



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3509

Introduced 2/9/2024, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

740 ILCS 174/5
740 ILCS 174/15
740 ILCS 174/20
740 ILCS 174/20.1
740 ILCS 174/20.2
740 ILCS 174/25
740 ILCS 174/30
740 ILCS 174/31 new

Amends the Whistleblower Act. Changes the definitions of "employer" and "employee". Defines "adverse employment action", "public body", "retaliatory action", and "supervisor". Provides that an employer may not take retaliatory action against an employee who discloses or threatens to disclose information about an activity, policy, or practice of the employer that the employee has a good faith belief that such activity, policy, or practice violates a State or federal law, rule, or regulation or poses a substantial and specific danger to public health or safety. Includes additional relief, damages, and penalties for violation of the Act. Allows the Attorney General to initiate or intervene in a civil action to obtain appropriate relief if the Attorney General has reasonable cause to believe that any person or entity is engaged in a practice prohibited by the Act. Provides that the changes made by the amendatory Act apply to claims arising or complaints filed on or after January 1, 2025. Effective January 1, 2025.

LRB103 38995 JRC 69132 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Whistleblower Act is amended by changing
5 Sections 5, 15, 20, 20.1, 20.2, 25, and 30 and by adding
6 Section 31 as follows:

7 (740 ILCS 174/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Adverse employment action" means any action that creates
10 an adverse change in the terms and conditions of employment
11 viewed in the totality of circumstances.

12 "Employer" means: an individual, sole proprietorship,
13 partnership, firm, corporation, association, and any other
14 entity that has one or more employees in this State, including
15 a political subdivision of the State; a unit of local
16 government; a school district, combination of school
17 districts, or governing body of a joint agreement of any type
18 formed by two or more school districts; a community college
19 district, State college or university, or any State agency
20 whose major function is providing educational services; any
21 authority including a department, division, bureau, board,
22 commission, or other agency of these entities; and any person
23 acting directly or indirectly in the interest of an employer

1 in relation to an employee ~~within the scope of his or her~~
2 ~~authority express or implied on behalf of those entities in~~
3 ~~dealing with its employees.~~

4 "Employee" means any individual permitted to work ~~who is~~
5 ~~employed on a full time, part time, or contractual basis~~ by an
6 employer unless:

7 (1) the individual has been and will continue to be
8 free from control and direction over the performance of
9 his or her work, both under his or her contract of service
10 with his or her employer and in fact;

11 (2) the individual performs work which is either
12 outside the usual course of business or is performed
13 outside all of the places of business of the employer
14 unless the employer is in the business of contracting with
15 parties for the placement of employees; and

16 (3) the individual is in an independently established
17 trade, occupation, profession, or business.

18 "Employee" also includes, but is not limited to, a
19 licensed physician who practices his or her profession, in
20 whole or in part, at a hospital, nursing home, clinic, or any
21 medical facility that is a health care facility funded whole
22 or in part, by the State.

23 "Public body" means any of the following: the State; any
24 officer, board, political subdivision, or commission of the
25 State; any institution supported in whole or in part by public
26 funds; units of local government; and school districts.

1 "Retaliatory action" means an adverse employment action or
2 the threat of an adverse employment action by an employer or
3 his or her agent to penalize or any non-employment action that
4 would dissuade a reasonable worker from disclosing information
5 under this Act. "Retaliatory action" includes, but is not
6 limited to:

7 (1) taking, or threatening to take, any action that
8 would intentionally interfere with an employee's ability
9 to obtain future employment or post-termination
10 retaliation to intentionally interfere with a former
11 employee's employment;

12 (2) taking, or threatening to take, any action
13 prohibited by subsection (G) of Section 2-102 of the
14 Illinois Human Rights Act; or

15 (3) contacting, or threatening to contact, United
16 States immigration authorities, or otherwise reporting, or
17 threatening to report, an employee's suspected or actual
18 citizenship or immigration status or the suspected or
19 actual citizenship or immigration status of an employee's
20 family or household member to a federal, State, or local
21 agency.

