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Illinois Amends Whistleblower Act

Posted September 13, 2024 - The Illinois Whistleblower Act (Act) prohibits employers from retaliating against an employee for disclosing information about or refusing to participate in an employer's activity that may violate the law. Illinois has amended the Act to define certain key terms; to prohibit retaliatory action against an employee who threatens disclosure of activity to various entities; and to include additional remedies and enforcement for violations of the Act. The changes effected in this amendment apply only to claims arising or complaints filed on or after January 1, 2025.

Definitions

The amendments modify the term "employee" to include any individual permitted to work by the employer, except those who would be classified as independent contractors. Additional key terms are defined as follows:

- "Adverse employment action" is an action that a reasonable employee would find materially adverse. An action is materially adverse when it could dissuade a reasonable worker from disclosing or threatening to disclose information about or refusing to participate in activities that may violate the law.
- "Retaliatory action" is an adverse employment action or the threat of action by an employer to penalize the employee, or any non-employment action that would dissuade a reasonable worker from disclosing information.
 - Retaliatory action includes reporting or threatening to report to a governmental agency the citizenship or immigration status of a worker or a worker's family or household member.
 - Retaliatory action does not include conduct undertaken if specifically required by state or federal law or if at the express direction or request of the federal government; or truthful, performance-related information about the individual provided to a prospective employer at their request.

Prohibited Retaliatory Action

The amendments expand and modify the prohibited retaliatory actions against employee whistleblowing activity in several ways.

- In addition to actual disclosure, the amendments prohibit retaliatory action against employees for threatening disclosure of the employer's activity, policy, or practice.
- The amendments prohibit retaliatory action for disclosure or threatening disclosure of an employer's activity, policy, or practice that may pose a substantial and specific danger to employees, public health, or safety, along with those that allegedly violate state or federal law, rule, or regulation.
- To benefit from the Act's protections, the employee must have a "good faith belief" (undefined in the amended Act) that the employer's activity, policy, or practice violates the law or poses a danger, rather than "reasonable cause to believe" as previously required.

Finally, the Act prohibits retaliation against an employee who discloses an employer's activity to a government or law enforcement agency or in a court, administrative hearing, or legislative proceeding. Under the amendments, retaliatory action is also prohibited against the whistleblowing employee for disclosing or threatening to disclose information to supervisors, principal officers, board members, or a supervisor in a contracting organization who makes the employer aware of the disclosure.

Remedies and Enforcement

As amended, the Act continues to allow a private right of action for an aggrieved employee seeking reinstatement, back pay, and compensation as a result of a violation. Additional remedies provided for employees include injunctive relief, up to 90 days of interest at 9% on back pay, liquidated damages of up to \$10,000, and a \$10,000 civil penalty.

Under the amendments, the Illinois Attorney General (AG) is now authorized to conduct investigations into alleged violations, as well as to initiate or intervene in a civil action. The AG can seek monetary damages, restitution, and equitable relief, as well as any remedy available to an employee in a private action. For repeated violations, the AG can request a civil penalty of up to \$10,000 for each violation.

Finally, the amendments provide a defense for employers who can show that the retaliatory action complained of was based solely on grounds other than the employee's exercise of whistleblowing rights protected by the Act.