

THE LEGISLATIVE AUDITOR'S SUMMARY & REVIEW OF LOUISIANA'S WHISTLE-BLOWER STATUTES

In four (4) separate statutes, Louisiana employees are given protection when they report illegal acts by their employers. This employer may be a public entity or a private company.

The four (4) statutes referred to are:

- 1) **[R.S. 23:967](#)—Labor & Workers' Compensation/Employee protection from reprisal; prohibited practices; remedies;**
- 2) **[R.S. 42:1169](#)—Code of Governmental Ethics/Freedom from reprisal for disclosure of improper acts;**
- 3) **[R.S. 46:440.3](#)—Public Welfare & Assistance/Whistle-blower protection and cause of action;**
- 4) **[R.S. 30:2027](#)—Department of Environmental Quality/Environmental violations reported by employees; reprisals prohibited.**

Although these four (4) statutes are separately laid out in Louisiana law, there is some overlap. In other words, an employee who is a whistle-blower under R.S. 46:440.3 might also sue under the more general provisions of R.S. 23:967, which deal with labor and worker compensation issues.

In all of these statutes, if an employee is fired, laid-off, loses benefits, or receives any other discriminatory treatment by his/her employer, that employee may have a cause of action, which he/she must bring within one year of the alleged discriminatory treatment.

The types of employee action which are characteristic of whistle-blowers are the following:

- **Whistle-blower discloses or threatens to disclose a work place act or practice that is in violation of state law;**
- **Whistle-blower provides information to or testifies before a public body conducting an investigation, hearing, or inquiry into a violation of law;**
- **Whistle-blower objects to or refuses to participate in an employment act or practice that is in violation of law.**

If any of these actions occur, the whistle-blower may file a cause of action and subsequently may receive compensatory damages, back pay, benefits, reinstatement, reasonable attorney's fees, and court costs.

- On its face, the whistleblower statute supports actions by plaintiffs who are aware of a workplace practice or act in which a violation of law actually occurred. *Hale v. Touro Infirmary*, App. 4 Cir. 2004, 886 So.2d 1210, 2004-

Whistle-Blower

Revised 06/03/2011

0003 (La. App. 4 Cir. 11/3/04), rehearing denied, writ denied 896 So.2d 1036, 2005-0103 (La. 3/24/05).

- City accountant notified his employer of violation of state law, as required for protection under whistleblower statute, even though his review of cash receipts, which he presented to mayor, did not use words “theft” or “malfeasance in office,” where review stated that several pages were marked “missing dates,” not on [general ledger] and “not on bank statement,” indicating that numerous cash payments to city had disappeared. *Mabry v. Andrus*, 34 So.3d 1075, (La. App. 2 Cir. 4/14/10), writ denied 45 So.3d 1079, 2010-1368 (La. 9/24/10).

An employee involved in medical programs may bring his/her action against the employer or the healthcare provider. The medical whistle-blower who is successful will also receive exemplary damages (Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; damages assessed by way of penalizing the wrongdoer or making an example to others. • Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract. The Supreme Court has held that three guidelines help determine whether a punitive-damages award violates constitutional due process: (1) the reprehensibility of the conduct being punished; (2) the reasonableness of the relationship between the harm and the award; and (3) the difference between the award and the civil penalties authorized in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996).

A Department of Environmental Quality (DEQ) employee or any other person working in the environmental arena may bring his/her whistle-blower action under R.S. 30:2027 mentioned above. If this employee is successful, the damages awarded shall be tripled, in addition, the employee would receive all costs of preparing, filing, prosecuting, appealing, or otherwise conducting a lawsuit including attorney's fees. It appears from the statutes that this environmental employee may also sue in the alternative under R.S. 23:967 or any other Federal whistle-blower statute, which might apply.

- In order for a plaintiff to establish a prima facie case of retaliation under the environmental whistleblower statute, he must show: (1) that he engaged in activity protected by the statute, (2) he suffered an adverse employment action, and (3) a causal connection existed between the protected activity in which he engaged and the adverse action. *Stone v. Entergy Services, Inc.*, App. 4 Cir.2009, 9 So.3d 193, 2008-0651 (La. App. 4 Cir. 2/4/09).
- Evidence was sufficient to support trial court's finding that terminated employee acted in good faith when he reported violations of environmental regulations on oil platform and that employer's termination of employee based on his failure to arrive at heliport 30 minutes prior to helicopter's departure to platform was a pretext for terminating employee based on whistleblower activity in violation of the Environmental Whistleblower Statute; evidence indicated that employee questioned certain actions he was told to perform by supervisor, that he reported potential regulatory violations to the Department of the Interior, that employee's evaluations deteriorated with his continued complaints regarding employer's practices, and that employer

Whistle-Blower

Revised 06/03/2011

disciplined employee for violation of new 30-minute arrival rule while other employees who violated rule escaped discipline. *Overton v. Shell Oil Co.*, App. 4 Cir.2006, 937 So.2d 404, 2005-1001 (La. App. 4 Cir. 7/19/06), writ denied 940 So.2d 674, 2006-2093 (La. 11/3/06).

As noted above, there is also a whistle-blower provision noted in the Code of Governmental Ethics. That particular statute is R.S. 42:1169. The courts seem to hold that this statute applies to violations of the Code of Governmental Ethics only. However, there does not appear to be a prohibition that an employee who is an "ethics whistle-blower" could not also sue under the more general law, R.S. 23:967. In this more general section, the employer must have committed a violation of state law, which the employee attempted to disclose or refused to participate in. The Ethics Code whistle-blower has two (2) years to bring his/her action to the Ethics Board. If the Ethics Board finds that the employer has retaliated against the employee, the Ethics Board can fine the employer.

This overview of the whistle-blower law should be read in conjunction with two (2) significant Louisiana cases.

They are:

- 1) *Bear vs. Pellerin Construction, Inc.*, 806 So.2d. 984 (La. App. 4 Cir.1/30/2002) - In this matter, former employees sued their former employer alleging they were terminated in retaliation for reporting certain environmental violations.
- 2) *Puig vs. Greater New Orleans Expressway Commission*, 772 So.2d. 842 (La. App. 5 Cir. 10/31/2000) - In this action, there is discussion of the general whistle-blower statute R.S. 23:967 as well as the ethics whistle-blower provision R.S. 42:1169. This action was brought by a former police officer who was employed by the Greater New Orleans Expressway Commission. The officer alleged retaliatory discharge claiming he was fired after he issued a traffic citation for speeding to the son of the chairman of the commission.

In summary, these whistle-blower statutes give substantial clout to the injured employee. The courts appear to interpret these statutes favorable to the employees who have specific claims, which they can substantiate.