
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 304 Session of
2007

INTRODUCED BY MUNDY, BELFANTI, BENNINGTON, CALTAGIRONE, COHEN,
DeLUCA, DePASQUALE, FRANKEL, FREEMAN, GOODMAN, HENNESSEY,
JAMES, JOSEPHS, LEACH, MANDERINO, MELIO, PALLONE, PRESTON,
SANTONI, K. SMITH, SOLOBAY, STURLA, SURRA, TANGRETTI, THOMAS
AND YOUNGBLOOD, FEBRUARY 7, 2007

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 7, 2007

AN ACT

1 Providing protection to employees from retaliation by employers
2 for certain acts, for procedures and remedies and for
3 penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Conscientious
8 Employee Protection Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Employee." Any individual who performs services for and
14 under the control and direction of an employer for wages or
15 other remuneration.

16 "Employer." Any individual, partnership, association,
17 corporation or any person or group of persons acting directly or

1 indirectly on behalf of or in the interest of an employer with
2 the employer's consent and shall include all branches of State
3 government, counties and municipalities, any other political
4 subdivision, a school district, any special district, any
5 authority, commission or board or any other agency or
6 instrumentality thereof.

7 "Improper quality of patient care." With respect to patient
8 care, any practice, procedure, action or failure to act of an
9 employer that is a health care provider which violates any law
10 or any rule, regulation or declaratory ruling adopted pursuant
11 to law or any professional code of ethics.

12 "Public body." The United States Congress, the General
13 Assembly or any popularly elected local governmental body, or
14 any member or employee thereof; any Federal, State or local
15 judiciary or any member or employee thereof, or any grand or
16 petit jury; any Federal, State or local regulatory,
17 administrative or public agency or authority, or instrumentality
18 thereof; any Federal, State or local law enforcement agency,
19 prosecutorial office or police or peace officer; any Federal,
20 State or local department of an executive branch of government;
21 or any division, board, bureau, office, committee or commission
22 of any of the public bodies described in this definition.

23 "Retaliatory action." The discharge, suspension or demotion
24 of an employee, or other adverse employment action taken against
25 an employee in the terms and conditions of employment.

26 "Supervisor." Any individual with an employer's organization
27 who has the authority to direct and control the work performance
28 of the affected employee, who has the authority to take
29 corrective action regarding the violation of the law, rule or
30 regulation of which the employee complains or who has been

1 designated by the employer on the notice required under section
2 7.

3 Section 3. Retaliatory action prohibited.

4 An employer shall not take any retaliatory action against an
5 employee because the employee does any of the following:

6 (1) Discloses or threatens to disclose to a supervisor
7 or to a public body an activity, policy or practice of the
8 employer or another employer with whom there is a business
9 relationship that the employee reasonably believes is in
10 violation of a law, or a rule or regulation promulgated
11 pursuant to law, or, in the case of an employee who is a
12 licensed or certified health care professional, reasonably
13 believes constitutes improper quality of patient care.

14 (2) Provides information to or testifies before any
15 public body conducting an investigation, hearing or inquiry
16 into any violation of law, or a rule or regulation
17 promulgated pursuant to law, by the employer or another
18 employer with whom there is a business relationship or, in
19 the case of an employee who is a licensed or certified health
20 care professional, provides information to or testifies
21 before any public body conducting an investigation, hearing
22 or inquiry into the quality of patient care.

23 (3) Objects to or refuses to participate in any
24 activity, policy or practice which the employee reasonably
25 believes:

26 (i) is in violation of a law or a rule or regulation
27 promulgated pursuant to law or, if the employee is a
28 licensed or certified health care professional,
29 constitutes improper quality of patient care;

30 (ii) is fraudulent or criminal; or

1 (iii) is inconsistent with any mandate of public
2 policy concerning the public health, safety or welfare or
3 protection of the environment.

