

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Mary M. Cheh introduced the following bill, which was referred to the Committee on _____.

To amend the Comprehensive Merit Personnel Act of 1979 to include conducting an investigation as a prohibited personnel action, to expand the definition of protected disclosures, to extend the limitations period for whistleblower retaliation claims, to increase the amount of supervisor penalties, to allow an employee to bring a civil action even if he or she has brought an administrative claim, and to establish authority to grant a cash award to an employee whose protected disclosure leads to a recovery by the District; to amend the Employees of District Contractors and Instrumentality Whistleblower Protection Act of 1998 to define a prohibited procurement practice, and to prohibit District retaliation against contractors who make protected disclosures, and to extend the limitations period for whistleblower retaliation claims; and to amend the Procurement Practices Act of 1985 to increase the amount that a qui tam plaintiff may receive.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Whistleblower Protection Amendment Act of 2009”.

Sec. 2. The District of Columbia Comprehensive Merit Personnel Act of 1979, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 1552(a) (D.C. Official Code § 1-615.52(a)) is amended as follows:

(1) Paragraph (5) is amended by striking the phrase “or retaliating” and inserting the phrase “conducting, or cause to be conducted, an investigation, other than

1 any ministerial or nondiscretionary factfinding activities necessary for the agency to
2 perform its mission, of an employee or applicant for employment because of any
3 protected disclosure; or retaliating” in its place.

4 (2) Paragraph (6) is amended by striking the phrase “public body” and
5 inserting the phrase “public body, whether made in the ordinary course of performing his
6 or her job duties or not,” in its place.

7 (c) Section 1554(a) (D.C. Official Code § 1-615.54(a)) is amended by striking the
8 phrase “A civil action shall be filed within one year after a violation occurs or within one
9 year after the employee first becomes aware of the violation” and inserting the phrase “A
10 civil action shall be filed within 3 years after a violation occurs or within one year after
11 the employee first becomes aware of the violation, whichever occurs first” in its place.

12 (d) Section 1555(b) (D.C. Official Code § 1-615.55(b)) is amended by striking the
13 phrase “shall be subject to a civil fine not to exceed \$ 1000” and inserting the phrase
14 “shall be subject to a civil penalty not to exceed \$ 10,000” in its place.

15 (e) Section 1556(b) (D.C. Official Code § 1-615.56(b)) is amended by striking the
16 phrase “No civil action shall be brought” and inserting the phrase “An employee may
17 bring a civil action” in its place.

18 (f) Section 1557 (D.C. Official Code § 1-615.57) is amended by striking the
19 phrase “reporting documents” and inserting the phrase “reporting documents and in a
20 letter provided to employees upon commencement of employment”.

21 (g) Section 1901 (D.C. Official Code § 1-619.01) is amended by adding a new
22 subsection (d) to read as follows:

1 “(d) At the discretion of the Office of Inspector General, the District of Columbia
2 Auditor, or other similar law enforcement authority, and with the written approval of the
3 Mayor, an employee whose protected disclosure (as defined in section 1552(a)(6)) leads
4 to the recovery by the District of an amount of \$500,000 or greater may be granted a cash
5 award up to 2.5% of the recovered amount or \$25,000, whichever is less.”.

6 Sec. 3. The Employees of District Contractors and Instrumentality Whistleblower
7 Protection Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code
8 § 2-223.01 *et seq.*), is amended as follows:

9 (a) Section 202 (D.C. Code § 2-223.01) is amended as follows:

10 (1) A new paragraph (6A) is added to read as follows:

11 “(6A) Prohibited procurement action includes any recommended,
12 threatened, or actual proceedings to terminate a contract by default or convenience
13 without adequate and documented justification, unreasonably delaying or withholding
14 payment on legitimate vouchers or claims of a contractor, imposing conditions or
15 requirements on the contractor not required by the contract, taking any action designed to
16 or having the effect of impeding a contractor’s performance, or taking any other action
17 designed to or having the effect of injuring the business or reputation of a contractor
18 solely on the basis of protected disclosures made by officers or employees of the
19 contractor.”.

20 (2) Paragraph (10) is amended by striking the phrase “an employee” and
21 inserting the phrase “an employee or contractor” in its place.

22 (c) Section 203 (D.C. Code § 2-223.02) is amended to read as follows:

23 “Sec. 203. Prohibitions.

1 “(a) A supervisor shall not threaten to take or take a prohibited personnel action or
2 otherwise retaliate against an employee because of the employee’s protected disclosure or
3 because of an employee's refusal to comply with an illegal order.

4 “(b) A District government official or employee having the responsibility to
5 evaluate, award, authorize payments, terminate, or otherwise administer a contract for
6 goods or services between the District government and a contractor shall not threaten to
7 take or take a prohibited procurement action against a contractor, or a contractor
8 competing for a contract, because of protected disclosures made by an officer or
9 employee of the contractor to a public body.”.

10 (d) Section 204 (D.C. Official Code § 2-223.03) is amended as follows:

11 (1) Subsection (a) is amended by striking the phrase “A civil action shall
12 be filed within 1 year after a violation occurs or within 1 year after the employee first
13 becomes aware of the violation” and inserting the phrase “A civil action shall be filed
14 within 3 years after a violation occurs or within one year after the employee first becomes
15 aware of the violation, whichever occurs first” in its place.

16 (2) A new subsection (e) is added to read as follows:

17 “A contractor aggrieved by a violation of section 203(b) may bring a civil
18 action before a court or a jury in the Superior Court of the District of Columbia seeking
19 relief and damages, including but not limited to injunction, reinstatement to the same
20 position held before the prohibited procurement action or to an equivalent position,
21 compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed
22 within 2 years after a violation occurs or within one year after the contractor first
23 becomes aware of the violation, whichever occurs first.”.

1 Sec. 4. Section 815(f)(1) of the District of Columbia Procurement Practices Act of
2 1985, effective February 21, 1986 (D.C. Law. 6-85, D.C. Official Code § 2-308.15(f)(1)),
3 is amended by striking the phrase “but not more than 20%” and inserting the phrase “but
4 not more than 25%”.

5 Sec. 5. Fiscal Impact Statement

6 The Council adopts the fiscal impact statement in the committee report as the
7 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
8 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02
9 (c)(3)).

10 Sec. 6. Effective Date

11 This act shall take effect following approval by the Mayor (or in the event of veto
12 by the Mayor, action by Council to override the veto), a 30-day period of Congressional
13 review as provided in section 602(c)(1) of the District of Columbia Home Rule Act,
14 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and
15 publication in the District of Columbia Register.