

1 HOUSE BILL 532

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Larry A. Larrañaga

5  
6  
7  
8  
9  
10 AN ACT

11 RELATING TO PUBLIC EMPLOYMENT; AMENDING THE WHISTLEBLOWER  
12 PROTECTION ACT; REPEALING THE POSTING REQUIREMENT OF THAT ACT.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 10-16C-1 NMSA 1978 (being Laws 2010,  
16 Chapter 12, Section 1) is amended to read:

17 "10-16C-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article  
18 16C NMSA 1978 may be cited as the "Whistleblower Protection  
19 Act"."

20 SECTION 2. Section 10-16C-2 NMSA 1978 (being Laws 2010,  
21 Chapter 12, Section 2) is amended to read:

22 "10-16C-2. DEFINITIONS.--As used in the Whistleblower  
23 Protection Act:

24 [~~A. "good faith" means that a reasonable basis~~  
25 ~~exists in fact as evidenced by the facts available to the~~

.200284.1

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 ~~public employee;~~

2           ~~B.~~ A. "public employee" means a person who works  
3 for ~~[or contracts with]~~ a public employer;

4           ~~E.~~ B. "public employer" means:

5                   (1) any department, agency, office,  
6 institution, board, commission, committee, branch or district  
7 of state government;

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

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

13                   (4) every office ~~[or officer]~~ of any entity  
14 listed in Paragraphs (1) through (3) of this subsection;

15           ~~D.~~ C. "retaliatory action" means taking any  
16 ~~[discriminatory or adverse employment]~~ action against a public  
17 employee ~~[in the terms and conditions of public employment]~~  
18 that results in the suspension, demotion or dismissal of the  
19 public employee; and

20           ~~E.~~ D. "unlawful or ~~[improper]~~ unethical act"  
21 means a practice, procedure, action or failure to act on the  
22 part of a public employer that ~~[+]~~ violates the Governmental  
23 Conduct Act, the Code of Judicial Conduct, a federal law, a  
24 federal regulation, ~~[a]~~ other state law, a state administrative  
25 rule or a law or ordinance of any political subdivision of the

.200284.1

underscored material = new  
[bracketed material] = delete

1 state [~~(2) constitutes malfeasance in public office; or (3)~~  
2 ~~constitutes gross mismanagement, a waste of funds, an abuse of~~  
3 ~~authority or a substantial and specific danger to the public]."~~

4 SECTION 3. Section 10-16C-3 NMSA 1978 (being Laws 2010,  
5 Chapter 12, Section 3) is amended to read:

6 "10-16C-3. PUBLIC EMPLOYER RETALIATORY ACTION  
7 PROHIBITED.--

8 A. A public employer shall not take any retaliatory  
9 action against a public employee because the public employee:

10 [~~A.~~] (1) communicates to the public employer  
11 or [~~a third party information about an action or a failure to~~  
12 ~~act that the public employee believes in good faith constitutes~~  
13 ~~an unlawful or improper act]~~ to the media information about the  
14 public employer's unlawful or unethical action or unlawful or  
15 unethical failure to act or makes a report to law enforcement  
16 with jurisdiction to investigate the unlawful or unethical act.  
17 Anonymous reports shall not be considered communication for  
18 purposes of the Whistleblower Protection Act;

19 [~~B.~~] (2) provides information to, or testifies  
20 before, a public body as part of an investigation, hearing or  
21 inquiry into an unlawful or [~~improper~~] unethical act; or

22 [~~C.~~] (3) objects to or refuses to participate  
23 in an [~~activity, policy or practice~~] action that constitutes an  
24 unlawful or [~~improper~~] unethical act.

25 B. Communication of information shall not

.200284.1

underscored material = new  
[bracketed material] = delete

1 constitute whistleblowing if providing the information is part  
2 of the public employee's job duties."

3 SECTION 4. Section 10-16C-4 NMSA 1978 (being Laws 2010,  
4 Chapter 12, Section 4) is amended to read:

5 "10-16C-4. RIGHT TO CIVIL ACTION FOR DAMAGES--AFFIRMATIVE  
6 DEFENSES--REMEDY NOT EXCLUSIVE.--

7 A. A public employer that violates the provisions  
8 of the Whistleblower Protection Act shall be liable to the  
9 public employee for actual damages, reinstatement with the same  
10 seniority status that the employee would have had but for the  
11 violation, two times the amount of back pay with interest on  
12 the back pay and compensation for any special damage sustained  
13 as a result of the violation. In addition, an employer shall  
14 be required to pay the litigation costs and reasonable attorney  
15 fees of the employee. ~~[An employee may bring an action~~  
16 ~~pursuant to this section in any court of competent~~  
17 ~~jurisdiction.]~~ Any litigation costs and attorney fees incurred  
18 after a written offer of settlement has been made shall be  
19 barred unless the public employee receives an award greater  
20 than the offer of settlement. Litigation costs and attorney  
21 fees shall not be included in determining whether the award  
22 exceeds the offer.

23 B. It shall be an affirmative defense to a civil  
24 action brought pursuant to this section that the action taken  
25 by a public employer against a public employee was due to the

.200284.1

underscored material = new  
[bracketed material] = delete

1 employee's misconduct, the employee's poor job performance, a  
2 reduction in work force or other legitimate business purpose  
3 [~~unrelated to conduct prohibited pursuant to the Whistleblower~~  
4 ~~Protection Act and that retaliatory action was not a motivating~~  
5 ~~factor~~]. The ultimate burden shall remain with the public  
6 employee to demonstrate that but for the public employee's  
7 actions pursuant to Subsection A of Section 10-16C-3 NMSA 1978,  
8 the public employee would not have been dismissed from the  
9 public employee's position.

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

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

18 **SECTION 5.** Section 10-16C-6 NMSA 1978 (being Laws 2010,  
19 Chapter 12, Section 6) is amended to read:

20 "10-16C-6. LIMITATION ON ACTIONS--REMEDIES.--

21 A. A civil action pursuant to the Whistleblower  
22 Protection Act shall be forever barred unless the action is  
23 filed within two years from the date on which the retaliatory  
24 action occurred. A public employee's back pay shall not accrue  
25 until an action is filed.

.200284.1

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

1                    B. The remedies provided for in the Whistleblower  
2 Protection Act shall not be available to a public employee  
3 unless the public employee has first exhausted all available  
4 grievance and other administrative remedies."

5                    SECTION 6. REPEAL.--Section 10-16C-5 NMSA 1978 (being  
6 Laws 2010, Chapter 12, Section 5) is repealed.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25