

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1979 to include conducting an investigation in response to a protected disclosure as a prohibited personnel action, to expand the definition of protected disclosures, to extend the limitations period for whistleblower retaliation claims, to increase the amount of supervisor penalties, to allow an employee to bring a civil action even if he or she has brought an administrative claim, and to establish authority to grant a cash award to an employee whose protected disclosure leads to a recovery by the District; to amend the Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998 to clarify the definition of a prohibited procurement practice, to prohibit District retaliation against contractors who make protected disclosures, and to extend the limitations period for whistleblower retaliation claims; and to amend the District of Columbia Procurement Practices Act of 1985 to increase the amount that a qui tam plaintiff may receive.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Whistleblower Protection Amendment Act of 2009”.

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 1552(a) (D.C. Official Code § 1-615.52(a)) is amended as follows:

Amend
§ 1-615.52

(1) Paragraph (5) is amended as follows:

(A) The existing text is designated as subparagraph (A).

(B) A new subparagraph (B) is added to read as follows:

“(B) For purposes of this paragraph, the term :

“(i) Investigation” includes an examination of fitness for duty and excludes any ministerial or nondiscretionary factfinding activity necessary to perform the agency’s mission”.

ENROLLED ORIGINAL

“(ii) “Retaliating” includes conducting or causing to be conducted an investigation of an employee or applicant for employment because of a protected disclosure made by the employee or applicant who is a whistleblower.

(2) Paragraph (6) is amended by striking the phrase “by statute” and inserting the phrase “by statute, without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties,” in its place.

(b) Section 1553 (D.C. Official Code § 1-615.53) is amended to read as follows:

**Amend
§ 1-615.53**

“Sec. 1553. Prohibitions.

“(a) A supervisor shall not take, or threaten to take, a prohibited personnel action or otherwise retaliate against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order.

“(b) Except in cases where the communication would be unlawful, a person shall not interfere with or deny the right of employees, individually or collectively, to furnish information to the Council, a Council committee, or a Councilmember.”.

(c) Section 1554 (D.C. Official Code § 1-615.54) is amended as follows:

**Amend
§ 1-615.54**

(1) Subsection (a) is amended to read as follows:

“(a)(1) An employee aggrieved by a violation of section 1553 may bring a civil action against the District, and, in his or her personal capacity, any District employee, supervisor, or official having personal involvement in the prohibited personnel action, before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including:

“(A) An injunction;

“(B) Reinstatement to the same position held before the prohibited personnel action or to an equivalent position;

“(C) Reinstatement of the employee’s seniority rights;

“(D) Restoration of lost benefits;

“(E) Back pay and interest on back pay;

“(F) Compensatory damages; and

“(G) Reasonable costs and attorney fees.

“(2) A civil action shall be filed within 3 years after a violation occurs or within one year after the employee first becomes aware of the violation, whichever occurs first.

“(3) D.C. Official Code § 12-309 shall not apply to any civil action brought under this section.”.

(2) Subsection (b) is amended by striking the phrase “employing District agency” and inserting the word “defendant” in its place.

(3) A new subsection (e) is added to read as follows:

“(e)(1) If a protected disclosure assists in securing the right to recover, the actual recovery of, or the prevention of loss of more than \$100,000 in public funds, the Mayor may pay a reward in any amount between \$5,000 and \$50,000 to the person who made the protected

ENROLLED ORIGINAL

disclosure; provided, that any reward shall be recommended by the Inspector General, the District of Columbia Auditor, or other similar law enforcement authority.

“(2) This subsection shall not create any right or benefit, substantive or procedural, enforceable at law or equity, by a party against any District government agency, instrumentality, officer, employee, or other person.”

(d) Section 1555 (D.C. Official Code § 1-615.55) is amended as follows:

**Amend
§ 1-615.55**

(1) Subsection (a) is amended as follows:

(A) Strike the phrase “any supervisor, including any manager, department director, or other District official,” and insert the phrase “any person” in its place.

(B) Strike the phrase “violated section 1553” and insert the phrase “violated section 1553 or section 203 of the Whistleblower Reinforcement Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.02),” in its place.

