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Philadelphia COVID-19 Whistle-Blower Law

Recently, the Mayor of Philadelphia, Jim Kenney, signed into law the Essential Workers Protection Act, also known as the "Employee Protections in Connection with COVID-19 Emergency Health Order" (the "Act"). The Act provides workplace protections for employees of Philadelphia employers against retaliatory actions both for the disclosure of information related to employer non-compliance with emergency health orders and regulations and for refusing to work under unsafe conditions caused by employer non-compliance with such orders and regulations.

The Act prohibits employers from taking any adverse action, such as termination, against an employee who, in good faith, discloses or demonstrates an intention to disclose information evidencing an employer's violation of a local or state COVID-19 public health order that may significantly threaten the health or safety of employees or the public.

The Act also prohibits an employer from taking adverse employment action against any employee who refuses to work in unsafe conditions. This applies if the employee reasonably believes that the employer is violating a local or state COVID-19 public health order in a manner that has created an unsafe condition, and the employee has notified the employer of the unsafe condition. However, an employee may not refuse to work if either: (1) the employer can provide the employee with a reasonable alternative work assignment that does not expose the employee to an unsafe condition; and (2) upon inspection by the Philadelphia or Pennsylvania Department of Health, the employer demonstrates it has complied with all public health orders addressing safe workplace practices.

Further, the Act imposes a rebuttable presumption of retaliation when an employer commits an adverse employment action within 90 days of the protected disclosures by the employee. Notably, the Act also applies to any employee who mistakenly, but reasonably and in good faith, alleges non-compliance with the Act's provisions.

Employees who claim that the Act was violated may bring an action in a court of competent jurisdiction only after filing a complaint with the City's Department of Labor and obtaining a "determination of reasonable cause to go forward." If an employee successfully prevails in his/her action, the employee may recover civil penalties on behalf of the city for each violation as well as back pay, reinstatement, other compensatory damages, and attorney fees.

Comment: Philadelphia employers should review and update their policies to include the Essential Workers Protection Act, train their managers and supervisors on the new legislation, and implement procedures to appropriately address and respond to any concerns raised by their employees relating to unsafe work conditions.

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