

# New York Significantly Expands Employee Whistleblower Protections

October 29, 2021

On October 28, 2021, Governor Hochul signed legislation which significantly expands employee protections for whistleblowing activity in New York. The new law amends Section 740 of the New York Labor Law to expand: (i) the scope of protected activity that entitles an employee to anti-retaliation protection; (ii) the categories of workers protected against retaliation; (iii) the definition of prohibited retaliatory action; and (iv) the statute of limitations. The new law becomes effective in 90 days.

**Overview of the New Law.** The new law provides that an employer may not take any retaliatory action against an employee because the employee (i) discloses or threatens to disclose to a supervisor or a public body any activity, policy or practice of the employer that the employee reasonably believes is in violation of any law, rule or regulation or poses a substantial and specific danger to the public health and safety; (ii) provides information to, or testifies before, any public body investigating any such activity, policy or practice; or (iii) objects to or refuses to participate in any such activity, policy or practice.

An employee who is retaliated against for engaging in any of these protected activities may sue in court, is entitled to a jury trial and may seek a broad range of remedies including: injunctive relief, reinstatement, lost compensation, a civil penalty of up to \$10,000, punitive damages and reimbursement of attorneys' fees and costs incurred in bringing the action.

**A Dramatic Expansion of the Scope of Protected Activity.** Prior to the new law, New York's anti-retaliation protections were very narrow. Protected activity giving rise to anti-retaliation protection had to relate to violations of law which created or presented a substantial and specific danger to the public health and safety. As the legislative materials accompanying the new law describe, previously "an employee reporting any myriad of illegal activities that do not directly affect public health or safety, from sexual harassment to tax evasion, may [have been] at risk of being retaliated against by their employer with no protection in law." Now, with the new law, protected activity can relate to **any** violation of **any** federal, state or local statute, rule, or regulation, regardless of subject matter, **or** to practices affecting public health and safety. The new law brings

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New York in line with the small number of states with very broad employee whistleblower protections, such as New Jersey, which provides for broad protections under the Conscientious Employee Protection Act (CEPA). Judging from the experience in New Jersey, which saw a significant rise in employment litigation following the passage of CEPA, it is likely that New York employers may face an increase in employee whistleblower litigation in the wake of this new law.

**Expanded Definition of Employee.** The scope of employees covered by the anti-retaliation protections is expanded by the new law to include former employees and independent contractors.

**Expanded Definition of Retaliation.** The scope of retaliatory actions prohibited by the new law is expanded to include, not only discharge, suspension or demotion but also any other “adverse action” or threat to take adverse action.

**Expanded Statute of Limitations.** The statute of limitations for filing a claim is expanded under the new law from one year to two.

**Publication Requirement.** Employers must inform their employees of their rights under the new law by posting a notice conspicuously in an easily accessible, well-lighted location customarily frequented by employees.

**Recommended Actions for Employers.** Given the expanded scope of whistleblower protections under the new law and the increased likelihood of whistleblower litigation in New York, employers should:

- Immediately review and update existing whistleblower policies, as needed, or adopt a whistleblower policy if one is not already in place.
- Consider training management on all levels on whistleblower protections including how to respond if they receive reports of possible violations of law and how to minimize retaliation risks.
- Inform employees of their rights under the new law including by posting notices as required by the new law.
- Consider involving counsel when faced with employee or independent contractor complaints regarding alleged violations of law and before taking adverse action against an employee or independent contractor who has arguably engaged in protected activity.

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Please do not hesitate to contact us with any questions.

**NEW YORK**



Jyotin Hamid  
jhamid@debevoise.com



Tricia Bozyk Sherno  
tbsherno@debevoise.com