CHAPTER 27

Employment Protection for Reports of Violations of State or Federal Law or Regulation

**SECTION 8‑27‑10.** Definitions.

 For purposes of this chapter:

 (1) “Public body” means a department of the State; a state board, commission, committee, agency, or authority; a public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; an organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or a quasi‑governmental body of the State and its political subdivisions.

 (2) “Employee” means an employee of a department of the State; a state board, commission, committee, agency, or authority; a public or governmental body or political subdivision of the State, including counties, municipalities, school districts, or special purpose or public service districts; an organization, corporation, or agency supported in whole or in part by public funds or expending public funds; or a quasi‑governmental body of the State and its political subdivisions. “Employee” does not include those persons enumerated within the provisions of Section 8‑17‑370.

 (3) “Appropriate authority” means, respectively, the public body that employs the person making the report; or a federal, state, or local governmental body, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or wrongdoing. If a report is made to an entity other than the public body employing the person making the report, the employing public body must be notified as soon as practicable by the entity that received the report. The term includes, but it is not limited to, the South Carolina Law Enforcement Division, the Solicitor’s Office, the State Ethics Commission, the State Auditor, the Legislative Audit Council, and the Office of Attorney General.

 (4) “Report” means:

 (a) a written or oral allegation of waste or wrongdoing that contains the following information:

 (i) the date of disclosure;

 (ii) the name of the employee making the report; and

 (iii) the nature of the wrongdoing and the date or range of dates on which the wrongdoing allegedly occurred. A report must be made within one hundred eighty days of the date the reporting employee first learns of the alleged wrongdoing; or

 (b) sworn testimony regarding wrongdoing, regardless of when the wrongdoing allegedly occurred, given to any standing committee, subcommittee of a standing committee, oversight committee, oversight subcommittee, or study committee of the Senate or the House of Representatives.

 (5) “Wrongdoing” means action by a public body which results in substantial abuse, misuse, destruction, or loss of substantial public funds or public resources. “Wrongdoing” also includes an allegation 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, which violation is not merely technical or of a minimum nature.

HISTORY: 1988 Act No. 354, eff March 14, 1988; 1993 Act No. 164, Part II, Section 37A, eff June 21, 1993, and applies with respect to any personnel actions taken after that date; 2014 Act No. 121 (S.22), Pt IV, Section 6.B, eff January 1, 2015.

Effect of Amendment

The 1993 amendment added paragraphs (3) “appropriate authority”, (4) “report”, and (5) “wrongdoing”.

2014 Act No. 121, Section 6.B, in subsection (4), added paragraph designator (a); in paragraph (a), substituted “a written or oral allegation of” for “a written document alleging”; changed former paragraph designators (a) through (c) to (i) through (iii); in paragraph (a)(iii), substituted “one hundred eighty days” for “sixty days”; and added paragraph (b).

RESEARCH REFERENCES

ALR Library

10 ALR 6th 531 , What Constitutes Activity of Employee Protected Under State Whistleblower Protection Statute Covering Employee’s “Report,” “Disclosure,” “Notification,” or the Like of Wrongdoing‑Sufficiency of Report.

90 ALR 5th 687 , Who Are “Public Employers” or “Public Employees” Within the Meaning of State Whistleblower Protection Acts.

Encyclopedias

S.C. Jur. Labor Relations Section 41, Coverage.

S.C. Jur. Labor Relations Section 42, Employees’ Rights.

Forms

South Carolina Litigation Forms and Analysis Section 3:53 , Whistleblower Act.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 58:122, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

NOTES OF DECISIONS

In general 1

Public body 2

1. In general

Whistleblower Act provides a remedy to “employee” of “public Body” who is retaliated against because he reports, exposes or testifies to wrongdoing, waste or corruption by “public body” or by employees or officials of “public body”. Whistleblower claim lies only against “public body” which is defined to include “any department of the state” and “any...state agency” ‑ thus, clearly embracing National Guard but not natural persons such as individual defendants. “Employee” as defined in Act does not extend to plaintiff because, in his capacity as full‑time enlisted military member of National Guard, he was public officer, not employee. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

