STATE OF NEW YORK

3603

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the civil service law, in relation to protection of employees against retaliatory action by employers

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

Section 1. Section 740 of the labor law, as amended by chapter 522 of the laws of 2021, is amended to read as follows:

§ 740. Retaliatory action by employers; prohibition. 1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

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

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

(c) "Law, rule or regulation" includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; [~~or~~] (iii) **any internal rule promulgated by the employer pursuant to any statute or ordinance; or (iv)** any judicial or administrative decision, ruling or order.

(d) "Public body" includes the following:

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

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

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

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

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

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

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

(e) "Retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

(f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of [~~the affected~~] an employee; or who has [~~managerial~~] authority to take corrective action regarding the [~~violation of the law, rule or regulation~~] improper business activity of which the employee complains.

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

(h) "Improper business activity" means any practice, procedure, action or failure to act by an employer, or an employee or agent of such employer, taken in the course of the employer's business, whether or not within the scope of employment or agency, which is in violation of any law, rule or regulation.

2. Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor [~~or to a~~]~~,~~ agent, internal agency, or to the public [~~body~~] information about an improper business activity[~~, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety~~];

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such [~~activity, policy or practice by such employer~~] improper business activity; or

(c) objects to, or refuses to participate in any [~~such~~] improper business activity[~~, policy or practice~~].

3. Application. The protection against retaliatory action provided by [~~paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be~~

~~required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice~~] **subdivision two of this section shall apply to any employee who in good faith reasonably believes that an improper business activity has occurred or will occur, based on information that the employee in good faith reasonably believes to be true**.

4. Violation; remedy. (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.

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

(c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

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

(a) [~~an injunction to restrain continued violation of this section; (b)~~] the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;

[~~(c)~~] **(b)** the reinstatement of full fringe benefits and seniority rights;

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

[~~(e)~~] **(d) compensatory damages for economic loss;**

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

(f) **an injunction to restrain the employer's continued violation of this section with respect to the employee;**

(g) a civil penalty of an amount not to exceed [~~ten~~] **thirty** thousand dollars **if the court, in its discretion, finds that the employer acted in bad faith in the retaliatory action**; and/or

[~~(g)~~] **(h)** the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

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

~~7.~~] Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

[~~8.~~] 7. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

§ 2. Section 741 of the labor law, as added by chapter 24 of the laws of 2002, subdivisions 1, 2 and 3 as amended by chapter 117 of the laws of 2020, subdivision 4 as amended and subdivision 6 as added by chapter 522 of the laws of 2021, is amended to read as follows:

§ 741. Prohibition; health care employer who penalizes employees because of complaints of employer violations. 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 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.

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

(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.

(i) "Law, rule or regulation" includes:

(1) any duly enacted federal, state or local statute or ordinance;

(2) any rule or regulation promulgated pursuant to any statute or ordinance;

(3) any internal rule promulgated by the employer pursuant to any statute or ordinance; or

(4) any judicial or administrative decision, ruling or order.

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, **agent 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[~~.~~]**; or**

(c) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation or action described in subparagraph (i) of paragraph (a) of subdivision two of section seventy-five-b of the civil service law.

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.~~

~~4. Enforcement. A health care employee may seek enforcement of this section pursuant to subdivisions four and five of section seven hundred forty of this article.~~

~~5.~~] Relief. In any court action brought pursuant to this section it shall be a defense that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section.

[~~6.~~] **4.** Publication. Every employer shall inform employees of their protections, rights and obligations under this section by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

§ 3. Subdivision 2 of section 75-b of the civil service law, as added by chapter 660 of the laws of 1984 and paragraph (a) as amended by chapter 899 of the laws of 1986, is amended to read as follows:

2. (a) A public employer shall not dismiss**, suspend, demote, penalize or discriminate against,** or take other disciplinary or other [~~**adverse personnel action**~~] **act of reprisal** against a public employee regarding the employee's employment because the employee**:**

(i) discloses **or threatens to disclose** to a **supervisor,** governmental body [~~**information:(i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which the employee reasonably believes to be true and reasonably believes**~~]**, agency or to the public any conduct which** constitutes an improper governmental action. [~~**"Improper governmental action" shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent's official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.**~~]

(ii) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any improper governmental action; or

(iii) objects to, or refuses to participate in, any improper governmental action.

The protection against retaliatory personnel action provided in paragraph (a) of this subdivision shall apply to any employee who in good faith reasonably believes that a violation or improper governmental action has occurred or will occur, based on information that the employee in good faith reasonably believes to be true.

(b)(i) "Improper governmental action" shall mean any practice, procedure, action or failure to act by a public employer or employee, or an agent of such employer or employee, whether or not such action is within the scope of such person's employment, which is in violation of any law, rule or regulation.

(ii) "Law, rule or regulation" includes: (A) any duly enacted federal, state or local statute or ordinance; (B) any rule or regulation promulgated pursuant to any such statute or ordinance; or (C) any judicial or administrative decision, ruling or order.

§ 4. Paragraph (c) of subdivision 3 of section 75-b of the civil service law, as added by chapter 660 of the laws of 1984, is amended to read as follows:

(c) [~~**Where**~~] **In addition to or in lieu of the procedures set forth in paragraphs (a) and (b) of this subdivision, or where** an employee is not subject to any of the provisions of [~~**paragraph (a) or (b) of this subdivision**~~] **such paragraphs**, the employee may commence an action in a court of competent jurisdiction under the same terms and conditions **and for the same relief** as set forth in article twenty-C of the labor law.

§ 5. Section 75-b of the civil service law is amended by adding a new subdivision 5 to read as follows:

5. Every public employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and highly visible areas frequently visited by employees and applicants for employment.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law.