
SENATE BILL 5839

State of Washington

63rd Legislature

2013 Regular Session

By Senators Kline, Chase, Darneille, Conway, Keiser, Hasegawa, and Kohl-Welles

Read first time 02/21/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to the protection of workers acting in furtherance
2 of public policy; adding a new section to chapter 49.60 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that retaliation
6 against employees who act in furtherance of federal, state, and local
7 laws and regulations is a matter of state concern, and such retaliation
8 threatens the public interest and the rights and proper privileges of
9 employees. Common law in this area has become inadequate to protect
10 public policy and employees who act in furtherance of it. Washington
11 is now one of the only states in the United States that lacks
12 sufficient protection from retaliation. It is the intent of the
13 legislature to protect employees who act in furtherance of public
14 policy and to reject the recent common law developments in the
15 Washington state supreme court case *Cudney v. ALSCO* which have eroded
16 those protections.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.60 RCW
18 to read as follows:

1 (1) It is unlawful for an employer to take materially adverse
2 action against an employee where retaliation is a substantial factor in
3 the employer's decision to take adverse action. An adverse action is
4 not material if it has only a trivial effect. In order to maintain a
5 civil action for the violation of public policy, an employee must show
6 all of the following:

7 (a) That a clear public policy exists. Whether a clear public
8 policy exists is a question of law for the court to decide. Clear
9 public policy may be reflected in federal, state, or local laws,
10 including constitutions, statutes, regulations, ordinances, and codes.
11 Prior judicial decisions may also be a source of public policy;

12 (b) That discouraging the conduct the employee engaged in would
13 jeopardize the public policy. To establish jeopardy, an employee must
14 show that the conduct in which he or she engaged directly relates to
15 public policy, and that the threat of adverse action will discourage
16 others from engaging in such conduct; and

17 (c) That the public policy-related conduct caused the adverse
18 action. To satisfy causation, the employee must establish that the
19 protected activity was a substantial factor in the employer's decision
20 to take adverse action.

21 (2) Where an employer asserts that there is an overriding
22 justification for his or her or its decision to take adverse action,
23 the employer bears the burden of asserting and proving the affirmative
24 defense. Whether there is an overriding justification for the
25 employer's decision is a question of law for the court to decide. In
26 order to assert this affirmative defense, the employer must admit that
27 he or she or it took adverse action because of the employee's public
28 policy-related conduct and must prove that the balance of public
29 policies relied upon by employer outweighs the public policies relied
30 upon by the employee.

31 (3) An employee who is retaliated against has a civil cause of
32 action in a court of competent jurisdiction to enjoin further
33 violations and to recover actual damages sustained by the employee and
34 the cost of the lawsuit, including reasonable attorneys' fees and any
35 other appropriate remedy authorized by RCW 49.60.030(2).

36 (4) A civil cause of action is available for a violation of this
37 section notwithstanding the existence of any other means of protecting

1 public policy and is independent of any civil cause of action or remedy
2 that may exist at common law.

3 (5) A three-year statute of limitations applies to violations of
4 this section.

5 (6) For the purposes of this section, "retaliate" means to commit
6 a materially adverse action against an employee for conduct that the
7 employee reasonably believes promotes a clear mandate of public policy.
8 Protected conduct includes, but is not limited to, the refusal to
9 commit an illegal act, performing a legal duty or obligation,
10 exercising a legal right or privilege, or reporting employer misconduct
11 or whistleblowing.

--- END ---