

South Carolina's Statutory Whistleblower Protections

A Review for SC Qui Tam Attorneys, SC Whistleblower Lawyers & SC Fraud Law Firms

South Carolina whistleblowers who are employed by a South Carolina state government agency are protected from adverse employment actions when they timely report violations of state or federal laws or regulations or other wrongdoing. South Carolina attorneys, lawyers and law firms who represent SC state government whistleblowers should be aware of the protections afforded to these employees who are fired, demoted, suspended or otherwise subjected to an adverse action in reaction to a report of fraud or other wrongdoing by a public agency or one of its officers or employees. South Carolina whistleblower attorneys, lawyers and law firms should also be aware of the administrative requirements necessary to invoke the protections of the state's anti-retaliation statute, as well as the relief provisions afforded to such SC whistleblowers. There are also some whistleblower protections for government and private employees who report violations of South Carolina's occupational safety and health statutes, rules or regulations.

South Carolina's Whistleblower Protection Act for State Government Employees

South Carolina's General Assembly enacted legislation called the "Employment Protection for Reports of Violations of State or Federal Law or Regulation" (the "Act") to protect South Carolina state employees from retaliation or disciplinary actions when they report violations of state or federal laws or regulations or other wrongdoing including fraud and abuse. *See* South Carolina Code § 8-27-10, *et seq.* The Act prohibits a South Carolina public body from decreasing the compensation of, or dismissing, suspending or demoting, a state employee based on the employee's filing of a protected report of wrongdoing with an appropriate authority. S.C. Code § 8-27-20(A). The protected report must be made by the SC whistleblower in good faith and not be a mere technical violation. *Id.* The Act does not apply to private, non-government employers or employees. S.C. Code § 8-27-50.

A "public body" under the Act means one of the following South Carolina entities: (A) a department of the State; (B) a state board, commission, committee, agency, or authority; (C) a public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; (D) an organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or, (E) a quasi-governmental body of the State and its political subdivisions. S.C. Code § 8-27-10(1).

A South Carolina "employee" under the Act is an employee of any South Carolina public body entity, generally excluding those state executives whose appointment or employment is subject to Senate confirmation. S.C. Code § 8-27-10(2).

An "appropriate authority" under the Act means either (A) the public body that employs the whistleblower making the protected report, or (B) a federal, state, or local governmental body, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or wrongdoing, including but not limited to, the South Carolina Law Enforcement Division ("SLED"), a County Solicitor's Office, the State Ethics Commission,

the State Auditor, the Legislative Audit Council (the “LAC”), and the Office of Attorney General (the “SCAG”). S.C. Code § 8-27-10(3). When a protected report is made to an entity other than the public body employing the whistleblower making the report, the Act requires that the employing public body be notified as soon as practicable by the entity that received the report. *Id.*

A SC whistleblower employee’s protected “report” under the Act is a written document alleging waste or wrongdoing which is made within sixty (60) days of the date the reporting employee first learns of the alleged wrongdoing, and which includes (a) the date of disclosure; (b) the name of the employee making the report; and, (c) the nature of the wrongdoing and the date or range of dates on which the wrongdoing allegedly occurred. S.C. Code § 8-27-10(4).

Pursuant to the Act, a reportable “wrongdoing” is any action by a public body which results in substantial abuse, misuse, destruction, or loss of substantial public funds or public resources, including allegations that a public employee has intentionally violated federal or state statutory law or regulations or other political subdivision ordinances or regulations or a code of ethics. S.C. Code § 8-27-10(5). A violation which is merely technical or of a *de minimus* nature is not a “wrongdoing” under the Act. *Id.*

Rewards for SC Whistleblowers

When a SC state employee blows the whistle on fraudulent or abusive acts or violations of federal, state or local laws, rules or regulations, and the protected report results in savings of public funds for the state of South Carolina, the whistleblower is entitled to a reward or bounty under the Act. However, the reward is extremely limited. The provisions of the Act provide that a SC whistle blower is entitled to the lesser of Two Thousand Dollars (\$2,000) or twenty-five percent (25%) of the estimated money saved by the state in the first year of the whistleblowing employee’s report. The South Carolina State Budget and Control Board determines the amount of the monetary reward that is to be paid to the employee who is eligible for the reward as a result of filing a protected report. *See* S.C. Code § 8-27-20(B). This reward is very meager when compared to the bounty provisions of the federal False Claims Act, 31 U.S.C. §§ 3729-3732 (the “FCA”). The FCA allows a qui tam whistleblower or relator to receive up to 30% of the total amount of the government’s recovery against defendants who have made false and fraudulent claims for payment to the United States. Some recent federal FCA recoveries by the U.S. Department of Justice have exceeded \$1 Billion Dollars.

