

PENNSYLVANIA STATUTES
TITLE 43. LABOR
CHAPTER 25. WHISTLEBLOWER LAW

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43 P.S. § 1421 (2007)

§ 1421. Short title

This act shall be known and may be cited as the Whistleblower Law.

43 P.S. § 1422 (2007)

§ 1422. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"APPROPRIATE AUTHORITY." A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

"EMPLOYEE." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

"EMPLOYER." A person supervising one or more employees, including the employee in question; a superior of that supervisor; or an agent of a public body.

"GOOD FAITH REPORT." A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"PUBLIC BODY." All of the following:

- (1) A State officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.
- (2) A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.
- (3) Any other body which is created by Commonwealth or political subdivision authority or which is funded in any amount by or through Commonwealth or political subdivision authority or a member or employee of that body.

"WASTE." An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.

43 P.S. § 1421

"WHISTLEBLOWER." A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority.

"WRONGDOING." A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

§ 1423. Protection of employees

(a) PERSONS NOT TO BE DISCHARGED.-- No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

(b) DISCRIMINATION PROHIBITED.-- No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

§ 1424. Remedies

(a) CIVIL ACTION.-- A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

(b) NECESSARY SHOWING OF EVIDENCE.-- An employee alleging a violation of this act must show by a preponderance of the evidence that, prior to the alleged reprisal, the employee or a person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

(c) DEFENSE.-- It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

(d) CIVIL SERVICE EMPLOYEES.-- An employee covered by civil service who contests a civil service action, believing it to be motivated by his having made a good faith report, verbally or in writing, of an instance of wrongdoing or waste, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal.

§ 1425. Enforcement

A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

§ 1426. Penalties

A person who, under color of an employer's authority, violates this act shall be liable for a civil fine of not more than \$ 500. Additionally, except where the person holds an elected public office, if the court specifically finds that the person, while in the employment of the Commonwealth or a political subdivision, committed a violation of this act with the

43 P.S. § 1421

intent to discourage the disclosure of criminal activity, the court may order the person's suspension from public service for not more than six months. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

§ 1427. Construction

This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by an appropriate authority, or impair the rights of any person under a collective bargaining agreement.

§ 1428. Notice

An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this act.

§ 1431. Commercial motor vehicle operators; discharge, discipline, discrimination prohibited

(a) No person shall discharge, discipline or in any manner discriminate against any employee with respect to the employee's compensation, terms, conditions or privileges of employment because such employee, or person acting pursuant to a request of the employee:

(1) refuses to operate a commercial motor vehicle which is not in compliance with the provisions of 67 Pa. Code Ch. 231 (relating to intrastate motor carrier safety requirements) and existing safety laws; or

(2) has filed any complaint or instituted or caused to be instituted any proceeding relating to a violation of a commercial motor vehicle safety rule, regulation, standard or order, or has testified or is about to testify in any such proceeding.

(b) No person shall discharge, discipline or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rules, regulations, standards or orders applicable to commercial motor vehicle safety or health, or because of the employee's reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The unsafe conditions causing the employee's apprehension of injury must be of such nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a bona fide danger of an accident, injury or serious impairment of health resulting from the unsafe condition. In order to qualify for protection under this subsection, the employee must have sought from his employer and have been unable to obtain correction of the unsafe condition.

(c)(1) Any employee who believes he has been discharged, disciplined or otherwise discriminated against by any person in violation of subsection (a) or (b) may, within 180 days after such alleged violation occurs, file, or have filed by any person on the employee's behalf, a complaint with the Secretary of Labor and Industry alleging such discharge, discipline or discrimination. Upon receipt of such a complaint, the Secretary of Labor and Industry shall notify the person named in the complaint of the filing of the complaint.

(2)(i) Within 60 days of receipt of a complaint filed under paragraph (1), the Secretary of Labor and Industry shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify the complainant and the person alleged to have committed a violation of this section of his findings. Where the Secretary of Labor and Industry has concluded that there is reasonable cause to believe that a violation

43 P.S. § 1421

has occurred, he shall accompany his findings with a preliminary order providing the relief prescribed by subparagraph (ii). Thereafter, either the person alleged to have committed the violation or the complainant may, within 30 days, file objections to the findings or preliminary order, or both, and request a hearing on the record, except that the filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be expeditiously conducted. Where a hearing is not timely requested, the preliminary order shall be deemed a final order which is not subject to judicial review. Upon the conclusion of such hearing, the Secretary of Labor and Industry shall issue a final order within 120 days. In the interim, such proceedings may be terminated at any time on the basis of a settlement agreement entered into by the Secretary of Labor and Industry, the complainant and the person alleged to have committed the violation.

(ii) If, in response to a complaint filed under paragraph (1), the Secretary of Labor and Industry determines that a violation of subsection (a) or (b) has occurred, the Secretary of Labor and Industry shall order:

(A) the person who committed such violation to take affirmative action to abate the violation;

(B) such person to reinstate the complainant to the complainant's former position together with the compensation, including back pay, terms, conditions and privileges of the complainant's employment; and

(C) compensatory damages.

If such an order is issued, the Secretary of Labor and Industry, at the request of the complainant, may assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses, including attorney fees, reasonably incurred, as determined by the Secretary of Labor and Industry, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(d)(1) Any person adversely affected or aggrieved by an order issued after a hearing under subsection (c) may obtain review of the order in the Commonwealth Court. The petition for review must be filed within 60 days from the issuance of the Secretary of Labor and Industry's order. Such review shall be in accordance with the provisions of 42 Pa.C.S. (relating to judiciary and judicial procedure) and shall be heard and decided expeditiously.

(2) An order of the Secretary of Labor and Industry, with respect to which review could have been obtained under this section, shall not be subject to judicial review in any criminal or other civil proceeding.

(e) Whenever a person has failed to comply with an order issued under subsection (c)(2), the Secretary of Labor and Industry shall file a civil action in the court of common pleas for the district in which the violation was found to occur in order to enforce such order. In actions brought under this subsection, the court of common pleas shall have jurisdiction to grant all appropriate relief, including injunctive relief, reinstatement and compensatory damages.