



Raised Bill 263
Public Hearing: 3-5-14

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 5, 2014

RE: SUPPORT OF SB263, AAC THE EXTENSION OF WHISTLE-BLOWER PROTECTIONS TO AN EMPLOYEE WHO REPORTS A SUSPECTED VIOLATION OF LAW TO THE EMPLOYEE'S SUPERVISOR OR MANAGER

The Connecticut Trial Lawyers Association strongly supports the modifications of Connecticut's Whistleblower Statute, which is currently codified as Conn. Gen. Stat. §31-51m. The statute proposes three changes: (1) It increases the statute of limitations from 90 days to 180 days; (2) It provides coverage to individuals who speak out on violations or suspected violations of state or federal law when they raise the issues with their supervisors or managers; (3) It broadens the remedies to include noneconomic damages and future lost earnings.

I. There is Currently No Protection Against Retaliation For Employees Who Make Internal Reports to Their Employers of Violations of State and Federal Law

RB 263 extends the protection against retaliation for whistleblowers to employees report violations or suspected violations of law to their supervisors or managers. Under current law, Conn. Gen. Stat. §31-51m only applies to individuals who have reported their employers violations of law to a "public body." In other words the employee had to have actually complained to a state, federal or local agency to get whistleblower protection.

As currently written, Connecticut's whistle blower statute has very limited practical application. Most employees who lose their job for reporting potential legal violations never get to the point of reporting the illegal conduct to a public body. In over twenty year of representing employees in workplace disputes, , I have seen employees claiming to be fired for internal reports of illegal conduct literally hundreds of times, and I can count on two hands the number of employees who have actually gone to an outside agency and suffered retaliation.

There is currently no other protection against retaliation for employees who make an internal complaint about illegal conduct. Employees who spoke out to public employees on matters of public policy used to be protected under Connecticut's free speech statute, Conn. Gen. Stat. §31-51q. Two recent decisions by the Connecticut Supreme Court¹ have effectively eliminated this protection.

Although Connecticut courts have recognized a tort claim for wrongful discharge in violation of public policy,² employees suffer retaliation as a result of internal reports of illegal conduct to their employees are also precluded from bringing a common law wrongful discharge claim. Several Supreme

¹ *Perez-Dickson v. City of Bridgeport*, 304 Conn. 483; 43 A. 2d 69 (2012); *Schumann v. Dianon Systems, Inc.*, 304 Conn. 585, 43 A. 3d 111(2012).

² *Sheets v. Teddy's Frosted Foods, Inc.*, 179 Conn. 471, 427 A.2d 385 (1980)

and Appellate Court decisions have held that an employee who makes an internal complaint to his manager or supervisor is precluded from bringing a wrongful discharge claim on the basis of public policy against whistleblowers because of the availability of the statutory remedy of Conn. Gen. Stat. §31-51m. **Employees who make an internal complaint to their employer about illegal conduct have no current protection. They are precluded from bringing a wrongful discharge claim because of the existence Conn. Gen. Stat. §31-51m; But they also cannot bring a claim under the statute because they have not fulfilled the necessary element of making a report to a state or federal agency³**

Employees should be encouraged to make any initial report of illegal conduct internally to their employers. Companies should similarly be encouraged to exercise responsible governance without the necessity of outside reporting. On the other hand, employees should not lose their job for truthfully reporting illegal or suspected illegal conduct to their employers. Whistleblower protection should not be limited to reports to public agencies. This bill addresses the gap in coverage that currently exists under Connecticut law.

I would also note although we were the initial draftsmen of this statute. A definition of "Supervisor and Manager" has since been added to the original bill that we proposed. Often companies have policies or procedures in place about how and where to report illegal or unethical conduct. They make an internal complaint to their employer, and get fired. And that is the right thing to do. Employees should report and try to rectify illegal or unethical conduct internally before going to outside agencies.

The intent of this modification of RB 263 is to broadly cover any type of reporting of illegal conduct, not just to the employee's immediate supervisor or manager, but to any hotline, human resources department, compliance supervisor or manager, financial supervisor or manager, legal department, health or safety supervisor or manager who would be involved in processing such complaints and monitoring compliance.

II. Extension of the Statute of Limitations Makes the Statute of Limitations Allows Adequate Time to Investigate Initial Complaints, and Gives Whistleblowers the Same Amount of Time to file as Victims of Discrimination

The 180 day statute of limitations gives whistleblowers the same amount of time to file their claim as individuals who claim to be victims of discrimination. There is no rational reason to give whistleblowers less time to file their complaints than victims of discrimination. In addition, I know of or have read a number of decisions where potential whistleblower claims have been time barred. These cases often can be legally and factually complex, and require investigation prior to filing suit. The longer statute of limitations will permit counsel time to weed out the meritorious cases from frivolous ones.

III. Modifications of the Damages Provisions Makes the Relief Provided Comparable to Other Statutory Causes of Action

The proposal also includes providing a remedy for future lost earnings and noneconomic damages. The intent of including non-economic damages is to permit, in appropriate cases, awards for emotional distress damages and punitive damages. This makes the relief allowed in this whistleblower statute commensurate with the relief permitted in other protections against retaliation, such as the anti-discrimination statutes, the free speech statute, drug testing, worker's compensation, and Family and Medical Leave. Again, there is no rational reason to distinguish whistleblowers who suffer retaliation from these other protections. These broader remedies are important because the broader damages make a

³ *Burnham v. Karl & Gelb, P.C.*, 252 Conn. 153, 161-162 (2000); *Campbell v. Town of Plymouth*, 74 Conn. App. 67 (2002); *King v. Connection, Inc.*, 2011 Conn. Super. LEXIS 1629 (Conn. Super. 2011); *Perssico v. Emiliani Enters.*, 2010 Conn. Super. LEXIS 1557, 21-23 (Conn. Super. 2010).

claim under the statute more viable for low wage earners. If there remedies are limited to back pay, as is currently the case, it generally does not make economic sense for low wage earners to pursue these claims.

For example, I recently represented a woman in a whistleblower case who worked for a fast food chain. She was a single mother; she made \$8.50 per hour, and received no benefits. She had asthma and had to work during repairs to the roof that was left uncovered and exposed her, her co-workers, and customers to dust and other materials that were being blown into the restaurant by the air conditioning unit. She complained to her manager, and nothing was done. She reported it to the local department of health, and they inspected and cited the restaurant. My client was fired the same day as the inspection. We filed suit and were able to obtain a reasonable recovery that helped her out during difficult circumstances. But it was only because we were able to bring other claims that included damages for emotional distress that she was able to obtain a favorable outcome. In employment claims, damages for emotional distress are the great equalizer in bridging the gap. The protection afforded to whistleblowers should apply to all wage earners, not just highly-compensated individuals.

Respectfully Submitted,

Lewis Chimes
Chairperson of the Connecticut Trial Lawyers
Employment Section