

Vermont Statutes

Title 3: Executive

Chapter 27: STATE EMPLOYEES LABOR RELATIONS ACT

Sub-Chapter 04A: Whistleblower Protection (pages 1 – 4)

and

Sec. 1. 1 V.S.A. § 317(c), as amended May 2014 (page 5)

Chapter 27: STATE EMPLOYEES LABOR RELATIONS ACT

Sub-Chapter 04A: Whistleblower Protection

§ 971. Intent of subchapter

A state employee, as a trustee and servant of the people, shall be free to report, in good faith and with candor, waste, fraud, abuse of authority, violations of law, or a threat to the health of employees, the public, or persons under the care of the state without fear of reprisal, intimidation, or retaliation. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 972. Definitions

As used in this subchapter:

(1) "Department head" means a secretary of an agency, commissioner of a department, director of an office, or any other appointing authority in charge of an agency of state government.

(2) "Illegal order" means a directive to violate, or to assist in violating, a federal, state, or local law.

(3) "Public body" means:

(A) a department head or employee specifically designated or assigned to receive a complaint that constitutes protected activity under this chapter;

(B) a board or commission of state government;

(C) the Vermont state auditor;

(D) a state or federal agency that oversees the activities of a state agency;

(E) a law enforcement officer as defined in 20 V.S.A. § 2358(c)(1);

(F) a federal or state court, grand jury, petit jury, law enforcement agency, or prosecutorial office;

(G) the general assembly or the United States Congress; or

(H) an officer or employee of an entity listed in this subdivision (3) when acting within the scope of his or her duties.

(4) "Retaliatory action" includes any adverse performance or disciplinary action, including discharge, suspension, reprimand, demotion, denial of promotion, imposition of a performance warning period, or involuntary transfer or reassignment that is given in retaliation for the state employee's involvement in a protected activity, as set forth in section 973 of this title.

(5) "State employee" means an individual employed on a permanent or limited status basis by the state of Vermont. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 973. Protected activity

(a) A state agency, department, appointing authority, official, or employee shall not engage in retaliatory action against a state employee because the state employee refuses to comply with an illegal order or engages in any of the following:

(1) Providing to a public body a good faith report or good faith testimony that alleges an entity of state government, a state employee or official, or a person providing services to the state under contract has engaged in a violation of law or in waste, fraud, abuse of authority, or a threat to the health of employees, the public, or persons under the care of the state.

(2) Assisting or participating in a proceeding to enforce the provisions of this subchapter.

(b) No state agency, department, appointing authority, official, or employee shall attempt to restrict or interfere with, in any manner, a state employee's ability to engage in any of the protected activity described in subsection (a) of this section.

(c) No state agency, department, appointing authority, or manager shall require any state employee to discuss or disclose his or her testimony, or intended testimony, prior to an employee's appearance to testify before the general assembly if he or she is not testifying on behalf of an entity of state government.

(d) No employee may divulge information that is confidential under state or federal law. An act by which an employee divulges such information shall not be considered protected activity under this section.

(e) In order to establish a claim of retaliation based upon the refusal to follow an illegal order, the employee shall assert at the time of the refusal his or her good faith and reasonable belief that the order is illegal. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 974. Communication with general assembly

(a) No entity of state government may prohibit a state employee from engaging in discussion with a member of the general assembly or from testifying before a legislative committee; provided, however, that an employee may not divulge confidential information, and an employee shall be clear that he or she is not speaking on behalf of an entity of state government.

(b) No state employee shall be subject to discipline, discharge, discrimination, or other adverse employment action as a result of the employee providing information to a legislator or legislative committee; provided, however, that the employee does not divulge confidential information, and that the

employee is clear that he or she is not speaking on behalf of any entity of state government. The protections set forth in this subchapter shall not apply to statements that constitute hate speech or threats of violence against a person.

(c) In the event that an appearance before a committee of the general assembly will cause an employee to miss work, he or she shall request to be absent from work and shall provide as much notice as is reasonably possible. The request shall be granted unless there is good cause to deny the request. If a request is denied, the decision and reasons for the denial shall be in writing and shall be provided to the employee in advance of the scheduled appearance. The protections set forth in this section are subject to the efficient operation of state government, which shall prevail in any instance of conflict. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 975. Enforcement and preemption

(a) Nothing in this subchapter shall be deemed to diminish the rights, privileges, or remedies of a state employee under other federal or state law or under any collective bargaining agreement or employment contract, except the limitation on multiple actions as set forth in this section.

(b) A state employee who files a claim of retaliation for protected activity with the Vermont labor relations board may not bring such a claim in superior court.

(c) A state employee who files a claim under this subchapter in superior court may not bring a claim of retaliation for protected activity under a grievance procedure or similar process available to the employee. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 976. Remedies

A state employee who brings a claim in superior court may be awarded the following remedies:

(1) reinstatement of the employee to the same position, seniority, and work location held prior to the retaliatory action;

(2) back pay, lost wages, benefits, and other remuneration;

(3) in the event of a showing of a willful, intentional, and egregious violation of this subchapter, an amount up to the amount of back pay in addition to the actual back pay;

(4) other compensatory damages;

(5) interest on back pay;

(6) appropriate injunctive relief; and

(7) reasonable costs and attorney's fees. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 977. Posting

Every state agency and department shall distribute a copy of this law by August 1, 2008, and shall post and display notices of state employee protection under this subchapter in a prominent and accessible location in the workplace. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

§ 978. Limitations of actions

An action alleging a violation of this subchapter brought under a grievance procedure or similar process shall be brought within the period allowed by that process or procedure. An action brought in superior court shall be brought within 180 days of the date of the alleged retaliatory action. (Added 2007, No. 128 (Adj. Sess.), § 1, eff. May 13, 2008.)

Sec. 1. 1 V.S.A. § 317(c), as amended May 2014:

(c) The following public records are exempt from public inspection and copying:

* * *

(41) documents reviewed by the Victim's Victims Compensation Board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c);

(42) except as otherwise provided by law, information that could be used to identify a complainant who alleges that a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of 1 law, or in waste, fraud, or abuse of authority, or in an act creating a threat to health or safety, unless the complainant consents to disclosure of his or her identity.