



New York State Expands Workplace Whistleblower Protections

New York State Governor Kathy Hochul recently signed legislation amending Section 740 of the New York Labor Law that greatly expands protections for workplace whistleblowers. When the amendment takes effect on January 26, 2022, New York State will have one of the strongest whistleblower laws in the country. Significant changes to Section 740, as amended, include the following provisions:

- **Covered Whistleblowers** – The amendment expands the definition of the persons protected under the law from only current employees to also include former employees and independent contractors (“covered whistleblowers”).
- **Reasonable Belief Standard** – The current law protects only employees who disclose activity that actually violates a law, rule or regulation and which creates and presents a substantial and specific danger to the public health or safety. The amendment replaces that standard with a “reasonable belief” standard that protects any covered whistleblower who discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice that the covered whistleblower reasonably believes is in violation of law, rule or regulation or reasonably believes poses a substantial and specific danger to the public health or safety.

Inclusion of this reasonable belief standard means that covered whistleblowers will now be protected if they report what they reasonably believe to be a violation of law, rule or regulation, or report activity that they reasonably believe poses a substantial and specific danger to the public health or safety, even though no actual violation or danger exists.
- **Reduced Notice Requirement** – Under the amended law, a covered whistleblower will only be required to make a “good faith” effort to notify the employer of the activity and afford the employer a reasonable opportunity to correct the activity before notifying a public body. However, notification will not be required where (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.
- **Prohibited Retaliatory Conduct** – As amended, Section 740 prohibits discharging, threatening, penalizing or in any other manner discriminating against a covered whistleblower for exercising his or her rights under the law, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report a covered whistleblower's suspected citizenship or immigration status or the suspected citizenship or immigration status of a covered whistleblower's family or household member.



PHILLIPS LYTLE LLP CLIENT ALERT

LABOR & EMPLOYMENT



JANUARY 2022

- **Remedies** – The current law allows successful plaintiffs to obtain injunctive relief and reinstatement as well as recover lost wages, benefits and other remuneration and attorneys’ fees. The amended law will also allow for the recovery of front pay (in lieu of reinstatement) and punitive damages, and authorizes courts to impose a civil penalty up to \$10,000.
- **Notice Requirement** – The amended law requires employers to inform employees of their protections, rights and obligations under the law by posting a notice “conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.”

Employers should consider training their managers and supervisors on how to identify, handle and respond to whistleblower claims covered by Section 740 and ensure that they post the notice as required.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney with whom you have a relationship](#). ■

Phillips Lytle LLP

Albany Omni Plaza 30 South Pearl Street Albany, NY 12207-1537 (518) 472-1224

Buffalo One Canalside 125 Main Street Buffalo, NY 14203-2887 (716) 847-8400

Chautauqua 201 West Third Street Suite 205 Jamestown, NY 14701-4907 (716) 664-3906

Garden City 1205 Franklin Avenue Plaza Suite 390 Garden City, NY 11530-1629 (516) 742-5201

New York City 620 Eighth Ave 38th Floor New York, NY 10018-1442 (212) 759-4888

Rochester 28 East Main Street Suite 1400 Rochester, NY 14614-1935 (585) 238-2000

Washington, DC 1101 Pennsylvania Avenue NW Suite 300 Washington, DC 20004-2514 (202) 617-2700

Canada The Communitech Hub 151 Charles Street West Suite 100 The Tannery Kitchener, Ontario N2G 1H6 Canada (519) 570-4800