

BILL TEXT:

STATE OF NEW YORK

1582

2007-2008 Regular Sessions

IN SENATE

January 23, 2007

Introduced by Sen. LARKIN -- read twice and ordered printed,
and when printed to be committed to the Committee on Civil Service and
Pensions

AN ACT to amend the civil service law, in relation to
retaliatory actions by public employers taken against public employees

**The People of the State of New York, represented in Senate
and Assembly, do enact as follows:**

1 Section 1. Section 75-b of the civil service law, as added by
chapter

2 660 of the laws of 1984, paragraph (a) of subdivision 2 as
amended by

3 chapter 899 of the laws of 1986, is amended to read as follows:

4 § 75-b. Retaliatory action by public employers. 1. For the
purposes of

5 this section the term:

6 (a) "Public employer" or "employer" shall mean (i) the state
of New

7 York, (ii) a county, city, town, village, or any other
political subdi-

8 vision or civil division of the state, (iii) a school district
or any

9 governmental entity operating a public school, college or
university,

10 (iv) a public improvement or special district, (v) a public
authority,

11 commission or public benefit corporation, or (vi) any
other public

12 corporation, agency, instrumentality or unit of government
which exer-
13 cises governmental power under the laws of the state.
14 (b) "Public employee" or "employee" shall mean any person
holding a
15 position by appointment or employment in the service of a
public employ-
16 er, except judges or justices of the unified court system and
members of
17 the legislature.
18 (c) "Governmental body" shall mean (i) an officer, employee,
agency,
19 department, division, bureau, board, commission, council,
authority or
20 other body of a public employer, (ii) employee, committee,
member[-] or
21 commission of the legislative branch of government, (iii) a represen-
22 tative, member or employee of a legislative body of a
county, town,
23 village, or any other political subdivision or civil
division of the
24 state, (iv) a law enforcement agency or any member or employee
of a law

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in
brackets

[-] is old law to be omitted.

LBD07463-01-7

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1 enforcement agency, or (v) the judiciary or any employee of
the judici-
2 ary.
3 (d) "Personnel action" shall mean an action affecting
compensation,
4 appointment, promotion, transfer, **elimination of job title or**
classi-
5 **fication,** assignment, reassignment, reinstatement or
evaluation of
6 performance.
7 2. (a) A public employer shall not dismiss or take other
disciplinary
8 or other adverse personnel action against a public employee
regarding
9 the employee's employment because the employee discloses to a govern-
10 mental body information: (i) regarding a violation of a
law, rule or
11 regulation, which violation creates and presents a
substantial and
12 specific danger to the public health or safety, **or which**
could reason-
13 **ably be expected to lead to endangering the welfare of a minor,**
includ-

14 ing but not limited to physical, mental or sexual misuse or
abuse; or
15 (ii) which the employee reasonably believes to be true and
reasonably
16 believes constitutes an improper governmental action.
"Improper govern-
17 mental action" shall mean any action by a public employer or
employee,
18 or an agent of such employer or employee, which is
undertaken in the
19 performance of such agent's official duties, whether or not
such action
20 is within the scope of his or her employment, and which is in
violation
21 of any federal, state or local law, rule or regulation.
22 (b) Prior to disclosing information pursuant to paragraph (a)
of this
23 subdivision, an employee shall have made a good faith effort
to provide
24 the appointing authority or his or her designee the
information to be
25 disclosed and shall [~~provide~~] have provided the appointing
authority or
26 designee a reasonable time to take appropriate action, unless
(i) there
27 is imminent and serious danger to public health or safety, or
(ii) such
28 violation could reasonably be expected to lead to
endangering the
29 welfare of a minor, including but not limited to physical,
mental or
30 sexual misuse or abuse. For the purposes of this
subdivision, an
31 employee who acts pursuant to this paragraph shall be
deemed to have
32 disclosed information to a governmental body under paragraph
(a) of this
33 subdivision.
34 3. (a) Where an employee is subject to dismissal or other
disciplinary
35 action under a final and binding arbitration provision, or
other disci-
36 plinary procedure contained in a collectively negotiated
agreement, or
37 under section seventy-five of this title or any other provision
of state
38 or local law, or the elimination of job title or
classification that
39 uniquely fits and singles out such employee or a class of
employees of
40 which such employee is a member and the employee reasonably
believes
41 that such dismissal [~~or~~], other disciplinary action, or
any other
42 adverse personnel action would not have been taken but for the
conduct

43 protected under subdivision two of this section, he or she
may assert
44 such as a defense before the designated arbitrator or hearing
officer.
45 The merits of such defense shall be considered and determined
as part of
46 the arbitration award or hearing officer decision of the
matter. If
47 there is a finding that the dismissal [~~or~~], other disciplinary
action,
48 or other personnel action is based [~~solely~~] primarily on a
violation by
49 the employer of such subdivision, the arbitrator or hearing
officer
50 shall dismiss or recommend dismissal of the disciplinary
proceeding, as
51 appropriate, and, if appropriate, reinstate the employee with
back pay,
52 and, in the case of an arbitration procedure, may take other
appropriate
53 action as is permitted in the collectively negotiated
agreement.

54 (b) Where an employee is subject to a collectively
negotiated agree-
55 ment which contains provisions preventing an employer
from taking
56 adverse personnel actions and which contains a final and
binding arbi-

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1 tration provision to resolve alleged violations of such
provisions of
2 the agreement and the employee reasonably believes that such
personnel
3 action would not have been taken but for the conduct
protected under
4 subdivision two of this section, he or she may assert such
as a claim
5 before the arbitrator. The arbitrator shall consider such
claim and
6 determine its merits and shall, if a determination is made
that such
7 adverse personnel action is based on a violation by the
employer of such
8 subdivision, take such action to remedy the violation as is
permitted by
9 the collectively negotiated agreement.

10 (b-1) Where an employee is the subject of an adverse
personnel action,
11 such as the elimination of a job title or classification that
uniquely
12 fits and singles out such employee or a class of employees of
which such
13 employee is a member, and action is not a dismissal or other
discipli-
14 nary action that is subject to a hearing, and the employee
reasonably

15 believes that such personnel action would not have been
16 taken but for
17 the conduct protected under subdivision two of this
18 section, such
19 employee may bring an action or proceeding in a court of
20 competent
21 jurisdiction to prohibit such public employer from taking such
22 action.
23 The court shall consider such claim and determine its merits;
24 provided,
25 that the public employer may present evidence that the adverse
26 personnel
27 action was taken independently of the employee's conduct
28 pursuant to
29 subdivision two of this section. A claim of an
30 independent, adverse
31 personnel action by a public employer must be proven by
32 clear and
33 convincing evidence. The court shall award reasonable
34 attorneys' fees,
35 costs, and disbursements to a prevailing plaintiff employee.

26 (c) Where an employee is not subject to any of the provisions
of para-

27 graph (a) or (b) of this subdivision, the employee may
commence an
28 action in a court of competent jurisdiction under the same
terms and

29 conditions as set forth in article twenty-C of the labor law.

30 4. Nothing in this section shall be deemed to diminish or
impair the

31 rights of a public employee or employer under any law, rule,
regulation,

32 or collectively negotiated agreement or to prohibit any
personnel action

33 which otherwise would have been taken regardless of any
disclosure of

34 information.

35 § 2. This act shall take effect immediately and shall be
deemed to

36 have been in full force and effect on and after January 1,
2007.
