

Philadelphia Enacts COVID-19 Whistleblower Protection Ordinance

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The City of Philadelphia recently enacted an ordinance providing workplace protections for employees who refuse to work in unsafe conditions if they reasonably believe that their employer is violating a COVID-19 public health order and have notified the employer. The ordinance also protects from retaliation employees who make a “protected disclosure” concerning a violation of a COVID-19 public health order. The ordinance became effective on June 26, 2020.

REFUSAL TO WORK

The ordinance prohibits employers from taking any adverse employment action against an employee “for refusing to work in unsafe conditions if the employee reasonably believes that the employer is operating in violation of a COVID-19 public health order in a manner that has created the unsafe condition and the employee has notified the employer of the unsafe condition.” An “unsafe condition” is defined as a condition that violates a COVID-19 public health order.

The term “adverse employment action” is defined to include a “reduction in pay, atypical adverse change in working hours, termination, refusal to employ, harassment, or threats pertaining to an individual’s perceived immigration status.”

An employee may not refuse to work:

- If the business provides a reasonable alternative work assignment that does not expose the employee to the unsafe condition; or
- If, upon inspection by the Philadelphia or Pennsylvania Department of Health, the business proves it is compliant with all public health orders addressing safe workplace practices.

WHISTLEBLOWER PROTECTIONS

The ordinance prohibits employers from taking an adverse employment action against an employee for making a “protected disclosure.” The term “protected disclosure” is defined as “a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence a violation of a COVID-19 public health order that may significantly threaten the health or safety of employees or the public, if the disclosure or intention to disclose was made for the purpose of remedying such violation.”

COVID-19 PUBLIC HEALTH ORDER

The term “public health order” refers to an order or regulation issued by the Pennsylvania Department of Health or the Philadelphia Department of Public Health related to COVID-19.

PRESUMPTION OF RETALIATION

The ordinance provides for a rebuttable presumption of retaliation if an employer takes an adverse employment action against a person within 90 days of the person's exercise of rights under the ordinance. This presumption may be rebutted by evidence that the adverse action was taken for a permissible purpose. The ordinance protects any employee who "mistakenly, but reasonably and in good faith" alleges noncompliance.

ENFORCEMENT

Aggrieved employees may file a complaint with the Office of Benefits and Wage Compliance in the Mayor's Office of Labor. A private right of action in court is available to an employee upon receipt of a determination of reasonable cause. Remedies for a prevailing employee include reinstatement, backpay, compensatory damages and attorneys' fees and costs. Civil penalties on behalf of the City are also available.

TAKEAWAYS FOR EMPLOYERS

Businesses with operations in Philadelphia should ensure that they are in full compliance with all applicable orders and regulations issued by the Pennsylvania Department of Health and the Philadelphia Department of Public Health related to COVID-19 safety. Employers should also consider updating their policies and procedures to address COVID-19 related workplace safety compliance and reporting and ensure that managers are trained to recognize protected disclosures and prepared to address possible refusal to work situations. Workplace safety orders and regulations related to COVID-19 are updated frequently and employers must stay up-to-date with the latest requirements.

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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