

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Expanding Scope of Whistleblower Protection Ordinance]

Ordinance amending the Campaign and Governmental Conduct Code to broaden the agencies with which a whistleblower may file a complaint, provide retaliation protections for City contractors, increase the remedies available for whistleblowers who have suffered retaliation, and establish greater confidentiality protections for whistleblowers' identities.

Existing Law

The City's Whistleblower Protection Ordinance ("WPO"), Article IV of the S.F. Campaign & Gov'tal Conduct Code ("C&GC Code"), establishes a framework for the filing of whistleblower complaints and seeks to protect whistleblowers from retaliatory employment actions.

1. Where a whistleblower may file a complaint

The WPO provides that any member of the public may file a complaint with the Ethics Commission, Controller, District Attorney, City Attorney or the complainant's department alleging that a City employee or officer engaged in improper government activity. C&GC Code § 4.105(a).

2. Protection of whistleblowers

The WPO prohibits City employees and officers from retaliating – *i.e.*, taking adverse employment action such as termination, demotion, etc. - against whistleblowers who have filed a complaint alleging improper government activity with one of the agencies listed above. *Id.* § 4.115(a).

3. Penalties and remedies

City employees and officers who unlawfully retaliate against whistleblowers are subject to administrative or civil penalties of up to \$5,000 per violation. They are also subject to discipline, up to and including dismissal by his or her appointing authority. *Id.* § 4.115(c).

4. Confidentiality of whistleblowers' identities

Whistleblowers may elect to keep their identities confidential after filing a complaint of improper government activity. *Id.* § 4.120(a). The WPO does not directly provide for any penalties or remedies upon a person who unlawfully disclosed a whistleblower's identity; but such disclosure may be actionable pursuant to Campaign and Governmental Conduct Code 3.228.

Amendments to Current Law

1. Where a whistleblower may file a complaint

The proposed amendments broaden the agencies with whom a whistleblower may file a complaint to include any City department, or any supervisory employee at a City department.

2. Protection of whistleblowers

The proposed amendments would protect whistleblowers from retaliation if they filed a complaint with any local, State or federal agency, or a supervisory employee of any local, State or federal agency.

The amendments would also protect City contractors and their employees from whistleblower retaliation.

3. Penalties and remedies

The amendments would increase the civil penalties available for whistleblower retaliation from \$5,000 to \$10,000, and authorizes the Ethics Commission to adjust these penalties for inflation. The amendments would also provide a new remedy that would allow the Ethics Commission to order the cancellation of or provide redress for any retaliatory adverse action, subject to the Charter's budgetary and employment provisions.

4. Confidentiality of whistleblowers' identities

The amendments provide explicit penalties for disclosure of a whistleblower's confidential identity: any City officer or employee who discloses the identity of any complainant with the knowledge that the complainant elected to keep his or her identity confidential would be subject to administrative penalties of up to \$5,000 per violation.

Background Information

In June 2015, the San Francisco Civil Grand Jury issued a report entitled, "San Francisco's Whistleblower Protection Ordinance Is In Need of Change," addressing potential issues with the WPO. In response to this Civil Grand Jury report, the Ethics Commission developed the amendments proposed by this ordinance.

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