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HOUSE BILL 557

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

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO EMPLOYMENT; ENCOURAGING REPORTING OF SUSPECTED
IMPROPER QUALITY OF PATIENT CARE; PROHIBITING EMPLOYER
RETALIATORY ACTION IN CERTAIN CIRCUMSTANCES; PROVIDING
GRIEVANCE PROCEDURES AND PENALTIES.

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

Section 1. A new section of Chapter 28 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Conscientious Health Care Employee Protection Act"."

Section 2. A new section of Chapter 28 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] PURPOSE.--It is the purpose of the
Conscientious Health Care Employee Protection Act to maintain
and improve a high level of health care throughout New Mexico

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1 by encouraging health care professionals to notify appropriate
2 public bodies of suspected improper quality of patient care.
3 This reporting is encouraged in order to protect patients and
4 employees and to assist public bodies charged with ensuring
5 that health care is safe and adequate."

6 Section 3. A new section of Chapter 28 NMSA 1978 is
7 enacted to read:

8 "[NEW MATERIAL] DEFINITIONS.--As used in the Conscientious
9 Health Care Employee Protection Act:

10 A. "division" means the human rights bureau of the
11 labor relations division of the workforce solutions department;

12 B. "employee" means a licensed health care
13 professional who performs services for and under the control
14 and direction of an employer for wages or other remuneration;

15 C. "employer" means a person who has four or more
16 employees and includes an agent of an employer and a public
17 employer;

18 D. "health care professional" means a person
19 licensed pursuant to Chapter 61, Article 2 through 14E or 31
20 NMSA 1978;

21 E. "improper quality of patient care" means a
22 practice, procedure, action or failure to act on the part of an
23 employer that violates any law, act, rule or best practice
24 standard;

25 F. "public body" means a state government

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1 department, agency or political subdivision;

2 G. "retaliatory action" means the discharge,
3 suspension, demotion, disciplining or discriminatory or adverse
4 employment action against an employee in the terms and
5 conditions of employment; and

6 H. "urgent medical condition" means any medical
7 condition as defined by an appropriate medical authority
8 through documentation or by direct witness of a clearly visible
9 disablement and that poses a serious threat to the life of the
10 person with the medical condition."

11 Section 4. A new section of Chapter 28 NMSA 1978 is
12 enacted to read:

13 "[NEW MATERIAL] EMPLOYER RETALIATORY ACTION

14 PROHIBITED.--If an employee is in compliance with the federal
15 Health Insurance Portability and Accountability Act of 1996, an
16 employer shall not take retaliatory action against the employee
17 for the following:

18 A. disclosing or threatening to disclose to an
19 employer or to a public body an activity, policy or practice of
20 the employer that constitutes improper quality of patient care;

21 B. providing information to or testifying before a
22 public body as part of an investigation, hearing or inquiry
23 into improper quality of patient care, a violation of law or a
24 rule promulgated pursuant to law; or

25 C. objecting to or refusing to participate in an

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1 activity, policy or practice that:

- 2 (1) is in violation of a law or rule;
- 3 (2) constitutes improper quality of patient
- 4 care; or
- 5 (3) is fraudulent or criminal."

6 Section 5. A new section of Chapter 28 NMSA 1978 is
7 enacted to read:

8 "[NEW MATERIAL] GRIEVANCE PROCEDURE.--An employee who
9 alleges a retaliatory action pursuant to the Conscientious
10 Health Care Employee Protection Act may file a grievance under
11 procedures specified in the Human Rights Act. However, an
12 employee who alleges a retaliatory action pursuant to the
13 Conscientious Health Care Employee Protection Act shall also:

14 A. exhaust all other employer administrative
15 grievance procedures; and

16 B. within sixty days of the final employer
17 administrative procedure, file with the division a written
18 complaint that states the name and address of the person
19 alleged to have engaged in the retaliatory action and
20 information relating to the retaliatory act."

21 Section 6. A new section of Chapter 28 NMSA 1978 is
22 enacted to read:

23 "[NEW MATERIAL] HEARING PROCEDURES.--A Conscientious
24 Health Care Employee Protection Act hearing shall be conducted
25 according to procedures specified in the Human Rights Act."

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Section 7. A new section of Chapter 28 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ENFORCEMENT.--If a respondent to a complaint filed pursuant to the Conscientious Health Care Employee Protection Act has not complied with an order of the human rights commission within thirty days, the employee may seek enforcement pursuant to Section 28-1-12 NMSA 1978."

Section 8. A new section of Chapter 28 NMSA 1978 is enacted to read:

"[NEW MATERIAL] APPEAL.--Any party may appeal the final decision of the human rights commission pursuant to the provisions of Section 28-1-13 NMSA 1978."

Section 9. A new section of Chapter 28 NMSA 1978 is enacted to read:

"[NEW MATERIAL] POSTING OF LAW AND INFORMATION.--Every employer subject to the Conscientious Health Care Employee Protection Act shall keep posted in a conspicuous place on the employer's premises notices prepared by the division that set forth:

- A. prohibited actions;
- B. the definition of retaliatory action;
- C. excerpts of the Human Rights Act regarding the filing of complaints, hearing procedures, enforcement and appeals; and

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1 D. other relevant information as determined by the
2 secretary of workforce solutions."

3 Section 10. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2009."

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