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HOUSE BILL 165

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

INTRODUCED BY

Joseph Cervantes

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 a public employer;

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- 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 an adverse

13 employment action against a public employee in the terms and

14 conditions of public employment; and

15 E. "unlawful or improper act" means an action or

16 failure to act on the part of a public employer that:

- 17 (1) violates any regulation or rule;
- 18 (2) constitutes malfeasance in public office;
- 19 or
- 20 (3) constitutes gross mismanagement, a gross
- 21 waste of funds, an abuse of authority or a substantial and
- 22 specific danger to public safety.

23 Section 3. PUBLIC EMPLOYER RETALIATORY ACTION

24 PROHIBITED.--A public employer shall not take any retaliatory

25 action against a public employee because the public employee:

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1 A. discloses, in good faith, a public employer's
2 unlawful or improper act;

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

6 C. objects to or refuses to participate in an
7 activity, policy or practice that constitutes an unlawful or
8 improper act.

9 Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES--AFFIRMATIVE
10 DEFENSES--REMEDY NOT EXCLUSIVE.--

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

21 B. It shall be an affirmative defense to a civil
22 action brought pursuant to this section that the action taken
23 by a public employer against a public employee was due to the
24 employee's misconduct, the employee's poor job performance, a
25 reduction in work force or other legitimate business purpose

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1 unrelated to conduct prohibited pursuant to the Whistleblower
2 Protection Act and that retaliatory action was not a motivating
3 factor.

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

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

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

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

20 Section 7. APPLICABILITY.--The provisions of this act
21 apply only to civil actions for damages resulting from
22 retaliatory action that occurred on or after July 1, 2008.