22 "Retaliatory action" does not include:

23 (1) conduct undertaken at the express and specific
24 direction or request of the federal government; or

25 (2) truthful, performance-related information about an
26 employee or former employee provided in good faith to a

1 prospective employer at the request of the prospective
2 employer. "Employee" also includes, but is not limited to,
3 a licensed physician who practices his or her profession,
4 in whole or in part, at a hospital, nursing home, clinic,
5 or any medical facility that is a health care facility
6 funded, in whole or in part, by the State.

7 "Supervisor" means (i) any individual within an employer's
8 organization, or an organization the employer has a
9 contractual relationship with, (ii) any individual who has the
10 authority to direct and control the work performance of the
11 affected employee, or (iii) any individual who has managerial
12 authority to take corrective action regarding a violation of
13 the law, rule, or regulation disclosed by an employee in
14 accordance with Section 15.

15 (Source: P.A. 95-128, eff. 1-1-08; 96-1253, eff. 1-1-11.)

16 (740 ILCS 174/15)

17 Sec. 15. Retaliation for certain disclosures prohibited.

18 (a) An employer may not take retaliatory action ~~retaliate~~
19 against an employee who discloses or threatens to disclose to
20 a public body conducting investigation, or in a court, an
21 administrative hearing, or any other proceeding initiated by a
22 public body, information related to an activity, policy, or
23 practice of the employer where the employee has a good faith
24 belief that the activity, policy, or practice (i) violates in
25 a court, an administrative hearing, or before a legislative

1 commission or committee, or in any other proceeding, where the
2 employee ~~has reasonable cause to believe that the information~~
3 ~~discloses a violation~~ of a State or federal law, rule, or
4 regulation or (ii) poses a substantial and specific danger to
5 co-workers, public health or safety..

6 (b) An employer may not take retaliatory action ~~retaliate~~
7 against an employee for disclosing or threatening to disclose
8 information to a government or law enforcement agency
9 information to an activity, policy, or practice of the
10 employer, where the employee has a good faith belief that the
11 activity, policy, or practice of the employer (i) violates
12 ~~reasonable cause to believe that the information discloses a~~
13 ~~violation~~ of a State or federal law, rule, or regulation or
14 (ii) poses a substantial and specific danger to co- workers,
15 public health, or safety.

16 (c) An employer may not take retaliatory action against an
17 employee for disclosing or threatening to disclose to any
18 employees with supervisory authority, principal officer, or
19 board member, information related to an activity, policy, or
20 practice of the employer where the employee has a good faith
21 belief that the activity, policy, or practice(i) violates a
22 State or federal law, rule, or regulation or (ii) poses a
23 substantial and specific danger to co-workers, or public
24 health or safety.

25 (Source: P.A. 95-128, eff. 1-1-08.)

1 (740 ILCS 174/20)

2 Sec. 20. Retaliation for certain refusals prohibited. An
3 employer may not take retaliatory action ~~retaliate~~ against an
4 employee for refusing to participate in an activity that the
5 employee has a good faith belief that such participation would
6 result in a violation of a State or federal law, rule, or
7 regulation, including, but not limited to, violations of the
8 Freedom of Information Act.

9 (Source: P.A. 96-555, eff. 8-18-09.)

10 (740 ILCS 174/20.1)

11 Sec. 20.1. Other retaliation. Any other act or omission
12 not otherwise specifically set forth in this Act, whether
13 within or without the workplace, also constitutes retaliatory
14 action ~~retaliation~~ by an employer under this Act if the act or
15 omission would be materially adverse to a reasonable employee
16 and is because of the employee disclosing or attempting to
17 disclose public corruption or wrongdoing.

18 (Source: P.A. 96-555, eff. 8-18-09.)

