
SUBSTITUTE SENATE BILL 5200

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senators Skratek, Owen, Gaspard, Prentice, Moore and Winsley)

Read first time 03/03/93.

1 AN ACT Relating to the protection of private employee rights;
2 amending RCW 49.60.250; adding a new chapter to Title 49 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This chapter may be cited as the private
6 whistleblowers' protection act.

7 NEW SECTION. **Sec. 2.** Private employees have a right and should be
8 encouraged to disclose, to the extent not expressly prohibited by law,
9 actions by their employers that are in violation of federal, state, or
10 local laws, rules, or regulations, or that otherwise create a threat to
11 the health and safety of themselves or the public. It is the intent of
12 the legislature that private employees who object to or report illegal
13 actions by their employers or other persons or cooperate in the
14 investigation or prosecution of illegal actions by their employers or
15 other persons be protected from retaliation by their employers.

1 NEW SECTION. **Sec. 3.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Damages" means damages for injury or loss caused by each
5 violation of this chapter, including reasonable attorneys' fees.

6 (2) "Employee" means any employee as defined in common law and an
7 individual acting as an independent contractor, and does not include
8 any individual employed by his or her parents, spouse, or child, or in
9 the domestic service of any person.

10 (3) "Private employer" means any corporation, partnership, joint
11 venture, limited partnership, nonprofit association or corporation, or
12 individual or any officer, employee, or agent thereof, and includes any
13 private entity acting as an independent contractor employed by or
14 acting on behalf of the federal, state, or local government.

15 (4) "Public body" means all of the following:

16 (a) An officer, employee, agency, department, division, bureau,
17 board, commission, council, authority, or other body in the executive
18 branch of the federal, state, or local government;

19 (b) An agency, board, commission, council, member, or employee of
20 the legislative branch of the federal, state, or local government;

21 (c) The federal, state, or local judiciary and any member or
22 employee thereof.

23 (5) "Retaliatory action" means an adverse action regarding the
24 terms and conditions of employment of an employee or an individual
25 working as an independent contractor, and includes, but is not limited
26 to:

27 (a) Denial of adequate staff to perform duties;

28 (b) Frequent staff changes;

29 (c) Frequent or undesirable work site changes;

30 (d) Refusal to assign meaningful work;

31 (e) Unwarranted and unsubstantiated reprimands or unsatisfactory
32 performance evaluations;

33 (f) Demotion;

34 (g) Reduction in pay;

35 (h) Denial of promotion;

36 (i) Suspension;

37 (j) Dismissal;

38 (k) Denial of employment; and

1 (1) A supervisor or superior encouraging coworkers to behave in a
2 hostile manner toward the employee.

3 NEW SECTION. **Sec. 4.** (1) A private employer shall not take any
4 retaliatory action or threaten to take any retaliatory action against
5 an employee because:

6 (a) The employee, acting in good faith, or a person acting on
7 behalf of the employee, reports, or was about to report, orally or in
8 writing, what the employee has reasonable cause to believe is a
9 violation of a law, rule, or regulation adopted under the laws of this
10 state, a political subdivision of this state, or the United States to
11 the employer or a public body;

12 (b) The employee, acting in good faith, or a person acting on
13 behalf of the employee, reports, or was about to report, to the
14 employer, or a public body, orally or in writing, what the employee has
15 reasonable cause to believe is a condition or practice that would put
16 at risk the health or safety of that employee or any other individual;

17 (c) The employee is requested or ordered by a public body or
18 official to participate in an investigation, hearing, or inquiry, or in
19 a court action the subject of which is illegal activity or other
20 wrongdoing by his or her employer; or

21 (d) The employee, acting in good faith, has refused to carry out a
22 directive that would expose the employee or any individual to a
23 condition that would result in serious injury, illness, or death, after
24 having sought and been unable to obtain a correction of the dangerous
25 condition from the employer.