(2) Subsection (b) is amended to read as follows:

“(b) As part of the relief ordered in a judicial proceeding, any person who is found to have violated section 1553 or section 203 of the Whistleblower Reinforcement Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.02), shall be subject to a civil fine not to exceed \$10,000.”

(e) Section 1556(b) (D.C. Official Code § 1-615.56(b)) is amended by striking the phrase “No civil action shall be brought” and inserting the phrase “An employee may bring a civil action” in its place.

**Amend
§ 1-615.56**

(f) Section 1557 (D.C. Official Code § 1-615.57) is amended by striking the phrase “reporting documents” and inserting the phrase “reporting documents and in a letter provided to employees upon commencement of employment” in its place.

**Amend
§ 1-615.57**

(g) A new section 1558a is added to read as follows:

“Sec. 1558a. Salary restriction for interfering with Council whistleblowers.

“District funds shall not be available for the payment of the salary of any officer or employee of the District who:

“(1) Prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the District from having any direct oral or written communication or contact with any member, committee, or subcommittee of the Council in connection with any matter pertaining to the employment of the other officer or employee or pertaining to the department or agency of the other officer or employee in any way, irrespective of whether the communication or contact is at the initiative of the other officer or employee or in response to the request or inquiry of the member, committee, or subcommittee, of the Council except where the communication or contact would be unlawful; or

“(2) Removes; suspends from duty without pay; demotes; reduces in rank, seniority, status, pay, or performance rating; denies promotion to; relocates; reassigns; transfers; disciplines; or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment, of any other officer or employee of the District, or attempts or

ENROLLED ORIGINAL

threatens to commit any of the foregoing actions with respect to the other officer or employee, by reason of any communication or contact of the other officer or employee with any member, committee, or subcommittee of the Council as described in paragraph (1) of this section.”.

Sec. 3. The Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.01 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 2-223.01) is amended as follows:

**Amend
§ 2-223.01**

(1) A new paragraph (6A) is added to read as follows:

“(6A) “Prohibited procurement action” includes any recommended, threatened, or actual proceeding, based wholly or in part on a protected disclosure made by an employee, officer, or owner of a contractor:

“(A) Terminate a contract by default or convenience without adequate and documented justification;

“(B) Unreasonably delay or withhold payment on legitimate vouchers or claims of a contractor;

“(C) Impose conditions or requirements on the contractor not required by the contract;

“(D) Take any action designed to or having the effect of impeding a contractor’s performance; or

“(E) Take any other action designed to or having the effect of injuring the business or reputation of a contractor.”.

(2) Paragraph (10) is amended by striking the phrase “an employee” and inserting the phrase “an employee or contractor” in its place.

(b) Section 203 (D.C. Official Code § 2-223.02) is amended to read as follows:

**Amend
§ 2-223.02**

“Sec. 203. Prohibitions.

“(a) A supervisor shall not threaten to take or take a prohibited personnel action or otherwise retaliate against an employee because of the employee’s protected disclosure or because of an employee’s refusal to comply with an illegal order.

“(b) A District government official or employee having the responsibility to evaluate, award, authorize payments, terminate, or otherwise administer a contract for goods or services between the District government and a contractor shall not threaten to take or take a prohibited procurement action against a contractor, or a contractor competing for a contract, based wholly or in part on a protected disclosure made by an employee, officer, or owner of the contractor to a public body.”.

(c) Section 204 (D.C. Official Code § 2-223.03) is amended as follows:

**Amend
§ 2-223.03**

(1) Subsection (a) is amended by striking the phrase “A civil action shall be filed within 1 year after a violation occurs or within 1 year after the employee first becomes aware of the violation” and inserting the phrase “A civil action shall be filed within 3 years after a

violation occurs or within one year after the employee first becomes aware of the violation, whichever occurs first” in its place.

(2) A new subsection (a-1) is added to read as follows:

“(a-1) A government contractor aggrieved by a violation of section 203(b) may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including an injunction, compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed within 2 years after a violation occurs or within one year after the contractor first becomes aware of the violation, whichever occurs first.”.

Sec. 4. Section 815(f)(1) of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-308.15(f)(1)), is amended by striking the phrase “but not more than 20%” and inserting the phrase “but not more than 25%” in its place.

Amend
§ 2-308.15

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia