

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2497**

BY DELEGATE KUMP, PUSHKIN, N. BROWN, S. BROWN,  
LOVEJOY, CANESTRARO, FLUHARTY AND HOUSEHOLDER

[Introduced January 17, 2019; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §6C-1-3, §6C-1-4, and §6C-1-7 of the Code of West Virginia, 1931,  
 2 as amended, all relating to the whistle-blower law; protecting promotion or increase in  
 3 compensation; allowing the use of grievance procedure; protecting use of other right or  
 4 legal action; and protecting rights related to political activity and membership in employee  
 5 organizations.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. WHISTLE-BLOWER LAW.**

**§6C-1-3. Discriminatory and retaliatory actions against whistle-blowers prohibited;  
promotion, increased compensation protected.**

1 (a) No employer may discharge, threaten or otherwise discriminate or retaliate against an  
 2 employee by changing the employee's compensation, terms, conditions, location or privileges of  
 3 employment because the employee, acting on his or her own volition, or a person acting on behalf  
 4 of or under the direction of the employee, makes a good faith report or is about to report, verbally  
 5 or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

6 (b) No employer may discharge, threaten or otherwise discriminate or retaliate against an  
 7 employee by changing the employee's compensation, terms, conditions, location or privileges of  
 8 employment because the employee is requested or subpoenaed by an appropriate authority to  
 9 participate in an investigation, hearing or inquiry held by an appropriate authority or in a court  
 10 action.

11 (c) No employer may deny a whistle-blower covered by the civil service system a  
 12 promotion or other increase in compensation that the whistle-blower otherwise would have  
 13 received.

**§6C-1-4. Civil action by whistle-blower for violation; limitation on actions; burden of proof;  
 defense; use of evidence in civil service proceeding; grievance action available;  
other rights and actions not limited.**

1 (a) A person who alleges that he or she is a victim of a violation of this article may bring a

2 civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both,  
3 within 180 days after the occurrence of the alleged violation.

4 (b) An employee alleging a violation of this article must show by a preponderance of the  
5 evidence that, prior to the alleged reprisal, the employee, or a person acting on behalf of or under  
6 the direction of the employee, had reported or was about to report in good faith, verbally or in  
7 writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

8 (c) It shall be a defense to an action under this section if the defendant proves by a  
9 preponderance of the evidence that the action complained of occurred for separate and legitimate  
10 reasons, which are not merely pretexts.

11 (d) An employee covered by the civil service system who contests a civil service action,  
12 believing it to be motivated by his the employee having made a disclosure of information may  
13 submit as admissible evidence any or all material relating to the action as whistle-blower and to  
14 the resulting alleged reprisal.

15 (e) Any employee covered by the civil service system who feels he or she has suffered  
16 retaliatory action as a result of being a whistle-blower may pursue a grievance under the West  
17 Virginia Public Employees Grievance Procedure.

18 (f) Nothing in this article shall disparage, impair, or limit any other right or legal action of  
19 an employee covered by the civil service system.

**§6C-1-7. Limitations on scope of construction; protections related to political activity and membership in organization of employee.**

1 (a) The provisions of this article shall not be construed to require an employer to  
2 compensate an employee for participation in an investigation, hearing or inquiry held by an  
3 appropriate authority or impair the rights of any person under a collective bargaining or other labor  
4 management agreement.

5 (b) Except when on duty or acting in an official capacity and except where otherwise  
6 prohibited by state or federal law, no employee covered by the civil service system may be

7 prohibited from engaging in political activity or be denied the right to refrain from engaging in  
8 political activity.  
9 (c) No employee covered by the civil service system may be denied the right to be a  
10 member of an organization of employees or to refrain from being a member of an organization of  
11 employees.

NOTE: The purpose of this bill is to extend or clarify protections under the state's whistle-blower law.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.