

NYSARC, INC. – SUFFOLK CHAPTER
2900 Veterans Memorial Highway, Bohemia, New York 11716-1193

Notice to Employees
Re: Expanded Whistleblower Protections

On October 28, 2021, New York Governor Kathy Hochul signed into law a bill dramatically expanding New York’s whistleblower statute, New York Labor Law § 740, which is scheduled to take effect on January 26, 2022. [S4394A/A.5144A](#).

The New Expanded Whistleblower Law

The new expanded law significantly bolsters protections for private-sector employees alleging retaliation, and exposes employers to significant additional liability.

Expanded Definition of “Employee”

The amended law adds “former employees” and “independent contractors” to those “employees” permitted to bring whistleblower claims.

Change to Reasonable Belief Standard

The amended law removes the previous requirement that there be an actual violation of the law. Employees are now protected if they “reasonably believe” an employer’s activity or conduct is (i) in violation of a “law, rule or regulation,” including executive orders and judicial or administrative decisions, rulings, and orders; or (ii) “poses a substantial and specific danger to the public health or safety.”

Expansion of Protected Activity

The prior law required that employees first report violations to their employers before disclosing violations to a public body, thereby providing a reasonable opportunity to correct the alleged violation. The amended law now requires employees to make a “good faith effort” to notify their employer. Employer notification is not necessary if (i) there is imminent and serious danger to public health; (ii) the employee reasonably believes reporting of the violation to the employer would result in the destruction of evidence, concealment, or harm to the employee; or (iii) the employee reasonably believe that their supervisor is already aware of the violation and will not correct it.

Expansion of Prohibited Retaliatory Conduct

The amended law expands the definition of prohibited “retaliatory actions” to include (i) adverse employment actions against current employees, such as discharge, suspension, or demotion; (ii) actions or threats that would adversely impact a former employee’s current or future employment; or (iii) contacting or threatening to contact immigration authorities on an employee or their family member.

Additional Remedies, Longer Statute of Limitations, and Right to Jury Trial

The amended law expands the remedies potentially available to whistleblowers to include: front pay, civil penalties not to exceed \$10,000, and punitive damages (in addition to back pay). The statute of limitations is extended from one year to two years, and whistleblowers now have a right to a jury trial.