However, the Act does not supersede the State Employee Suggestion Program, and if a whistleblower employee’s agency participates in the State Employee Suggestion Program, then items identified as involving “wrongdoing” must be referred as a suggestion to the program by the employee. A South Carolina government employee is entitled to only one reward either under the Act or under the State Employee Suggestion Program, at the employee's option. *Id.*

Civil Remedies for SC Whistleblowers

If a South Carolina government employee suffers an adverse action related to employment within one (1) year after having timely filed a protected report which alleged wrongdoing, the

employee may institute a non-jury civil action against the public body employer after exhausting all available grievance or other administrative remedies, and such grievance/administrative proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing. S.C. Code § 8-27-30(A). The adverse actions or retaliations can include dismissal, suspension from employment, demotion, or a decrease in whistle blower's compensation. The statutory remedies under the Act that the adversely effected employee may recover are (1) reinstatement to his or her former employment position; (2) lost wages; (3) actual damages not to exceed Fifteen Thousand Dollars (\$15,000); and (4) reasonable attorney fees as determined by the court. *Id.* However, an award of attorney's fees has a cap under the Act, and may not exceed Ten Thousand Dollars (\$10,000) for any trial and Five Thousand Dollars (\$5,000) for any appeal. *Id.*

At least one court has addressed the Act's remedies with respect to a whistleblower employee. In *Lawson v. South Carolina Department of Corrections*, 340 S.C. 346, 532 S.E.2d 259 (2000), the S.C. Supreme Court held that when a whistle blower employee is limited to a recovery under the statutory remedies of the Act when the employee alleges a wrongful discharge only on the grounds of his whistleblowing. In *Lawson*, the court granted summary judgment against the employee because he could not point to a violation of any policy, ethics rule, or other regulation as a basis for his whistleblower action which amounted to "wrongdoing" under the Act. *Id.*

Adverse Actions Based Upon Causes Independent of a Protected Report

In the event the appropriate authority which received the report determines the whistleblower employee's report is unfounded or a mere technical violation and is not made in good faith, the public body may take disciplinary action including termination and, notwithstanding the filing of a report, a public body may dismiss, suspend, demote, or decrease the compensation of an employee for causes independent of the filing of a protected report. *Id.* A South Carolina public body may also impose disciplinary sanctions against any direct line supervisory employees who retaliate against another employee for having filed a good faith report.

Statute of Limitations

Under the Act, a whistleblower's civil action must be commenced within one (1) year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies, or such a lawsuit is forever barred. S.C. Code § 8-27-30(B).

Occupational Safety and Health Act ("OSHA") Whistleblower Protections

South Carolina has a separate whistleblower protection statute for employees who report violations of statutes, rules or regulations regarding occupational safety and health. S.C. Code § 41-15-510. The protected activities include filing a complaint, instituting a proceeding, or testifying about OSHA violations. Any employee who has been discharged or otherwise discriminated against by any person in violation of Section 41-15-510 has the right to file a complaint with the South Carolina Commission of Labor alleging such discrimination. The SC Labor Commissioner shall cause investigation to be made as he or she deems appropriate, and, if the Commissioner determines that anti-discrimination provisions of Section 41-15-510 have been

violated, he must institute a law suit in the appropriate court of common pleas against such discriminating person or entity. In any such action, the court of common pleas has injunctive authority to restrain such OSHA anti-discrimination violations, as well as authority to order all appropriate relief including rehiring or reinstatement of employee to his or her former position with back pay. S.C. Code § 41-15-520. Unlike the Act, the OSHA whistleblower protections are available to state government and private employees.

Conclusion

South Carolina whistleblowers who are employed by a South Carolina state government agency are protected from adverse employment actions when they timely report violations of state or federal laws or regulations or other wrongdoing. South Carolina attorneys, lawyers and law firms who represent SC state government whistleblowers need to know the protections afforded to these employees who are fired, demoted, suspended or otherwise subjected to an adverse action in reaction to a report of fraud or other wrongdoing by a public agency or one of its officers or employees. South Carolina whistleblower attorneys, lawyers and law firms should review the administrative requirements necessary to invoke the protections of the state's anti-retaliation statute, the statutes of limitations, as well as the remedial provisions afforded to such SC state government whistleblowers, in order to properly advise such clients. So too, the employment attorney should be aware of the rights and remedies of both private and South Carolina government employees who blow the whistle on violations of state OSHA statutes, rules or regulations.

© 2010 Joseph P. Griffith, Jr.

Joseph P. Griffith, Jr.
SC Fraud Attorney
SC Qui Tam Lawyer
SC Whistleblower Law Firm
Joe Griffith Law Firm, LLC
7 State Street
Charleston, South Carolina 29401
(843) 225-5563
<http://www.joegriffith.com>

South Carolina Attorney Joe Griffith is a former SC federal prosecutor who handles fraud, whistleblower and qui tam cases in South Carolina and the United States.

