

# STATE OF NEW YORK

4394

2021-2022 Regular Sessions

## IN SENATE

February 4, 2021

Introduced by Sens. RAMOS, BIAGGI, GOUNARDES, JACKSON, KAMINSKY, LIU --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Labor

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 Assem-  
bly, 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;

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

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

LBD00031-01-1

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

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

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

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

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

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

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