

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 490

97TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 13, 2014, with recommendation that the Senate Committee Substitute do pass.

4602S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to public policy exceptions to the at-will employment doctrine.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.575, to read as follows:

285.575. 1. This section shall be known and may be cited as the "Whistleblower's Protection Act".

2. As used in this section, the following terms shall mean:

(1) "Because" or "because of", as it relates to a decision or action, the person's status as a protected person was a motivating factor;

(2) "Employer", any organization, partnership, political subdivision, corporation, or other legal entity which has or had in the entity's employ six or more individuals performing services for the entity within this state;

(3) "Proper authorities", the employee's supervisor or designated representative employed by the employer for the purposes of receiving reports from employees regarding unlawful activity or public authorities such as governmental or law enforcement agencies, but shall not include an individual involved in the alleged conduct;

(4) "Protected person", a person who has reported to the proper authorities an unlawful act of the employer or its agent; a person who has reported to an employer serious misconduct of the employer or its agent that violates a clear mandate of public policy as articulated in a constitutional provision, statute, or regulation promulgated under statute; a person who has refused to carry out a directive issued by an

21 employer or its agent that if completed would be a violation of the law;
22 or a person who has engaged in conduct otherwise protected by statute
23 or regulation, where the statute or regulation does not provide for a
24 private right of action. A person is not a "protected person" where the
25 unlawful act or serious misconduct reported concerns matters upon
26 which the person is employed to report or provide professional opinion;

27 (5) "Public policy", the principle of law which holds that no one
28 can lawfully do that which tends to be injurious to the public or against
29 the public good as expressed in a constitution, statutes, and regulations
30 promulgated pursuant to statute.

31 3. This section shall provide the exclusive remedy for any and all
32 unlawful employment practices articulated herein and hereby
33 abrogates any common law causes of action to the contrary.

34 4. It shall be an unlawful employment practice for an employer
35 to discharge or retaliate against an individual defined as a protected
36 person in this section, because of that person's status as a protected
37 person.

38 5. Any party to any action initiated under this section may
39 demand a trial by jury.

40 6. A protected person aggrieved by a violation of this section
41 shall have a private right of action which may be filed in a court of
42 competent jurisdiction for actual damages, but not for punitive
43 damages. The only remedies available in such an action shall be:

44 (1) Backpay;

45 (2) Reimbursement of medical bills incurred in treatment of
46 mental anguish; and

47 (3) If a protected person proves, by clear and convincing
48 evidence, that the conduct of the employer was outrageous because of
49 the employer's evil motive or reckless indifference to the rights of
50 others, then in addition to the amounts referenced in subdivisions (1)
51 and (2) of this subsection, an additional double amount as liquidated
52 damages may be awarded. In applying this subdivision, the provisions
53 of section 510.263 shall be applied as though liquidated damages were
54 punitive damages and as though the amounts referenced in
55 subdivisions (1) and (2) of this subsection were compensatory damages.

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