

COLORADO EXPANDS WHISTLEBLOWER PROTECTIONS FOR HEALTH AND SAFETY VIOLATIONS AT THE WORKPLACE

Insights
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Colorado recently expanded whistleblower protections at the state law level – and employers need to make sure their health and safety protocols are fully compliant if they want to avoid costly litigation. Under the new law signed by Governor Polis on May 31, both employees and independent contractors may now file a complaint with the Colorado Department of Labor & Employment (CDLE) if they have a reasonable, good faith belief that their employer or principal is committing a workplace violation of a government health or safety rule or a significant workplace health or safety threat. The law, which went into effect immediately, expands Colorado’s Public Health Emergency Whistleblower (PHEW) law into broad new territories. What do you need to know about this new law – and what should you do to prepare?

Summary of Key Parts of The Law

The PHEW law was initially enacted in 2020 permitting employees to raise workplace health or safety concerns related to the COVID-19 pandemic to the CDLE. Now, the law has been expanded to including any violation of a health or safety rule, regulation, or other significant health or safety threat. Employers or businesses with at least five independent contractors or workers are subject to the expanded PHEW law.

The new law does not obligate employers and businesses to address a worker’s health or safety concern. But they cannot fire or take other adverse action against the worker for raising such a concern as long as the concern was reasonable and in good faith.

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The law also permits workers to voluntarily wear their own PPE as long as they are still able to perform their job duties safely.

Costly Whistleblower Complaints

The recently enacted PHEW law permits complaints to be filed with the CDLE and then ultimately filed in state court. Whistleblowers also have a host of federal laws that they can file under with the Federal Department of Labor.

- Under Section 105(c) of the Mine Act, a miner who believes they have been discharged or otherwise discriminated against in retaliation for voicing health or safety concerns may file a complaint with the Secretary of Labor.
- Under Section 11(c) of the OSH Act, an employee at an OSHA-covered worksite who believes they have been discharged or otherwise discriminated against can file a similar safety and health complaint.
- If an employee believes that there are multiple reasons for their discipline or termination, they may also file with the Equal Employment Opportunity Commission (EEOC) or local state discrimination agency. These complaints do not typically involve safety concerns but allege that in addition to safety, the employee's discipline or termination was due to their race, gender, or religion.

Whistleblower complaints can be costly and time-consuming for a company. They typically involve many managers or front-line personnel and can raise a multitude of specific incidents requiring many witnesses to refute or defend against. An employee may raise the same incidents or other incidents involving the same witnesses in multiple complaints filed with various state or federal agencies.

An employer may have to defend themselves in front of multiple agencies at the same time, filing multiple position papers and subjecting the same witnesses to various interviews covering similar topics.

What Employers Can Do to Prepare

No employer is immune from a whistleblower complaint. Disgruntled employees can use the various administrative processes to try and force a settlement payment.

Employers can defend against these types of complaints by thoroughly documenting the basis for an employee disciplinary decision or termination decision. Being able to illustrate consistency with other employee decisions, and that any decision was unrelated to an employee's prior safety complaint, will be critical in establishing a defense to any complaint.

Further, there are multiple efficiencies with having one firm handle both your whistleblower and discrimination cases. The documents have been pulled, witnesses interviewed, and defenses developed. This approach helps maintain consistency and avoid duplication of effort. Perhaps most importantly, any inconsistencies in the employee's arguments are quickly discovered and can be used in both administrative proceedings.

Conclusion

We will continue to monitor this situation and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For further information, contact your Fisher Phillips attorney, the author of this Insight, any attorney in [our Denver office](#), or any attorney in our [Workplace Safety Practice Group](#).