

November 2021

## New York Expands Whistleblower Protection Law

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On Thursday, October 28, 2021, New York Governor Kathy Hochul signed a bill (S.4394A/A.5144A) that expands the scope and coverage of the state's whistleblower protection law. The amended law is scheduled to take effect on January 26, 2022. We highlight the key changes below:

- **Expanded Definition of Covered “Employee”:** “Former employees” and “independent contractors” have been added to the definition of covered “employee” under the amended law, and are therefore expressly permitted to bring whistleblower claims.
- **Change in Legal Standard for Establishing Claims:** Covered employees are now protected if they “reasonably believe” an activity or conduct is in violation of a law, rule or regulation, or pose a danger to the public health and safety. This replaces the prior standard of requiring employees to show an actual violation of law.
- **Broader Scope of Retaliatory Conduct:** The amended law expands the definition of “retaliatory action” beyond the traditional terms and conditions of employment to expressly include actual and threatened employment- and non-employment related adverse actions, such as threatening to report an employee to immigration authorities.
- **Broader Scope of Protected Activity:** Under the amended law, the covered employee’s reporting of an offending activity need not be within the scope of the employee’s job duties. The amended law also expands the definition of “law, rule or regulation” to include executive orders and judicial or administrative decisions, rulings, and orders.
- **Revised Employer Notification Requirement:** The prior law only provided whistleblower protection if the employee notified the employer of the offending behavior before disclosing it to a public body. The amended law now requires only that covered employees make a “good faith effort” to notify the employer of the offending activity, policy, or practice prior to disclosing to a public body, but also expressly does not require employer notification where, among other circumstances: (i) there is imminent and serious danger to public health or safety, (ii) the employee reasonably believes that reporting would result in destruction of evidence or concealment of the offending activity, or significantly, (iii) the employee reasonably believes the employer is already aware of the offending activity and will not correct it.

- **Extended Statute of Limitations; Right to Jury Trial:** The amended law extends the statute of limitations for bringing a civil action from one year to two years after the alleged retaliatory action was taken. It also provides for the right to a jury trial.
- **Expanded Remedies:** In addition to the pre-existing remedies, the amended law now provides for recovery of front pay in lieu of reinstatement, a civil penalty not to exceed \$10,000, and punitive damages in the case of a “willful, malicious or wanton” violation.

- **Publication Requirement:** Under the amended law, employers are now required to inform employees of the protections, rights and obligations under the law by posting a notice in places customarily frequented by employees and applicants for employment.

We will continue to monitor this law and will provide updates on material developments.

**Employer Update** is published by the Employment Litigation and the Executive Compensation & Benefits practice groups of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, [www.weil.com](http://www.weil.com).

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