19 (740 ILCS 174/20.2)

20 Sec. 20.2. Threatening retaliation. An employer may not
21 threaten any employee with any act or omission if that act or
22 omission would constitute retaliatory action ~~retaliation~~
23 against the employee under this Act.

24 (Source: P.A. 96-555, eff. 8-18-09.)

1 (740 ILCS 174/25)

2 Sec. 25. Criminal ~~Civil~~ penalty. Violation of this Act is
3 a Class A misdemeanor.

4 (Source: P.A. 93-544, eff. 1-1-04.)

5 (740 ILCS 174/30)

6 Sec. 30. Damages and penalties. If an employer takes any
7 retaliatory action against an employee in violation of Section
8 15 or 20, the employee may bring a civil action against the
9 employer for all relief necessary to make the employee whole,
10 including but not limited to the following, as appropriate:

11 (1) permanent or preliminary injunctive relief;

12 (1.5) reinstatement with the same seniority status
13 that the employee would have had, but for the violation;

14 (2) back pay, with interest, and front pay, or, in
15 lieu of actual damages, at the employee's election,
16 liquidated damages of \$30,000; and

17 (3) compensation for any costs incurred ~~damages~~
18 sustained as a result of the violation, including
19 litigation costs, expert witness fees, and reasonable
20 attorney's fees.

21 (4) Consequential damages, where the damages are a
22 direct and foreseeable result of an employer's violation
23 of this Act.

24 In addition to the remedies specified in paragraphs (1)

1 through (5), the Attorney General may request and the finder
2 of fact may impose a civil penalty in the amount of \$5,000 for
3 each violation, or \$10,000 for the second and each subsequent
4 violation within a 5-year period. For purposes of this
5 Section, each violation of this Act for each employee the
6 employer took or threatened to take retaliatory action against
7 shall constitute a separate and distinct violation. A civil
8 penalty imposed under this Section shall be deposited into the
9 Attorney General Court Ordered and Voluntary Compliance
10 Payment Projects Fund.

11 (Source: P.A. 93-544, eff. 1-1-04.)

12 (740 ILCS 174/31 new)

13 Sec. 31. Attorney General enforcement.

14 (a) Whenever the Attorney General has reasonable cause to
15 believe that any person or entity has engaged in a practice
16 prohibited by this Act, the Attorney General may, pursuant to
17 the authority conferred by Section 6.3 of the Attorney General
18 Act, initiate or intervene in a civil action in the name of the
19 People of the State in any appropriate court to obtain
20 appropriate relief.

21 (b) Before initiating an action, the Attorney General may
22 conduct an investigation and may:

23 (1) require an individual or entity to file a
24 statement or report in writing, under oath or otherwise,
25 as to all information the Attorney General may consider

1 necessary;

2 (2) examine under oath any person alleged to have
3 participated in, or with knowledge of, the alleged
4 violation; or

5 (3) issue subpoenas or conduct hearings in aid of any
6 investigation.

7 (c) Service by the Attorney General of any notice
8 requiring a person or entity to file a statement or report, or
9 of a subpoena upon any person or entity, shall be made:

10 (1) personally by delivery of a duly executed copy
11 thereof to the person to be served or, if a person is not a
12 natural person, in the manner provided in the Code of
13 Civil Procedure when a complaint is filed; or

14 (2) by mailing by certified mail a duly executed copy
15 thereof to the person to be served at his or her last known
16 abode or principal place of business within this State or,
17 if the person is not a natural person, in the manner
18 provided in the Code of Civil Procedure when a complaint
19 is filed.

20 The Attorney General may compel compliance with
21 investigative demands under this Section through an order by
22 any court of competent jurisdiction.

23 Section 90. Applicability. The changes made by this
24 amendatory Act of the 103rd General Assembly apply to claims
25 arising or complaints filed on or after January 1, 2025.

1 Section 99. Effective date. This Act takes effect January
2 1, 2025.