26 (2) Subsection (1) of this section does not apply to an employee
27 who has reported or caused to be reported a violation or unsafe
28 condition or practice to a public body, unless the employee has first
29 brought the alleged violation, condition, or practice to the attention
30 of a person having supervisory authority for the employer and has
31 allowed the employer a reasonable opportunity to correct that
32 violation, condition, or practice. Prior notice to an employer is not
33 required if the employee has reasonable cause to believe: (i) That
34 reports to the employer would result in retaliation or harassment; (ii)
35 that a crime has been committed; (iii) that an emergency involving
36 personal or public safety exists; or (iv) that the violation or unsafe
37 condition is caused by a person other than the employer.

1 (3) A person shall not direct, encourage, or otherwise seek to
2 persuade a private employer to take any retaliatory action or threaten
3 to take any retaliatory action against an employee for any of the
4 reasons set forth in subsection (1) (a), (b), or (c) of this section.

5 NEW SECTION. **Sec. 5.** (1) A person who alleges a violation of this
6 chapter may bring a civil action for appropriate injunctive relief, or
7 actual damages, or both within three years after the cessation of any
8 occurrence of the alleged violation of this chapter.

9 (2) An action commenced pursuant to subsection (1) of this section
10 may be brought in the superior court for the county where the alleged
11 violation occurred, the county where the complainant resides, or the
12 county where the person against whom the civil complaint is filed or
13 has its principal place of business.

14 (3) An employee claiming that he or she or a person acting on his
15 or her behalf was about to make a report of the nature described in
16 section 4(1) (a) and (b) of this act shall prove that element of the
17 claim by clear and convincing evidence in order to prevail. Claims
18 based on other protected activities need only be proved by a
19 preponderance of evidence.

20 (4) A court, in rendering a judgment in an action brought under
21 this chapter, shall order, as the court considers appropriate,
22 reinstatement of the employee, the payment of back wages, full
23 reinstatement of fringe benefits and seniority rights, actual damages,
24 or any combination of these remedies. A court may also award the
25 complainant all or a portion of the costs of litigation, including
26 reasonable attorneys' fees and witness fees, if the court determines
27 that the award is appropriate.

28 (5) A person who violates this chapter is liable for a civil fine
29 of not more than three thousand dollars. Any fine that is ordered
30 pursuant to this chapter shall be paid into the state treasury and
31 credited to the general fund.

32 NEW SECTION. **Sec. 6.** This chapter shall not be construed: (1) To
33 diminish or impair the rights of a person under any collective
34 bargaining agreement; (2) to derogate any common law rights of an
35 employee; or (3) to limit in any way the rights and powers granted
36 under RCW 4.24.500, 4.24.510, and 4.24.520.

1 NEW SECTION. **Sec. 7.** (1) A violation of this chapter is an unfair
2 practice under chapter 49.60 RCW.

3 (2) An employee alleging a violation of this chapter may, as an
4 alternative to commencing a civil action under section 5 of this act,
5 file a complaint with the state human rights commission pursuant to
6 chapter 49.60 RCW.

7 **Sec. 8.** RCW 49.60.250 and 1992 c 118 s 5 are each amended to read
8 as follows:

9 (1) In case of failure to reach an agreement for the elimination of
10 such unfair practice, and upon the entry of findings to that effect,
11 the entire file, including the complaint and any and all findings made,
12 shall be certified to the chairperson of the commission. The
13 chairperson of the commission shall thereupon request the appointment
14 of an administrative law judge under Title 34 RCW to hear the complaint
15 and shall cause to be issued and served in the name of the commission
16 a written notice, together with a copy of the complaint, as the same
17 may have been amended, requiring the respondent to answer the charges
18 of the complaint at a hearing before the administrative law judge, at
19 a time and place to be specified in such notice.

20 (2) The place of any such hearing may be the office of the
21 commission or another place designated by it. The case in support of
22 the complaint shall be presented at the hearing by counsel for the
23 commission: PROVIDED, That the complainant may retain independent
24 counsel and submit testimony and be fully heard. No member or employee
25 of the commission who previously made the investigation or caused the
26 notice to be issued shall participate in the hearing except as a
27 witness, nor shall the member or employee participate in the
28 deliberations of the administrative law judge in such case. Any
29 endeavors or negotiations for conciliation shall not be received in
30 evidence.

