

Alert

Amendment Expands New York Whistleblower Protection Law

November 8, 2021

On Oct. 28, 2021, Governor Hochul signed into law an [amendment](#) to the New York Whistleblower Protection Law (“Whistleblower Law”). The amended Whistleblower Law generally prohibits employers from retaliating against employees who disclose, or threaten to disclose, their employers’ violation of any law to supervisors, law enforcement or other government entities. The amendment, effective Jan. 26, 2022, greatly increases protections for employees and expands the risk of liability for employers.

Increased Protection for Employees

Prior to the amendment, the law only protected employees who reported *actual* violations of the law that presented a substantial and specific danger to public health or safety. The new amendment protects employees, former employees, and individual independent contractors (collectively, “Employees”), if they *reasonably believe* that their employer has a policy or practice that violates the law *or* poses a substantial and specific danger to public health or safety. The amended law prohibits employers from retaliating against Employees for reporting these potential violations.

Under the current law, employees were required to first report to their supervisor and allow employers a reasonable opportunity to correct the violation. The new amendment has relaxed this requirement, requiring Employees to make a “good faith effort” to notify employers before reporting a violation. Employees do not need to notify employers if:

- The Employee *reasonably believes* that (i) evidence might be destroyed or concealed if the Employee reports the violation to the supervisor, (ii) the Employee or another person might be physically harmed if the Employee reports to the supervisor, or (iii) the supervisor is already aware of the violation and will not correct it;
- There is an imminent and serious danger to the public health or safety; or
- One could reasonably expect that the violation could endanger the welfare of a minor.

An Expanded Definition for Retaliation

The amendment also greatly expands actions by employers that could constitute retaliation under the law. Retaliation was previously defined as when an employer discharged, suspended or demoted the employee. Retaliation now includes:

- Any adverse action an employer or its agent takes to discharge, threaten, penalize or discriminate against an Employee; and
- Actions or threats to harm a former Employee’s current or future employment or to report an Employee’s immigration status.

Litigation and Damages

Employees who believe their employers retaliated against them can sue their employers in civil court. The amendment extends the timeframe Employees can sue their employer from one to two years after the alleged retaliation occurred, and adds that the parties shall be entitled to a jury trial.

A court can order an employer to reinstate the Employee or pay the Employee front pay, lost wages, benefits, and the Employees' attorneys' fees. Under the amendment, employers may be ordered to pay a civil penalty of up to \$10,000, and pay punitive damages if the employer willfully or maliciously violated the law.

Mandatory Actions for Employers

Employers are required to post a notice in their offices informing Employees of their rights under the amended Whistleblower Law. Employers must post the notice conspicuously in easily accessible and well lit locations that are frequently visited by Employees and job applicants. We expect the New York State Department of Labor will be issuing a poster.

Please contact [Mark E. Brossman](#), [Ronald E. Richman](#), [Max Garfield](#), [Scott A. Gold](#), [Donna K. Lazarus](#), [Abdulrahman Alwattar](#) or [Andrew B. Lowy](#) if you have any questions about these changes to the Whistleblower Law.

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