Crux of “whistleblowing,” for purposes of Whistleblower Act, is reporting of violation of law or regulation by public body or exposing of waste, fraud, gross negligence, or mismanagement. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 286

An employee must exhaust his administrative remedies under the State Employee Grievance Act, Sections 8‑17‑310 et seq., before seeking redress for alleged non‑grievable actions under the Whistleblower Act Sections 8‑27‑10 et seq. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

A trial judge is not required to determine whether a complainant has an excuse for the failure to exhaust administrative remedies where the trial judge had found that the complainant had a grievable action under the State Employee Grievance Procedure Act, Sections 8‑17‑310 et seq., and was required to exhaust his remedies prior to seeking redress under the Whistleblower Act, Sections 8‑27‑10 et seq. Ransom v. South Carolina Water Resources Com’n (S.C.App. 1996) 321 S.C. 211, 467 S.E.2d 463.

A former employee’s action under the Whistleblower Act, Sections 8‑27‑10 et seq., was foreclosed where the employee had failed to exhaust his administrative remedies under the State Employee Grievance Act, Sections 8‑17‑10 et seq. Allen v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1996) 321 S.C. 188, 467 S.E.2d 450. Administrative Law And Procedure 229; Public Employment 437

2. Public body

Employer that allegedly terminated employee in retaliation for his insistence on adhering to federal and state standards for air carrier quality and safety was not corporation “supported in whole or in part by public funds or expending public funds” and thus not “public body,” as defined by South Carolina Whistleblower Act, since employer was private corporation receiving public funds from South Carolina in exchange for providing jobs, pursuant to negotiated quid pro quo agreement governed by State General Obligation Economic Development Bond Act, and employer was not related to public body, or acting as agent of or operating for sole benefit of South Carolina. Woods v. Boeing Co., 2012, 841 F.Supp.2d 925. Labor And Employment 801

**SECTION 8‑27‑20.** No retaliation for filing report of wrongdoing; disciplinary action for unfounded or bad faith report or mere technical violation; reward for report resulting in savings; State Employee Suggestion Program not superseded.

 (A) No public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because the employee files a report with an appropriate authority of wrongdoing. If the appropriate authority determines the employee’s report is unfounded, or amounts to a mere technical violation, and is not made in good faith, the public body may take disciplinary action including termination. Any public body covered by this chapter may impose disciplinary sanctions, in accordance with its internal disciplinary procedures, against any of its direct line supervisory employees who retaliate against another employee for having filed a good faith report under this chapter.

 (B) If the employee’s report results in a saving of any public money from the abuses described in this chapter, twenty‑five percent of the estimated net savings resulting from the first year of implementation of the employee’s report, but not more than two thousand dollars, must be rewarded to the employee by the public body as determined by the Director of the Department of Administration. This chapter does not supersede the State Employee Suggestion Program. For employees of state agencies participating in the program, items that they identify involving wrongdoing must be referred as a suggestion to the program by the employee. An employee is entitled to only one reward either under this section or under the program, at the employee’s option.

HISTORY: 1988 Act No. 354, eff March 14, 1988; 1993 Act No. 164, Part II, Section 37B, eff June 21, 1993, and applies with respect to any personnel actions taken after that date.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 1993 amendment organized this section into subsections (A) and (B) and made several revisions, among them requiring that a report concern “wrongdoing” and be filed with an “appropriate authority”.

CROSS REFERENCES

Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury, see Section 41‑1‑70.

Presumption of retaliation and the burden of proof in a civil action alleging retaliation, see Section 8‑27‑30.

Prohibition against retaliation based upon employee’s institution of, or participation in, proceedings under Workers’ Compensation Law, see Section 41‑1‑80.

Right of a public body to discharge, terminate or suspend an employee for causes independent of the causes provided in this section, see Section 8‑27‑40.

RESEARCH REFERENCES

ALR Library

10 ALR 6th 531 , What Constitutes Activity of Employee Protected Under State Whistleblower Protection Statute Covering Employee’s “Report,” “Disclosure,” “Notification,” or the Like of Wrongdoing‑Sufficiency of Report.