31 (3) The respondent shall file a written answer to the complaint and
32 appear at the hearing in person or otherwise, with or without counsel,
33 and submit testimony and be fully heard. The respondent has the right
34 to cross-examine the complainant.

35 (4) The administrative law judge conducting any hearing may permit
36 reasonable amendment to any complaint or answer. Testimony taken at
37 the hearing shall be under oath and recorded.

1 (5) If, upon all the evidence, the administrative law judge finds
2 that the respondent has engaged in any unfair practice, the
3 administrative law judge shall state findings of fact and shall issue
4 and file with the commission and cause to be served on such respondent
5 an order requiring such respondent to cease and desist from such unfair
6 practice and to take such affirmative action, including, (but not
7 limited to) hiring, reinstatement or upgrading of employees, with or
8 without back pay, an admission or restoration to full membership rights
9 in any respondent organization, or to take such other action as, in the
10 judgment of the administrative law judge, will effectuate the purposes
11 of this chapter, including action that could be ordered by a court,
12 except that damages for humiliation and mental suffering shall not
13 exceed one thousand dollars, and including a requirement for report of
14 the matter on compliance.

15 (6) If a determination is made that retaliatory action, as defined
16 in RCW 42.40.050, has been taken against a whistleblower, as defined in
17 RCW 42.40.020, the administrative law judge may, in addition to any
18 other remedy, impose a civil penalty upon the retaliator of up to three
19 thousand dollars and issue an order to the state employer to suspend
20 the retaliator for up to thirty days without pay. At a minimum, the
21 administrative law judge shall require that a letter of reprimand be
22 placed in the retaliator's personnel file. All penalties recovered
23 shall be paid into the state treasury and credited to the general fund.

24 (7) If a determination is made that a private employer has
25 retaliated against an employee in violation of the private
26 whistleblowers' protection act, chapter 49.-- RCW (sections 1 through
27 7 of this act), the administrative law judge may, in addition to any
28 other remedy, impose a civil penalty upon the private employer of up to
29 three thousand dollars. All penalties recovered shall be paid into the
30 state treasury and credited to the general fund. In any case under the
31 private whistleblowers' protection act, chapter 49.-- RCW (sections 1
32 through 7 of this act) the administrative law judge may require payment
33 to the general fund of all or a portion of the commission's actual
34 costs of processing the case by any one or more of the parties joined
35 in the case.

36 (8) The final order of the administrative law judge shall include
37 a notice to the parties of the right to obtain judicial review of the
38 order by appeal in accordance with the provisions of RCW 34.05.510

1 through 34.05.598, and that such appeal must be served and filed within
2 thirty days after the service of the order on the parties.

3 ~~((8))~~ (9) If, upon all the evidence, the administrative law judge
4 finds that the respondent has not engaged in any alleged unfair
5 practice, the administrative law judge shall state findings of fact and
6 shall similarly issue and file an order dismissing the complaint.

7 ~~((9))~~ (10) An order dismissing a complaint may include an award
8 of reasonable attorneys' fees in favor of the respondent if the
9 administrative law judge concludes that the complaint was frivolous,
10 unreasonable, or groundless. In an order dismissing a complaint
11 brought under the private whistleblowers' protection act, chapter 49.--
12 RCW (sections 1 through 7 of this act) an order dismissing a complaint
13 shall include an award of reasonable attorneys' fees in favor of the
14 respondent and may impose a civil penalty of up to one thousand dollars
15 against the complainant if the administrative law judge concludes that
16 the complaint was frivolous, unreasonable, or groundless.

17 ~~((10))~~ (11) The commission shall establish rules of practice to
18 govern, expedite, and effectuate the foregoing procedure.

19 NEW SECTION. Sec. 9. Sections 1 through 7 of this act shall
20 constitute a new chapter in Title 49 RCW.

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