

RCW 21.40.090 Retaliatory action unlawful—Exceptions—Action for relief—Miscellaneous. (1) No employer may directly or indirectly terminate, discharge, demote, suspend, threaten, harass, or in any other manner retaliate against, an individual because of any lawful act done by the individual:

(a) In providing information to the state or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur;

(b) In initiating, testifying in, or assisting in any investigation or administrative or judicial action of the securities administrator, securities division, or other law enforcement agency based upon or related to such information;

(c) In making disclosures that are required or protected under the Sarbanes-Oxley act of 2002, 15 U.S.C. 7201 et seq.; the securities act of 1933, 15 U.S.C. 77a et seq.; the securities exchange act of 1934, 15 U.S.C. 78a et seq.; 18 U.S.C. 1513(e); any other law, rule, or regulation subject to the jurisdiction of the securities and exchange commission; or chapter 21.20 RCW or a rule adopted thereunder; or

(d) In making disclosures to a person with supervisory authority over the employee, or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct, regarding matters subject to the jurisdiction of the securities administrator, securities division, or the securities and exchange commission.

(2) Notwithstanding subsection (1) of this section, an individual is not protected under this section if:

(a) The individual knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;

(b) The individual uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information; or

(c) The individual knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous.

(3) An individual who alleges any act of retaliation in violation of subsection (1) of this section may bring an action for the relief provided in subsection (6) of this section in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection (3) of this section may be served at any place in the United States, in compliance with applicable court rules and the law of the other jurisdiction.

(5) An action under subsection (3) of this section may not be brought:

(a) More than six years after the date on which the violation of subsection (1) of this section occurred; or

(b) More than three years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subsection (1) of this section. Notwithstanding the above limitations, an action under subsection (3) of this section may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(6) A court may award as relief for an individual prevailing in an action brought under this section:

(a) Reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;

(b) Two times the amount of back pay otherwise owed to the individual, with interest;

(c) Compensation for litigation costs, expert witness fees, and reasonable attorneys' fees;

(d) Actual damages;

(e) An injunction to restrain a violation; or

(f) Any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under chapter 42.56 RCW. This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) No person may take any action to impede an individual from communicating directly with the securities division staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(a) Agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(b) Information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in this chapter may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement. [2023 c 149 s 10.]