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**HOUSE BILL 1894**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Gregerson, Jinkins, Goodman, Kirby, Walkinshaw, Ormsby, Moeller, and Pollet

AN ACT Relating to the protection of workers acting in furtherance of public policy; adding a new section to chapter 49.60 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that retaliation against employees who act in furtherance of federal, state, and local laws and regulations is a matter of state concern, and such retaliation threatens the public interest and the rights and proper privileges of employees. Common law in this area has become inadequate to protect public policy and employees who act in furtherance of it. Washington is now one of the only states in the United States that lacks sufficient protection from retaliation. It is the intent of the legislature to protect employees who act in furtherance of public policy and to reject the recent common law developments in the Washington state supreme court case *Cudney v. ALSCO* which have eroded those protections.

NEW SECTION. **Sec.**  A new section is added to chapter 49.60 RCW to read as follows:

(1) It is unlawful for an employer to take materially adverse action against an employee where retaliation is a substantial factor in the employer's decision to take adverse action. An adverse action is not material if it has only a trivial effect. In order to maintain a civil action for the violation of public policy, an employee must show all of the following:

(a) That a clear public policy exists. Whether a clear public policy exists is a question of law for the court to decide. Clear public policy may be reflected in federal, state, or local laws, including constitutions, statutes, regulations, ordinances, and codes. Prior judicial decisions may also be a source of public policy.

(b) That discouraging the conduct the employee engaged in would jeopardize the public policy. To establish jeopardy, an employee must show that the conduct in which he or she engaged directly relates to public policy, and that the threat of adverse action will discourage others from engaging in such conduct.

(c) That the public policy-related conduct caused the adverse action. To satisfy causation, the employee must establish that the protected activity was a substantial factor in the employer's decision to take adverse action.

(2) Where an employer asserts that there is an overriding justification for his or her or its decision to take adverse action, the employer bears the burden of asserting and proving the affirmative defense. Whether there is an overriding justification for the employer's decision is a question of law for the court to decide. In order to assert this affirmative defense, the employer must admit that he or she or it took adverse action because of the employee's public policy-related conduct and must prove that the balance of public policies relied upon by employer outweighs the public policies relied upon by the employee.

(3) An employee who is retaliated against has a civil cause of action in a court of competent jurisdiction to enjoin further violations and to recover actual damages sustained by the employee and the cost of the lawsuit, including reasonable attorneys' fees and any other appropriate remedy authorized by RCW 49.60.030(2).

(4) A civil cause of action is available for a violation of this section notwithstanding the existence of any other means of protecting public policy and is independent of any civil cause of action or remedy that may exist at common law.

(5) A three-year statute of limitations applies to violations of this section.

(6) For the purposes of this section, "retaliate" means to commit a materially adverse action against an employee for conduct that the employee reasonably believes promotes a clear mandate of public policy. Protected conduct includes, but is not limited to, the refusal to commit an illegal act, performing a legal duty or obligation, exercising a legal right or privilege, or reporting employer misconduct or whistleblowing.

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