4 Section 4. Written notice required.

5 The protection against retaliatory action provided by this
6 act pertaining to disclosure to a public body shall not apply to
7 an employee who makes a disclosure to a public body unless the
8 employee has brought the activity, policy or practice in
9 violation of a law or a rule or regulation promulgated pursuant
10 to law to the attention of a supervisor of the employee by
11 written notice and has afforded the employer a reasonable
12 opportunity to correct the activity, policy or practice.

13 Disclosure shall not be required where the employee is
14 reasonably certain that the activity, policy or practice is
15 known to one or more supervisors of the employer or where the
16 employee reasonably fears harm or retaliation as a result of the
17 disclosure provided, however, that the situation is emergency in
18 nature.

19 Section 5. Civil action, jury trial, remedies.

20 (a) General provisions.--Upon a violation of any of the
21 provisions of this act, an aggrieved employee or former employee
22 may, within one year, institute a civil action in a court of
23 competent jurisdiction. Upon the application of any party, a
24 jury trial shall be directed to try the validity of any claim
25 under this act specified in the suit. All remedies available in
26 common law tort actions shall be available to prevailing
27 plaintiffs, including, but not limited to, emotional distress.
28 These remedies are in addition to any legal or equitable relief
29 provided by this act or any other statute.

30 (b) Other relief.--The court may also order:

1 (1) an injunction to restrain continued violation of
2 this act;

3 (2) reinstatement of the employee to the same position
4 held before the retaliatory action or to an equivalent
5 position;

6 (3) reinstatement of full fringe benefits and seniority
7 rights;

8 (4) compensation for lost wages, benefits and other
9 remuneration;

10 (5) payment by the employer of reasonable costs and
11 attorney fees;

12 (6) punitive damages; or

13 (7) an assessment of a civil fine of not more than
14 \$1,000 for the first violation of this act and not more than
15 \$5,000 for each subsequent violation, which shall be paid to
16 the State Treasurer for deposit in the General Fund.

17 Section 6. Fees, costs to employer.

18 (a) General rule.--A court, upon notice of motion in
19 accordance with the Pennsylvania Rules of Civil Procedure, may
20 also order that reasonable attorney fees and court costs be
21 awarded to an employer if the court determines that an action
22 brought by an employee under this act was without basis in law
23 or in fact.

24 (b) Exception.--An employee shall not be assessed attorney
25 fees under this section if, after exercising reasonable and
26 diligent efforts after filing a suit, the employee files a
27 voluntary dismissal concerning the employer, within a reasonable
28 time after determining that the employer would not be found to
29 be liable for damages.

30 Section 7. Posting of notices.

1 (a) General rule.--An employer shall conspicuously display
2 and annually distribute to all employees written or electronic
3 notices of its employees' protections, obligations, rights and
4 procedures under this act and use other appropriate means to
5 keep its employees so informed. Each notice posted or
6 distributed pursuant to this section shall be in English and in
7 Spanish and, at the employer's discretion, any other language
8 spoken by the majority of the employer's employees. The notice
9 shall include the name of the person or persons the employer has
10 designated to receive written notifications pursuant to section
11 4. The Secretary of Labor and Industry shall make available to
12 employers a text of a notice fulfilling the requirements of this
13 section and provide copies of the notice suitable for display
14 and distribution to any employers who request the copies,
15 charging them as much as is needed to pay the costs of providing
16 the forms. The Secretary of Labor and Industry shall also
17 provide notices printed in a language other than English and
18 Spanish at the request of the employer.

19 (b) Exception.--The requirement that an employer annually
20 distribute to all employees written notices of the protections,
21 obligations, rights and procedures provided to the employees by
22 the provisions of this act shall not apply to any employer who
23 has fewer than five employees.

24 Section 8. Other rights, remedies unaffected.

25 Nothing in this act shall be deemed to diminish the rights,
26 privileges or remedies of any employee under any other Federal
27 or State law or regulation or under any collective bargaining
28 agreement or employment contract, except that the institution of
29 an action in accordance with this act shall be deemed a waiver
30 of the rights and remedies available under any other contract,

1 collective bargaining agreement, State law, rule or regulation
2 or under common law.

3 Section 20. Effective date.

4 This act shall take effect in 60 days.