

Legislation Text

File #: 200328, Version: 1

Amending The Philadelphia Code to add a new Chapter, entitled “Employee Protections in Connection with COVID-19 Emergency Health Order,” to provide workplace protections in emergency health orders and regulations, provide protections for employees against retaliatory actions both for the disclosure of information related to employer non-compliance with such orders and for refusal to work under unsafe conditions caused by non-compliance with such orders, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

1. Title 9 of The Philadelphia Code is amended by adding a new Chapter as follows:

CHAPTER 9-5000. EMPLOYEE PROTECTIONS IN CONNECTION WITH COVID-19 EMERGENCY HEALTH ORDER.

§ 9-5001. Definitions.

Adverse Employment Action. Includes, but is not limited to, reduction in pay, atypical adverse change in working hours, termination, refusal to employ, harassment, or threats pertaining to an individual’s perceived immigration status.

Department. The Department of Labor.

Employee. Any individual who performs work for an Employer.

Employer. Any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

Protected disclosure. A good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence a violation of a COVID-19 public health order that may significantly threaten the health or safety of employees or the public, if the disclosure or intention to disclose was made for the purpose of remedying such violation.

COVID-19 public health order. An order or regulation issued by the Pennsylvania Department of Health or the Philadelphia Department of Public Health related to the 2019 novel coronavirus (“COVID-19”).

Unsafe condition. A condition that violates a COVID-19 public health order.

§ 9-5002. Compliance with COVID-19 public Health Orders.

(1) Employers shall comply with all applicable requirements of COVID-19 public health orders addressing safe

workplace practices to mitigate the risks associated with the 2019 novel coronavirus (“COVID-19”).

§ 9-5003. Protection from Unsafe Conditions.

(1) No employer shall take any adverse employment action against an employee for refusing to work in unsafe conditions if the employee reasonably believes that the employer is operating in violation of a COVID-19 public health order in a manner that has created the unsafe condition and the employee has notified the employer of the unsafe condition; provided however, that an employee may not refuse to work if the business provides a reasonable alternative work assignment that does not expose the employee to the unsafe condition or upon inspection by the Philadelphia or Pennsylvania Department of Health the business proves it is compliant with all public health orders addressing safe workplace practices.

§ 9-5004. Protected Disclosures.

(1) No employer shall take any adverse employment action against any employee for making a protected disclosure.

§ 9-5005. Presumption of Retaliation.

(1) There shall be a rebuttable presumption of retaliation if an Employer takes an adverse employment action against a person within 90 days of the person's exercise of rights protected in this Chapter. In the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the Employer fails to rehire a former Employee at the next opportunity for work in the same position. The Employer may rebut the presumption with evidence that the adverse action was taken for a permissible purpose.

(2) This Chapter shall also apply to any employee who mistakenly, but reasonably and in good faith, alleges noncompliance with any provision of this Chapter.

§ 9-5006. Enforcement.

(1) Procedure for Complaints

The complaint filing, complaint administration and other enforcement provisions of Chapter 9-4300 of the Code (“Wage Theft Complaints”) shall apply to enforcement of this Chapter, except as otherwise inconsistent with this Chapter.

(2) Private Right of Action.

(a) An employee, upon submitting to the Department for review and receiving the Department’s certification of a determination of reasonable cause to go forward, may bring an action in a Court of competent jurisdiction against the business for violations of this Chapter and, upon proving a violation, may be awarded reinstatement, backpay and other compensatory damages. An employee may seek civil penalties on behalf of the City for each day in which a violation occurs.

(b) If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs to the employee as part of the costs recoverable.

(c) This Section shall not be construed to limit an employee’s right to bring any other applicable employment

claim, including for wrongful termination, unlawful discrimination or otherwise.

§ 9-5007. Penalties.

(1) The Department shall have the power to seek penalties and fines for violation of this Chapter and to provide or obtain appropriate relief. Remedies may include reinstatement and full restitution to the employee for lost wages and benefits.

(2) It shall be a Class III offense under § 1-109(3) of this Code for an Employer to retaliate against an employee for any activity protected under this Chapter. All other violations of this Chapter shall be Class II offenses under § 1-109(2) of this Code.

§ 9-5008. Regulations.

The Department may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter.

§ 9-5009. Severability.

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

Explanation:

Italics indicate new matter added.