

## **Virginia Takes Major Step Forward in Protecting Whistleblowers**

April 17, 2020

On April 11, 2020, Virginia Governor Ralph Northam signed into law HB798 (“VA Whistleblower Protection Law”), strengthening whistleblower protections for workers in the state of Virginia. The VA Whistleblower Protection Law amends the Code of Virginia, adding a section numbered § 40.1-27.3. to the Code’s Protection of Employees Chapter. The amendment will protect whistleblowers against retaliation from their employers. The VA Whistleblower Protection Law will take legal effect beginning July 1, 2020.

### **Protections under Virginia’s Whistleblower Protection Law**

The VA Whistleblower Protection Law provides that an employer “shall not discharge, discipline, threaten, discriminate against, or penalize an employee or take other retaliatory action regarding an employee’s compensation terms, conditions, location, or privileges of employment.” The language of the statute identifies four types of protected whistleblower conduct.

First, it protects whistleblowers from [retaliation](#) for reporting “a violation of any federal or state law or regulation to a supervisor or to any governmental body or law-enforcement official.” Va. Code § 40.1-27.3. This protection also extends to persons acting on behalf of the employee.

Second, the statute also protects whistleblowers who refuse to participate in a criminal act that “would subject the employee to criminal liability.”

Third, it protects employees who refuse an unlawful order that would violate a federal or state law or regulation, provided the employee communicates to the employer that he or she is refusing the order for that reason.

And fourth, the statute protects workers who provide information to or testify before “any governmental body or law-enforcement official conducting an investigation, hearing, inquiry into any alleged violation by the employer of federal or state law or regulation.”

Under the statute, whistleblowers may bring a civil action within one year of the employer’s prohibited retaliatory conduct and they do not have to exhaust any

administrative remedies first. In terms of legal remedies, a court may issue an injunction to restrain continued violations of the law, reinstate the employee to the same position the employee held before the retaliatory action, or compensate the employee for all economic damages and attorney fees and costs.

### **A Major Step Forward in Protecting Whistleblowers**

Virginia has historically lacked strong whistleblower protection laws and before this statute whistleblowers were only afforded narrow protection under the Virginia's Fraud Against Taxpayers Act or the state's common-law for wrongful discharge, which requires an employee to prove that her discharge violated a public policy of the commonwealth. Even with the enactment of HB798, Virginia's whistleblower protections are still not nearly as strong as the protections in states like New Jersey, where workers have more robust whistleblower protections, including protection for refusing to participate in activities that the employee "reasonably believes" constitute a violation of a law, rule, or regulation or is fraudulent or criminal. Nonetheless, the VA Whistleblower Protection Law should be considered a major victory for workers in the state and a major step forward.

The enactment of the statute also serves as a clear example of the importance of the role that elections and voting play in a representative democracy, as the law's passage was largely the result of Virginia Democrats taking control of the General Assembly and the Governorship in 2019.