The Legislative Auditor's Summary & Review of Louisiana's Whistleblower Statutes

Various statutes provide potential "whistleblower" protection to Louisiana employees from reprisal from their employer when they report illegal acts that occur in the workplace by their employers, fellow employees, or in some cases vendors or other third-parties. The employer for the purposes of these protections may be a public entity or a private company.

These statutes providing whistleblower protections 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/Whistleblower protection and cause of action;**

4) **R.S. 30:2027 Department of Environmental Quality/Environmental violations reported by employees; reprisals prohibited.**

5) **R.S. 23:968 Provides whistleblower protection to an employee who reports the sexual abuse of a minor child by any fellow employee.**

6) **R.S. 39:2165.12 Provides whistleblower protection from persons who engage in fraud, misrepresentation, abuse, or other ill practices, and who obtain funds, property, or other compensation for oil spill relief to which they are not entitled.**

7) **R.S. 39:2163 Provides whistleblower protection from persons who engage in fraud, misrepresentation, abuse, or other ill practices, and who obtain funds, property, or other compensation for hurricane relief to which they are not entitled.**

Although the above statutes are separately listed in Louisiana law, the protections they afford may overlap. In other words, an employee who is a whistleblower 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's compensation issues.

All of these statutes provide that if an employee is fired, laid-off, loses benefits, or receives any other discriminatory treatment from his or her employer as a result of reporting an illegal act that is finally found to be an illegal act or actual violation, that employee may have a cause of action, **which must be brought within one year of the alleged discriminatory treatment**.

GENERAL

Types of employee action that are characteristic of whistleblowers include:

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

The courts, as noted below, have required more than a good faith belief that a violation of law has occurred. The courts have held that the employee is required to show that an *actual* violation of state law occurred, and notified the employer of the violation, as essential elements of a Whistleblower claim.

If retaliation /adverse employment actions for any of these actions occurs, the whistleblower may file a cause of action and subsequently may receive compensatory damages (actual damages documented to the court resulting from the discriminatory employment action or termination), back pay, benefits, reinstatement, reasonable attorney's fees, and court costs.

Recent holdings by appellate courts regarding whistleblower protections include:

- 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, 2004-0003 (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).

- Although we have grave concerns regarding the chilling effect that this requirement will have on the reporting by an employee of illegal acts, we are compelled to conclude that the Louisiana Whistleblower Statute, La. R.S. 23:967, requires an employee to prove an actual violation of state law in order to prevail on the merits of the case. *Accardo v. Louisiana Health Servs. & Indem. Co*., 2005-2377 (La. App. 1 Cir. 6/21/06), 943 So. 2d 381, 387.

- The Louisiana Whistleblower Statute protects employees against reprisal from employers for reporting or refusing to participate in illegal work practices. The statute targets serious employer conduct that violates the law. R.S. 23:967 does not preclude employees whose job duties require that they report violations of law from filing a whistleblower suit under the statute. *Derbonne v. State Police Commission,* 2019-1455 (La. 1 Cir. 10/14/20), 314 So.3d 861.

An employee involved in medical programs may bring an action against the employer or the healthcare provider. The medical whistleblower who is successful will also receive punitive 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).

ENVIRONMENTAL

A Department of Environmental Quality (DEQ) employee or any other person working in the environmental arena may bring a 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 Federal whistleblower statute that might apply.

- A plaintiff seeking to establish a *prima facie* case of retaliation under the environmental whistleblower statute must show: (1) that plaintiff engaged in activity protected by the statute, (2) that plaintiff suffered an adverse employment action, and (3) that a causal connection existed between the protected activity 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 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).

- **"Good faith,"** within the meaning of the provision of the Louisiana Environmental Quality Act (LEQA) means an employee is acting with an honest belief that a violation of an environmental law, rule, or regulation occurred. *Borcik v. Crosby Tugs, L.L.C.*, 2016-1372 (La. 5/3/17) 222 So.3d 672

- **"Discloses"** within the meaning of the Louisiana Environmental Whistleblower Statute, R.S. 30:2027, includes an employee's refusal to participate in environmentally damaging employment activities and is a protected activity. Menard v Targa Resources, LLC, 366 So.3d 1238 (La. 06/27/23).

ETHICS

The Code of Governmental Ethics also contains a whistleblower provision. 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. No prohibition, however, apparently prevents an employee who is an "ethics whistleblower" from also suing under the more general law, R.S. 23:967. In this more general section, the employer must have committed a violation of state law that the employee attempted to disclose or refused to participate in. An Ethics Code whistleblower action must be brought to the Ethics Board within two years. If the Ethics Board finds that the employer has retaliated against the employee, the Ethics Board may fine the employer.

R.S. 42:1169 includes whistleblower protection for persons who are public employees under the Ethics Code because of a contractual arrangement with a governmental entity or agency. The entity or agency shall not suspend, reduce, terminate, or threaten with suspension, reduction, or termination the public employee's contract in retaliation for reporting alleged violations of the Ethics Code.

This overview of the whistleblower 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) - This opinion discusses the general whistleblower statute R.S. 23:967, as well as the ethics whistleblower

provision R.S. 42:1169. The 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 to the son of the chairman of the commission a traffic citation for speeding.

CONCLUSION

In summary, these whistleblower statutes provide substantial clout to an injured employee, assuming an actual violation of the law occurs and notice by the employee to the employer of the violation. The courts appear to interpret these statutes favorably to employees who have specific claims that can be substantiated.