

Pennsylvania Expands Whistleblower Law to Cover Some Private Employers, Nonprofits

Pennsylvania Governor Tom Corbett gave final approval to two bills that drastically expand the scope and enforcement provisions of the Pennsylvania Whistleblower Law. Under the amendments, which take effect on August 31, 2014, employees of any business or nonprofit organization that receives public contracts or funding from the Commonwealth or its subdivisions will now receive whistle-blower protection.

In the previous version of the law, only the employees of “public bod[ies]” were covered by the law’s protections. The new law covers employees who work for any public body or any private, for-profit or nonprofit organization that “receives money from a public body to perform work or provide services.” This expansion increases the number of employers covered by the law’s provisions, including its broad anti-retaliation provisions, which prohibit adverse actions against employees who report wrongdoing or waste. In a related statutory change, employees of the Pennsylvania legislature (and its agencies) will also receive whistle-blower protection as of August 31, 2014.

The enforcement provisions of the Whistleblower Law were also significantly increased. In its previous version, the maximum penalty an employer could face for wrongful retaliation against a whistle-blower was \$500, and, for public employees who are not elected officials, a suspension of up to six months. In the new version, employers will face a maximum financial penalty of \$10,000 for wrongful retaliation, while public employees who acted with the intent to discourage the disclosure of criminal activity could be suspended from public employment for seven years. Finally, courts will no longer have discretion in deciding whether or not to award costs and attorney’s fees. The new law now requires that a court award a complainant “all or a portion of the costs of litigation, including reasonable attorney fees ... if the complainant prevails in the civil action.”

Employers did gain one specific benefit from the amended law. Employees are only covered by the law if they make a good faith report of wrongdoing or waste. A good faith report must be made without malice or consideration of personal benefit and the person making the report must have reasonable cause to believe the report is true. The amended law makes clear that “[a]n employer is not barred from taking disciplinary action against [an] employee ... if the employee’s report was submitted in bad faith.”

Given the broad expansion of the amended Whistleblower Law and its considerable financial penalties, employers who receive public money from any state or local source should be aware of the law’s anti-retaliation provisions. Covered employers should review their existing policies to ensure that those policies properly apply and enforce protections for employees who report wrongdoing or waste. Covered employers should also consider training supervisors and other relevant staff on the Whistleblower Law’s new provisions in advance of the August 31, 2014 effective date.

If employers have any questions or concerns, they should contact a member of Cozen O’Connor’s Labor & Employment Department for more information about this decision.



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