13 ALR 6th 499 , What Constitutes Activity of Employee, Other Than “Reporting” Wrongdoing, Protected Under State Whistleblower Protection Statute.

37 ALR 6th 137 , What Constitutes Activity of Public or State Employee Protected Under State Whistleblower Protection Statute Covering Employee’s “Report,” “Disclosure,” “Notification,” or the Like of Wrongdoing‑Nature of Activity...

Encyclopedias

S.C. Jur. Labor Relations Section 42, Employees’ Rights.

S.C. Jur. Labor Relations Section 43, Employers’ Rights.

S.C. Jur. Labor Relations Section 44, Presumptions.

S.C. Jur. Public Officers and Public Employees Section 44.1, Whistleblower Statute.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 58:122, South Carolina.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, South Carolina whistleblower protection: the good, the bad, and the ugly. 43 S C Law Rev 415 (Winter 1992).

NOTES OF DECISIONS

In general 1

1. In general

Since at‑will Department of Corrections employee alleged wrongful discharge only on the ground of his whistleblowing, he was limited to his remedy under the Whistleblower Act. Lawson v. South Carolina Dept. of Corrections (S.C. 2000) 340 S.C. 346, 532 S.E.2d 259, rehearing denied. Public Employment 810; States 53

At‑will Department of Corrections employee who alleged that employer wrongfully terminated him because he reported violations of policy in regards to the hiring of applicant, who allegedly had been allowed to consult reference materials while taking test required for employment, did not establish whistleblower claim since he did not point to any provision or policy which would prevent a potential employee from using reference materials. Lawson v. South Carolina Dept. of Corrections (S.C. 2000) 340 S.C. 346, 532 S.E.2d 259, rehearing denied. Public Employment 286; States 53

Even if former at‑will employee had alleged that Department of Corrections terminated him because he had reported miscalculations of prisoners’ sentences, he never filed a report with an appropriate authority concerning the miscalculations as required to establish claim under the Whistleblower Act. Lawson v. South Carolina Dept. of Corrections (S.C. 2000) 340 S.C. 346, 532 S.E.2d 259, rehearing denied. Public Employment 791; States 53

Adjudication of employee’s state court action against city for conspiracy, defamation, and violation of whistleblower statute was not precluded, under doctrine of collateral estoppel, by dismissal with prejudice, based on failure to prosecute, of employee’s $1983 federal court action against city for violation of First Amendment rights, where final decision in federal suit was procedural action dismissing constitutional claims on form order containing no findings with regard to factual issues. Jones v. City of Folly Beach (S.C.App. 1997) 326 S.C. 360, 483 S.E.2d 770, rehearing denied, certiorari granted. Judgment 829(3)

Public employees’ claim under Whistleblower Act prohibiting retaliation for filing good‑faith report of wrongdoing is action for injuries “arising out of violation of the First Amendment” within meaning of tort liability insurance policy that was issued to town by State Budget and Control Board and covered liability for personal injury arising out of violation of First Amendment; public employee’s reporting of misconduct will always implicate First Amendment protection because the speech is matter of public concern. Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services (S.C. 1997) 326 S.C. 6, 482 S.E.2d 768, rehearing denied. Insurance 2307; Insurance 2349

Under Whistleblower Act, public body may not discharge or terminate any employee of public body due to employee’s report of violation of state or federal law, but if employee reports suspected violation without probable cause he may be terminated from employment; notwithstanding provisions of Whistleblower Act, public body may discharge employee for causes independent of whistleblowing. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 286

Whistleblower Act protects good faith reporting of suspected misconduct of employer; it is not necessary to show that any misconduct actually occurred, but only that employee reported suspected wrongdoing in good faith. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 287

An employer was not entitled to summary judgment dismissing an action under the Whistleblower statute (Sections 8‑27‑10 et seq.) on the ground that the employee was terminated on March 2, 1988, prior to the effective date of the statute (March 14, 1988), since an issue of material fact existed as to the effective date of the employee’s termination where she asserted that she did not receive notice of the employer’s final decision until April 1, and the record revealed various instances of retaliation against her following her reinstatement subsequent to the effective date of the act. Belton v. State (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554, rehearing denied.

