
HOUSE BILL 1894

State of Washington

64th Legislature

2015 Regular Session

By Representatives Gregerson, Jinkins, Goodman, Kirby, Walkinshaw, Ormsby, Moeller, and Pollet

Read first time 02/02/15. Referred to Committee on Judiciary.

1 AN ACT Relating to the protection of workers acting in
2 furtherance of public policy; adding a new section to chapter 49.60
3 RCW; and 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
8 retaliation threatens the public interest and the rights and proper
9 privileges of employees. Common law in this area has become
10 inadequate to protect public policy and employees who act in
11 furtherance of it. Washington is now one of the only states in the
12 United States that lacks sufficient protection from retaliation. It
13 is the intent of the legislature to protect employees who act in
14 furtherance of public policy and to reject the recent common law
15 developments in the Washington state supreme court case *Cudney v.*
16 *ALSCO* which have eroded those protections.

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

19 (1) It is unlawful for an employer to take materially adverse
20 action against an employee where retaliation is a substantial factor

1 in the employer's decision to take adverse action. An adverse action
2 is not material if it has only a trivial effect. In order to maintain
3 a civil action for the violation of public policy, an employee must
4 show all of the following:

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

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

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

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

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

35 (4) A civil cause of action is available for a violation of this
36 section notwithstanding the existence of any other means of
37 protecting public policy and is independent of any civil cause of
38 action or remedy that may exist at common law.

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

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

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