

1 SENATE BILL 299

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Jacob R. Candelaria

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10 AN ACT

11 RELATING TO WHISTLEBLOWER PROTECTION; CHANGING DEFINITIONS IN  
12 THE WHISTLEBLOWER PROTECTION ACT; CHANGING TO WHOM PUBLIC  
13 EMPLOYEES MAY REPORT UNLAWFUL OR IMPROPER ACTS; CHANGING  
14 REMEDIES AND AFFIRMATIVE DEFENSES; REQUIRING EXHAUSTION OF  
15 ADMINISTRATIVE REMEDIES BEFORE WHISTLEBLOWER PROTECTION ACT  
16 REMEDIES ARE AVAILABLE.

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

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

21 "10-16C-1. SHORT TITLE.--~~[This act]~~ Chapter 10, Article  
22 16C NMSA 1978 may be cited as the "Whistleblower Protection  
23 Act"."

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

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1 "10-16C-2. DEFINITIONS.--As used in the Whistleblower  
2 Protection Act:

3 A. "good faith" means that [~~a~~] an objectively  
4 reasonable basis exists in fact as evidenced by the facts  
5 available to the public employee;

6 B. "public employee" means a person who works for  
7 [~~or contracts with~~] a public employer;

8 C. "public employer" means:

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

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

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

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

19 D. "retaliatory action" means taking any  
20 discriminatory or adverse employment action against a public  
21 employee that results in a tangible or significant change in  
22 the public employee's terms and conditions of public  
23 employment; and

24 E. "unlawful or improper act" means a practice,  
25 procedure, action or failure to act on the part of a public

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1 employer that:

2 (1) violates a federal law, a federal  
3 regulation, a state law, a state administrative rule or a law  
4 of any political subdivision of the state;

5 [~~(2) constitutes malfeasance in public~~  
6 ~~office;~~] or

7 [~~(3)~~] (2) constitutes gross mismanagement, a  
8 gross waste of funds [~~an abuse of authority~~] or a substantial  
9 and specific danger to the public."

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

12 "10-16C-3. PUBLIC EMPLOYER RETALIATORY ACTION  
13 PROHIBITED.--A public employer shall not take any retaliatory  
14 action against a public employee because the public employee:

15 A. communicates to [~~the public employer or a third~~  
16 ~~party~~] an individual or entity in a position to further the  
17 public interest information about an action or a failure to act  
18 that the public employee believes in good faith constitutes an  
19 unlawful or improper act;

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

23 C. objects to or refuses to participate in an  
24 activity, policy or practice that constitutes an unlawful or  
25 improper act."

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

3           "10-16C-4. RIGHT TO CIVIL ACTION FOR DAMAGES--  
4 AFFIRMATIVE DEFENSES--REMEDY NOT EXCLUSIVE.--

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

19           B. It shall be an affirmative defense to a civil  
20 action brought pursuant to this section that the action taken  
21 by a public employer against a public employee was due to the  
22 employee's misconduct, the employee's poor job performance, a  
23 reduction in [~~work force~~] workforce or other legitimate  
24 business purpose unrelated to conduct prohibited pursuant to  
25 the Whistleblower Protection Act and that retaliatory action

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1 was not [a] the motivating factor.

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

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

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

12 "10-16C-6. LIMITATION ON ACTIONS.--

13 A. A civil action pursuant to the Whistleblower  
14 Protection Act shall be forever barred unless the action is  
15 filed within two years from the date on which the retaliatory  
16 action occurred.

17 B. The remedies provided for in the Whistleblower  
18 Protection Act shall not be available unless the public  
19 employee has first exhausted all available grievance and other  
20 administrative remedies as provided in Section 28-1-10 NMSA  
21 1978."