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HOUSE BILL 394

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO PUBLIC EMPLOYMENT; ENACTING THE WHISTLEBLOWER PROTECTION ACT; PROHIBITING PUBLIC EMPLOYER RETALIATORY ACTION AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES; CREATING A RIGHT TO CIVIL ACTION FOR DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Whistleblower Protection Act".

Section 2. DEFINITIONS.--As used in the Whistleblower Protection Act:

A. "good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the public employee;

B. "public employee" means a person who works for or contracts with a public employer;

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C. "public employer" means:

(1) any department, agency, office, institution, board, commission, committee, branch or district of state government;

(2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived;

(3) any entity or instrumentality of the state specifically provided for by law; and

(4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection;

D. "retaliatory action" means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment; and

E. "unlawful or improper act" means a practice, procedure, action or failure to act on the part of a public employer that:

(1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;

(2) constitutes malfeasance in public office;  
or

(3) results or would result in a misuse of public funds or substantial danger to public health and safety.

Section 3. PUBLIC EMPLOYER RETALIATORY ACTION

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1 PROHIBITED.--A public employer shall not take any retaliatory  
2 action against a public employee because the public employee:

3 A. discloses or threatens to disclose an activity,  
4 policy or practice of the public employer that constitutes an  
5 unlawful or improper act or that the public employee believes  
6 in good faith constitutes an unlawful or improper act;

7 B. provides information to, or testifies before, a  
8 public body as part of an investigation, hearing or inquiry  
9 into an unlawful or improper act; or

10 C. objects to or refuses to participate in an  
11 activity, policy or practice that constitutes an unlawful or  
12 improper act.

13 Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES--AFFIRMATIVE  
14 DEFENSES--REMEDY NOT EXCLUSIVE.--

15 A. A public employer that violates the provisions  
16 of the Whistleblower Protection Act shall be liable to the  
17 public employee for actual damages, reinstatement with the same  
18 seniority status that the employee would have had but for the  
19 violation, two times the amount of back pay with interest on  
20 the back pay and compensation for any special damage sustained  
21 as a result of the violation. In addition, an employer shall  
22 be required to pay the litigation costs and reasonable attorney  
23 fees of the employee. An employee may bring an action pursuant  
24 to this section in any court of competent jurisdiction.

25 B. It shall be an affirmative defense to a civil

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1 action brought pursuant to this section that the action taken  
2 by a public employer against a public employee was due to the  
3 employee's misconduct, the employee's poor job performance, a  
4 reduction in work force or other legitimate business purpose  
5 unrelated to conduct prohibited pursuant to the Whistleblower  
6 Protection Act and that retaliatory action was not a motivating  
7 factor.

8 C. The remedies provided for in the Whistleblower  
9 Protection Act are not exclusive and shall be in addition to  
10 any other remedies provided for in any other law or available  
11 under common law.

12 D. Nothing in the Whistleblower Protection Act  
13 precludes civil actions or criminal sanctions for libel,  
14 slander or other civil or criminal claims against a person who  
15 files a false claim under that act.

16 Section 5. POSTING OF LAW AND INFORMATION.--Every public  
17 employer shall keep posted in a conspicuous place on the public  
18 employer's premises notices prepared by the employer that set  
19 forth the provisions of the Whistleblower Protection Act.

20 Section 6. LIMITATION ON ACTIONS.--A civil action  
21 pursuant to the Whistleblower Protection Act shall be forever  
22 barred unless the action is filed within two years from the  
23 date on which the retaliatory action occurred.

24 Section 7. APPLICABILITY.--The provisions of this act  
25 apply only to civil actions for damages resulting from

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retaliatory action that occurred on or after July 1, 2007.