Allegations that an employee was terminated for reporting a violation of federal wage and hour laws, and that she was retaliated against for having testified at a hearing before the grievance committee, were sufficient to state a claim for violation of the Whistleblower statute (Sections 8‑27‑10 et seq.) prior to its 1993 amendment. Belton v. State (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554, rehearing denied. Public Employment 800; States 53

In an action by an employee who alleged that she was terminated for reporting a violation of the federal wage and hour laws, and that she was retaliated against for testifying at a hearing before the grievance committee, the grievance committee’s findings were not res judicata to the employee’s claim under the Whistleblower statute (Section 8‑27‑20) since the employee had prevailed in her action before the grievance committee, in which the retaliation issue had not been addressed; the employee was entitled to the litigate issue and the offer findings of the grievance committee in support of her claim. Belton v. State (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554, rehearing denied. Public Employment 800; States 53

In an employee’s successful action under the Whistleblower statute (Section 8‑27‑20), sick and annual leave comprised an element of the employee’s reinstatement award, so that the State Budget and Control Board had authority to hear her appeal. Belton v. State (S.C. 1994) 313 S.C. 549, 443 S.E.2d 554, rehearing denied.

A former city director’s motion for judgement n.o.v. was properly denied where the director, who made allegations of wrongdoing by the city in December 1988 and January 1989 and was terminated in March of 1989, claimed that he was terminated in violation of Section 8‑27‑20 (the whistleblower statute), but it was shown that there were several discrepancies in the payroll administered by the director, the director had been paid $12,000 more than he was entitled to, many expenditures were undocumented, and general disbursements were not managed in accordance with sound accounting practices, thus demonstrating independent causes for discharge. Gamble v. City of Manning (S.C. 1991) 304 S.C. 536, 405 S.E.2d 829.

**SECTION 8‑27‑30.** Civil action against employing public body for retaliation; remedies; exhaustion of remedies and other prerequisites; time in which to bring action.

 (A) If an employee is dismissed, suspended from employment, demoted, or receives a decrease in compensation, within one year after having timely reported an alleged wrongdoing under this chapter, the employee may institute a nonjury civil action against the employing public body for (1) reinstatement to his former position; (2) lost wages; (3) actual damages not to exceed fifteen thousand dollars; and (4) reasonable attorney fees as determined by the court, but this award of attorney fees may not exceed ten thousand dollars for any trial and five thousand dollars for any appeal. The action must be brought in the court of common pleas of the county in which the employment action occurred. No action may be brought under this chapter unless (1) the employee has exhausted all available grievance or other administrative remedies; and (2) any previous proceedings have resulted in a finding that the employee would not have been disciplined but for the reporting of alleged wrongdoing.

 (B) An action under this chapter must be commenced within one year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies or is forever barred.

HISTORY: 1988 Act No. 354, eff March 14, 1988; 1993 Act No. 164, Part II, Section 37C, eff June 21, 1993, and applies with respect to any personnel actions taken after that date.

Effect of Amendment

The 1993 amendment made several revisions, including eliminating the presumption that adverse personnel actions within one year after reporting misconduct are wrongful, specifying remedies, requiring exhaustion of administrative remedies, requiring that the action be bought in the county where the action allegedly occurred, and shortening the time for bringing an action from two years to one.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 53, Offers of Judgment.

S.C. Jur. Damages Section 14, Statutory Limits on Damages.

S.C. Jur. Labor Relations Section 41, Coverage.

S.C. Jur. Labor Relations Section 42, Employees’ Rights.

S.C. Jur. Labor Relations Section 43, Employers’ Rights.

S.C. Jur. Labor Relations Section 44, Presumptions.

S.C. Jur. Public Officers and Public Employees Section 44.1, Whistleblower Statute.

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 58:122, South Carolina.

NOTES OF DECISIONS

In general 1

1. In general

City’s grievance committee upholding employee’s termination based upon poor performance and making no finding that termination was related to employee’s reports of wrongdoing precluded employee from having standing to assert claims against city under South Carolina’s Whistleblower Act; Act required employee to obtain favorable ruling on report of alleged wrongdoing prior to bringing suit. Giraldo v. City of Columbia, 2014, 47 F.Supp.3d 430. Municipal Corporations 218(10); Public Employment 795

Eleventh Amendment bars assertion of Whistleblower Act claim against S.C. National Guard. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391. Federal Courts 2387

Whistleblower Act provides a remedy to “employee” of “public Body” who is retaliated against because he reports, exposes or testifies to wrongdoing, waste or corruption by “public body” or by employees or officials of “public body”. Whistleblower claim lies only against “public body” which is defined to include “any department of the state” and “any...state agency” ‑ thus, clearly embracing National Guard but not natural persons such as individual defendants. “Employee” as defined in Act does not extend to plaintiff because, in his capacity as full‑time enlisted military member of National Guard, he was public officer, not employee. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

Eleventh Amendment bars assertion of Whistleblower Act claim against S.C. National Guard. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391. Federal Courts 2387

Whistleblower Act provides a remedy to “employee” of “public Body” who is retaliated against because he reports, exposes or testifies to wrongdoing, waste or corruption by “public body” or by employees or officials of “public body”. Whistleblower claim lies only against “public body” which is defined to include “any department of the state” and “any...state agency” ‑ thus, clearly embracing National Guard but not natural persons such as individual defendants. “Employee” as defined in Act does not extend to plaintiff because, in his capacity as full‑time enlisted military member of National Guard, he was public officer, not employee. Introini v. South Carolina Nat. Guard, 1993, 828 F.Supp. 391.

Judgment entered pursuant to an offer of judgment was not a “court award” within the meaning of the former version of the Whistleblower Act permitting any court or jury award to include attorney fees; the trial judge’s ministerial act of entering judgment did not alter the status of the judgment as one entered pursuant to an offer of judgment. Belton v. State (S.C. 2000) 339 S.C. 71, 529 S.E.2d 4. Costs 194.50

Though employee of county mental retardation board was discharged within one year after making allegations that sheltered work program participants were unlawfully being put to work at construction company owned by his supervisor’s husband, evidence could not support finding that employee was fired in retaliation for reporting conduct which he believed to be illegal, as required for whistleblower claim, absent any evidence that supervisor was aware of employee’s report when she discharged him. Gastineau v. Murphy (S.C. 1998) 331 S.C. 565, 503 S.E.2d 712, rehearing denied. Counties 67; Public Employment 289

Jury could not have reasonably inferred that county mental retardation board’s executive director had learned of employee’s report of potentially illegal work conditions of sheltered work participants from circumstances of board inspector’s investigation of construction site where participants had been working, thus defeating employee’s whistleblower claim alleging he was terminated for reporting illegal conduct, where evidence showed only that inspector would not have revealed reason for his inspection and that his visit was not out of the ordinary. Gastineau v. Murphy (S.C. 1998) 331 S.C. 565, 503 S.E.2d 712, rehearing denied. Counties 67; Public Employment 289

Evidence that employee of county mental retardation board was unable to perform his job as director of residential facility for mentally handicapped individuals to satisfaction of his supervisors and was unwilling to follow directives, and that his incompetence was threatening facility’s funding, established that employee was not fired in retaliation for reporting allegedly illegal conduct but for being unsatisfactory employee, thus defeating his whistleblower claim. Gastineau v. Murphy (S.C. 1998) 331 S.C. 565, 503 S.E.2d 712, rehearing denied. Asylums And Assisted Living Facilities 17

Public employee who accepted offer of judgment in Whistleblower Act action did not litigate action in jury or nonjury proceeding, and, thus, was not prevailing party entitled to attorney fees within meaning of Act, despite fact that court fulfilled its ministerial duty by entering judgment against employer after employee accepted award. Belton v. State (S.C.App. 1998) 330 S.C. 422, 499 S.E.2d 225, rehearing denied, affirmed 339 S.C. 71, 529 S.E.2d 4. Public Employment 655

Although he was notified of his termination at earlier date, county’s former internal auditor was not actually terminated until public hearing was held and county council voted to affirm its decision to terminate him, which was after effective date of Whistleblower’s Act, thus allowing whistleblower claim; county rules required that removal be stayed pending decision at public hearing, and county’s own letter to auditor confirmed that his termination was effective on later date. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Counties 67; Public Employment 286

“Whistleblower’s action” is suit against public employer wherein public employee claims to have been subject to adverse personnel action in retaliation for having exposed governmental wrongdoing. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Public Employment 286

County’s former internal auditor’s whistleblower’s action accrued, and statute of limitations began to run, on date that county council formally voted to remove him from office. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Limitation Of Actions 58(1)

Although testimony of former county council clerk, regarding whether former county employee had notice of bad job performance should not have been excluded as hearsay during former employee’s case in chief on his whistleblowing claim, exclusion was not reversible error, since excluded evidence was later presented during county’s case in chief; proffer revealed clerk would have testified about event involving former employee and member of county council, and member testified at length on same subject during county’s case in chief. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Appeal And Error 1058(1)

After‑acquired evidence concerning former county auditor’s poor job performance, which did not form basis for his termination, was relatively minor and was not demonstrated to be of such severity that he in fact would have been terminated on those grounds alone had employer known of it at time of discharge, and thus there was no error in failing to allow jury to consider that evidence in auditor’s whistleblower’s action. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Counties 67; Public Employment 801

Supreme Court would adopt federal standard for admissibility of after‑acquired evidence of employee misconduct, under which employer seeking to rely upon after‑acquired evidence of wrongdoing must first establish that wrongdoing was of such severity that employee in fact would have been terminated on those grounds alone if employer had known of it at time of discharge. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Labor And Employment 862

As with reception of all evidence, whether employer has made prima facie case warranting admission of after‑acquired evidence of employee misconduct is in first instance a question for trial judge. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Labor And Employment 873

Trial court correctly refused to charge jury on employment‑at‑will doctrine when instructing jury as to former county auditor’s whistleblower’s claim, since employment‑at‑will of employee was irrelevant under version of Whistleblower’s Act in force at time of former auditor’s termination, under which plaintiffs enjoyed presumption that whistleblowing was cause for discharge, rebuttable by defendant by showing good cause as enumerated in statute. Baber v. Greenville County (S.C. 1997) 327 S.C. 31, 488 S.E.2d 314. Counties 67; Public Employment 286

Public employee’s suit for violation of Whistleblower Act prohibiting retaliation for filing good‑faith report of wrongdoing does not arise out of “malicious prosecution” within meaning of tort liability insurance policy covering town for personal injury arising out of malicious prosecution. Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services (S.C. 1997) 326 S.C. 6, 482 S.E.2d 768, rehearing denied. Insurance 2309

Allegations made by employee of county mental retardation board that he was discharged within one year after making allegations that residents of home for mentally handicapped individuals were being put to work at construction company owned by husband of board’s executive director were sufficient to support claim that termination violated Whistleblower Act. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Mental Health 20

Within rubric and aegis of Whistleblower Act, there is presumption of retaliation. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 603

If employee meets initial burden under Whistleblower Act of showing that he was terminated, suspended from employment, demoted, suffered decrease in compensation, or was disciplined, otherwise punished, and were threatened within one year after having exposed governmental criminality, corruption, waste, fraud, gross negligence, or mismanagement, rebuttable presumption results and employer must show that discharge was unrelated to reports of wrongdoing. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 603

To support claim under Whistleblower Act there must be report by employee and public body must have notice of knowledge of report. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Public Employment 286

Jury verdict of $375,000 in Whistleblower Act claim was within range of professional economist’s testimony regarding issue of plaintiff’s economic loss, and thus was not excessive. Gastineau v. Murphy (S.C.App. 1996) 323 S.C. 168, 473 S.E.2d 819, rehearing denied, certiorari granted, reversed 331 S.C. 565, 503 S.E.2d 712. Labor And Employment 2824

The difference in the type of relief available under the State Employee Grievance Act, