Connecticut Employer Lawyers Association
Connecticut Advocates for Employee Rights
www.ctnela.org
connecticutnela@gmail.com

2015-2016 Executive Board:

Nicole Rothgeb, President
Amanda DeMatteis, Vice President
Stephanie Dellolio, Treasurer
Maria Garcia-Quintner, Treasurer-Elect
Carolyn Naylor Flynn, Secretary

February 29, 2016

Good morning Senators Coleman and Kissel, Representatives Tong and Rebimbas and members of the committee.

My name is Deborah McKenna. I am an attorney at The Hayber Law Firm in New Haven, CT and I practice in the area of plaintiff's side employment law. I am testifying today on behalf of the Connecticut Employment Lawyer's Association (known as CELA) in support of **Raised Bill No. 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."**

CELA is a voluntary membership organization whose members are attorneys from throughout Connecticut who devote at least 51% or more of their employment related practice to representing employees. As such, CELA attorneys represent individual employees in all types of employment related matters including, but not limited to, discrimination, wrongful termination, and claims involving state and federal FMLA and related leave of absence issues as well as whistleblower claims.

CELA supports this *Raised Bill 5402* for the following reasons. If passed, it would make three important and necessary changes to Conn. Gen. Stat.§ 31-51m, Connecticut's existing whistleblower law. First, *Raised Bill 5402* expands the type of complaint that is protected by

Conn. Gen. Stat. § 31-51m. Second, *Raised Bill 5402* expands the statute of limitations to bring a claim under this statute. Finally, *Raised Bill 5402* expands the range of potential damages available to an employee who has experienced unlawful retaliation, should a plaintiff prevail on such a claim.

An employee who engages in whistleblowing activities should be protected from discharge, discipline or other penalties when the employee makes a good faith complaint or report about his or her employer's activity that he or she believes may violate the law. *Raised Bill 5402* as proposed, would expand the type of conduct that is protected by Conn. Gen. Stat. §31-51m. Under the current law, an employee who complains or reports (either verbally or in writing) a violation or suspected violation of any state or federal law or regulation or any municipal ordinance or regulation made by his or her employer is engaging in protected activity only when the employee complains or reports to "a public body." With these changes, the law would be expanded to protect employees who make complaints or reports to their supervisor or manager. This is an important and necessary change because many employees raise concerns internally first before turning to an outside entity to report a complaint about their workplace. In doing so, the employee who does complain about suspected or actual unlawful conduct puts himself at risk for retaliation by his or her employer. Right now, there is no protection for many employees who complain internally about a suspected violation by his or her employer. That lack of protection serves as a deterrent that very likely prevents employees from exposing conduct that violates Connecticut law, such a fraudulent behavior. This is exactly the kind of conduct that we as a state should be encouraging – we want our employees, the very individuals who are typically in the best place to witness such violations - to be able to voice their concerns to their supervisors and managers, without fearing that they will lose their jobs, simply for doing

so. By expanding the avenues of complaint in 31-51m, this bill will be consistent with another Connecticut whistleblower law – Conn. Gen. Stat. § 33-1336 – which protects whistleblowers who work at certain publicly traded corporations who complain internally.

Although there have been concerns raised that such an expansion would put employers at risk from employees who would invoke this statute in bad faith, there are sufficient protections for such situations. Under the present law, if an employee makes a report that he or she knows is false, he or she is not entitled to whistleblowing protection. Indeed, subsection (c) explicitly permits an employer to discipline and even fire an employee who knowingly makes a false report.

Second, under Conn. Gen. Stat. § 31-51m, the current time period for an individual to bring a claim is ninety (90) days. If passed, *Raised Bill 5402* would expand the time for filing to one hundred and eighty (180) days and bring this law in line with the minimum time to file found in many other laws designed to protect employees, such as the time to file a complaint of discrimination at the Commission on Human Rights and Opportunities, see Conn. Gen. Stat. § 46a-82(f), the time to file a complaint regarding a violation of the state Family and Medical Leave Act with the Connecticut Department of Labor, see Conn. Regs. §§ 31-51qq-43(c), the time to file a complaint if an employee believes he or she has been discriminated against because he or she was a victim of family violence, see, Conn. Gen. Stat. §31-51ss(h), and the time to file a complaint if an employee believes he or she has been terminated because he or she was a crime victim, see, Conn. Gen. Stat. §54-85b(c). Ninety (90) days is simply not enough time for an employee to learn that he or she may have a legal claim, find an attorney, and file his or her lawsuit. Moreover, the short time frame in not sufficient to permit his or her attorney time to investigate and determine if there is a claim that is worth pursuing in court. In fact, by the time

most individuals even realize that they may have a claim under this statute, the statute of limitations has expired, leaving an employee with no recourse. By expanding this statute, employees will be able to make more informed decisions about proceeding with a potential claim and making this bill consistent with many of our other laws prohibiting illegal discrimination and retaliation.

Finally, *Raised Bill 5402* proposes to expand the potential damages to include, "noneconomic damages, the removal of any discipline or penalty imposed upon the employee; and future economic damages attributable to a reduction in the employee's wages in the event that reinstatement of the employee's previous job is not feasible or impracticable." The expansion of remedies available to employees who have been retaliated against for their whistleblowing activity will make the remedies offered by Conn. Gen. Stat. § 31-51m consistent with the remedies provided by other statutes designed to protect employees who suffer illegal conduct at the hands of their employers, such as the Connecticut Fair Employment Practices Act. It is often difficult for an employee to find subsequent and comparable employment following a termination, particularly in a situation where the employee has subsequently sued his or her employer. Retaliation for engaging in lawful activity – whether it is in the form of unlawful discipline or an illegal termination can certainly cause significant pain and suffering to an individual. Under the present law, there is simply no way to hold the employer responsible for this harm, given the limited range of damages.

Therefore, CELA support the passage of *Raised Bill 5402* and urges the Judiciary Committee to support this bill.