

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 165

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO PUBLIC EMPLOYMENT; ENACTING THE WHISTLEBLOWER
PROTECTION ACT; PROHIBITING PUBLIC EMPLOYER RETALIATORY ACTION
AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES; CREATING A
RIGHT TO CIVIL ACTION FOR DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Whistleblower Protection Act".

Section 2. DEFINITIONS.--As used in the Whistleblower
Protection Act:

A. "good faith" means that a reasonable basis
exists in fact as evidenced by the facts available to the
public employee;

B. "public employee" means a person who works for
or contracts with a public employer;

.181454.1

underscoring material = new
[bracketed material] = delete

1 C. "public employer" means:

2 (1) any department, agency, office,
3 institution, board, commission, committee, branch or district
4 of state government;

5 (2) any political subdivision of the state,
6 created under either general or special act, that receives or
7 expends public money from whatever source derived;

8 (3) any entity or instrumentality of the state
9 specifically provided for by law; and

10 (4) every office or officer of any entity
11 listed in Paragraphs (1) through (3) of this subsection;

12 D. "retaliatory action" means taking any
13 discriminatory or adverse employment action against a public
14 employee in the terms and conditions of public employment; and

15 E. "unlawful or improper act" means a practice,
16 procedure, action or failure to act on the part of a public
17 employer that:

18 (1) violates a federal law, a federal
19 regulation, a state law, a state administrative rule or a law
20 of any political subdivision of the state;

21 (2) constitutes malfeasance in public office;
22 or

23 (3) constitutes gross mismanagement, a waste
24 of funds, an abuse of authority or a substantial and specific
25 danger to the public.

.181454.1

1 Section 3. PUBLIC EMPLOYER RETALIATORY ACTION

2 PROHIBITED.--A public employer shall not take any retaliatory
3 action against a public employee because the public employee:

4 A. communicates to the public employer or a third
5 party information about an action or a failure to act that the
6 public employee believes in good faith constitutes an unlawful
7 or improper act;

8 B. provides information to, or testifies before, a
9 public body as part of an investigation, hearing or inquiry
10 into an unlawful or improper act; or

11 C. objects to or refuses to participate in an
12 activity, policy or practice that constitutes an unlawful or
13 improper act.

14 Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES--AFFIRMATIVE
15 DEFENSES--REMEDY NOT EXCLUSIVE.--

16 A. A public employer that violates the provisions
17 of the Whistleblower Protection Act shall be liable to the
18 public employee for actual damages, reinstatement with the same
19 seniority status that the employee would have had but for the
20 violation, two times the amount of back pay with interest on
21 the back pay and compensation for any special damage sustained
22 as a result of the violation. In addition, an employer shall
23 be required to pay the litigation costs and reasonable attorney
24 fees of the employee. An employee may bring an action pursuant
25 to this section in any court of competent jurisdiction.

.181454.1

1 B. It shall be an affirmative defense to a civil
2 action brought pursuant to this section that the action taken
3 by a public employer against a public employee was due to the
4 employee's misconduct, the employee's poor job performance, a
5 reduction in work force or other legitimate business purpose
6 unrelated to conduct prohibited pursuant to the Whistleblower
7 Protection Act and that retaliatory action was not a motivating
8 factor.

9 C. The remedies provided for in the Whistleblower
10 Protection Act are not exclusive and shall be in addition to
11 any other remedies provided for in any other law or available
12 under common law.

13 D. Nothing in the Whistleblower Protection Act
14 precludes civil actions or criminal sanctions for libel,
15 slander or other civil or criminal claims against a person who
16 files a false claim under that act.

17 Section 5. POSTING OF LAW AND INFORMATION.--Every public
18 employer shall keep posted in a conspicuous place on the public
19 employer's premises notices prepared by the employer that set
20 forth the provisions of the Whistleblower Protection Act.

21 Section 6. LIMITATION ON ACTIONS.--A civil action
22 pursuant to the Whistleblower Protection Act shall be forever
23 barred unless the action is filed within two years from the
24 date on which the retaliatory action occurred.

25 Section 7. APPLICABILITY.--The provisions of this act
.181454.1

1 apply only to civil actions for damages resulting from
2 retaliatory action that occurred on or after July 1, 2008.

3 - 5 -
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscoring material = new
~~[bracketed material] = delete~~