



House of Representatives

General Assembly

File No. 405

February Session, 2016

House Bill No. 5402

House of Representatives, April 4, 2016

The Committee on Judiciary reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE EXTENSION OF WHISTLE-BLOWER PROTECTIONS TO AN EMPLOYEE WHO REPORTS A SUSPECTED VIOLATION OF LAW TO THE EMPLOYEE'S SUPERVISOR OR MANAGER.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-51m of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) As used in this section:

4 (1) "Person" means one or more individuals, partnerships,
5 associations, corporations, limited liability companies, business trusts,
6 legal representatives or any organized group of persons;

7 (2) "Employer" means a person engaged in business who has
8 employees, including the state and any political subdivision of the
9 state;

10 (3) "Employee" means any person engaged in service to an employer

11 in a business of his employer;

12 (4) "Public body" means (A) any public agency, as defined in
13 subdivision (1) of section 1-200, or any employee, member or officer
14 thereof, or (B) any federal agency or any employee, member or officer
15 thereof; and

16 (5) "Supervisor" or "manager" means any person who (A) directs or
17 controls the daily activities of an employee, or (B) solely or in part is
18 responsible for decisions involving employee compensation or other
19 material terms and conditions of employment.

20 (b) No employer shall discharge, discipline or otherwise penalize
21 any employee because (1) the employee, or a person acting on behalf of
22 the employee, reports, verbally or in writing, a violation or a suspected
23 violation of any state or federal law or regulation or any municipal
24 ordinance or regulation to a public body or to any supervisor or
25 manager of the employee, (2) the employee is requested by a public
26 body or any supervisor or manager of the employer to participate in an
27 investigation, hearing or inquiry held by [that] the public body or
28 employer, or a court action, or (3) the employee reports a suspected
29 incident of child abuse or neglect pursuant to sections 17a-101a to 17a-
30 101d, inclusive, or 17a-103. No municipal employer shall discharge,
31 discipline or otherwise penalize any employee because the employee,
32 or a person acting on behalf of the employee, reports, verbally or in
33 writing, to a public body concerning the unethical practices,
34 mismanagement or abuse of authority by such employer. The
35 provisions of this subsection shall not be applicable when the
36 employee knows that such report is false.

37 (c) Any employee who is discharged, disciplined or otherwise
38 penalized by his employer in violation of the provisions of subsection
39 (b) may, after exhausting all available administrative remedies, bring a
40 civil action, within [ninety] one hundred eighty days of the date of the
41 final administrative determination or within [ninety] one hundred
42 eighty days of such violation, whichever is later, in the superior court
43 for the judicial district where the violation is alleged to have occurred

44 or where the employer has its principal office, for (1) the reinstatement
 45 of [his] the employee's previous job, (2) payment of back wages and
 46 reestablishment of employee benefits to which [he] the employee
 47 would have otherwise been entitled if such violation had not occurred,
 48 (3) noneconomic damages, (4) the removal of any discipline or penalty
 49 imposed upon the employee, and (5) future economic damages
 50 attributable to a reduction in the employee's wages in the event that
 51 reinstatement of the employee's previous job is not feasible or
 52 impracticable. An employee's recovery from any such action shall be
 53 limited to such items, [provided the] except that the court may allow
 54 [to] the prevailing [party his] party's costs, together with reasonable
 55 attorney's fees to be taxed by the court. Any employee found to have
 56 knowingly made a false report shall be subject to disciplinary action by
 57 his or her employer up to and including dismissal.

58 (d) This section shall not be construed to diminish or impair the
 59 rights of a person under any collective bargaining agreement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	31-51m

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

Existing law prohibits a private or public sector employer from discharging, disciplining, or otherwise penalizing an employee for (1) reporting suspected illegal conduct to a public body or (2) participating in an investigation or similar proceeding on request of a public body. The bill extends these provisions to employees who make such reports to their supervisors or managers.

As any increase in caseload is anticipated to be minimal, there is no fiscal impact to the Commission on Human Rights and Opportunities (CHRO).

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5402*****AN ACT CONCERNING THE EXTENSION OF WHISTLE-BLOWER PROTECTIONS TO AN EMPLOYEE WHO REPORTS A SUSPECTED VIOLATION OF LAW TO THE EMPLOYEE'S SUPERVISOR OR MANAGER.*****SUMMARY:**

Existing law prohibits a private or public sector employer from discharging, disciplining, or otherwise penalizing an employee for (1) reporting suspected illegal conduct to a public body or (2) participating in an investigation or similar proceeding on request of a public body (see BACKGROUND). The prohibition also applies if someone makes such a report on an employee's behalf.

This bill extends these provisions to employees who (1) make such reports to their supervisors or managers (either directly or through a third party) or (2) participate in the employer's or a public body's investigation or similar proceeding on request of a supervisor or manager or the public body. A "supervisor" or "manager" is someone who (1) directs or controls an employee's daily activities or (2) is at least partly responsible for decisions on employee compensation or other material terms and conditions of employment.

The bill also extends the time an employee has to bring a civil action against the employer under this law and adds to the possible remedies available to aggrieved employees in such a lawsuit.

EFFECTIVE DATE: October 1, 2016

LAWSUITS CHALLENGING EMPLOYER RETALIATION

By law, an employee penalized in violation of these provisions may bring a civil action against the employer after exhausting all available administrative remedies. Under current law, the employee must file

the case within 90 days of the violation or final administrative decision, whichever is later. The bill extends this to 180 days.

Current law allows the court to (1) order the employer to reinstate the employee, pay back wages, and reestablish benefits and (2) award the prevailing party costs and reasonable attorney’s fees. The bill also allows the court to order (1) noneconomic damages, (2) the removal of any discipline or penalty imposed on the employee, and (3) future economic damages due to a wage reduction if reinstatement of the employee’s previous job is not feasible or practicable.

By law, employers may dismiss or discipline employees found to have knowingly made a false report of illegal conduct.

BACKGROUND

Prohibition on Retaliation for Whistleblowing

Under existing law, employers are prohibited from discharging, disciplining, or otherwise penalizing an employee because the employee or someone acting on his or her behalf reports, to a public body, a violation or suspected violation of federal or state law or regulation, or a municipal ordinance or regulation. Employers are also prohibited from penalizing the employee because a public body requests him or her to participate in one of its investigations, hearings or inquiries, or a court action.

Other provisions of this law prohibit (1) an employer from penalizing an employee for reporting suspected child abuse or neglect and (2) municipal employers from penalizing an employee because he or she reported the employer’s unethical practices, mismanagement, or abuse of authority to a public body. (The bill does not extend these other provisions to reports made to supervisors or managers.)

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 37 Nay 3 (03/16/2016)