HOUSE BILL 532

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

INTRODUCED BY

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AN ACT

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

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

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

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

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

"10-16C-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 a public employer;

E. "public employer" means:

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

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

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

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

C. "retaliatory action" means taking any [disciplinary or adverse employment] action against a public employee [in the terms and conditions of public employment] that results in the suspension, demotion or dismissal of the public employee; and

D. "unlawful or improper unethical act" means a practice, procedure, action or failure to act on the part of a public employer that violates the Governmental Conduct Act, the Code of Judicial Conduct, a federal law, a federal regulation, [a] other state law, a state administrative rule or a law or ordinance of any political subdivision of the state.
state [(2) constitutes malfeasance in public office; or (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public]."

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

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

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

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

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

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

B. Communication of information shall not
constitute whistleblowing if providing the information is part
of the public employee's job duties."

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

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

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

B. It shall be an affirmative defense to a civil
action brought pursuant to this section that the action taken
by a public employer against a public employee was due to the
employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose [unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor]. The ultimate burden shall remain with the public employee to demonstrate that but for the public employee's actions pursuant to Subsection A of Section 10-16C-3 NMSA 1978, the public employee would not have been dismissed from the public employee's position.

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

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

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

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

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

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

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