resides, or in the county in which the  
25 employer has its principal place of business. In any such action, the  
26 parties shall be entitled to a jury trial.

27 (c) It shall be a defense to any action brought pursuant to this  
28 section that the [~~personnel~~] retaliatory action was predicated upon  
29 grounds other than the employee's exercise of any rights protected by  
30 this section. [~~It shall also be a defense that the individual was an~~  
31 ~~independent contractor.~~]

32 [~~(d) Notwithstanding the provisions of paragraphs (a) and (c) of this~~  
33 ~~subdivision, a health care employee who has been the subject of a retal-~~  
34 ~~iatory action by a health care employer in violation of section seven~~  
35 ~~hundred forty one of this article may institute a civil action in a~~  
36 ~~court of competent jurisdiction for relief as set forth in subdivision~~  
37 ~~five of this section within two years after the alleged retaliatory~~  
38 ~~personnel action was taken. In addition to the relief set forth in that~~  
39 ~~subdivision, the court, in its discretion, based upon a finding that the~~  
40 ~~employer acted in bad faith in the retaliatory action, may assess the~~  
41 ~~employer a civil penalty of an amount not to exceed ten thousand~~  
42 ~~dollars, to be paid to the improving quality of patient care fund,~~  
43 ~~established pursuant to section ninety-seven-aaa of the state finance~~  
44 ~~law.]~~

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

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

48 (b) the reinstatement of the employee to the same position held before  
49 the retaliatory [~~personnel~~] action, or to an equivalent position, or  
50 front pay in lieu thereof;

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

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

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

1 (f) a civil penalty of an amount not to exceed ten thousand dollars;  
2 and/or

3 (g) the payment by the employer of punitive damages, if the violation  
4 was willful, malicious or wanton.

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

9 7. Existing rights. Nothing in this section shall be deemed to dimin-  
10 ish the rights, privileges, or remedies of any employee under any other  
11 law or regulation or under any collective bargaining agreement or  
12 employment contract.

13 8. Publication. Every employer shall inform employees of their  
14 protections, rights and obligations under this section, by posting a  
15 notice thereof. Such notices shall be posted conspicuously in easily  
16 accessible and well-lighted places customarily frequented by employees  
17 and applicants for employment.

18 § 2. Subdivision 4 of section 741 of the labor law, as added by chap-  
19 ter 24 of the laws of 2002, is amended and a new subdivision 6 is added  
20 to read as follows:

21 4. Enforcement. A health care employee may seek enforcement of this  
22 section pursuant to [~~paragraph (d) of subdivision~~] subdivisions four and  
23 five of section seven hundred forty of this article.

24 6. Publication. Every employer shall inform employees of their  
25 protections, rights and obligations under this section by posting a  
26 notice thereof. Such notices shall be posted conspicuously in easily  
27 accessible and well-lighted places customarily frequented by employees  
28 and applicants for employment.

29 § 3. This act shall take effect on the ninetieth day after it shall  
30 have become a law; provided, however, that effective immediately, the  
31 addition, amendment and/or repeal of any rule or regulation necessary  
32 for the implementation of this act on its effective date are authorized  
33 to be made by the commissioner of labor of the state of New York on or  
34 before such effective date.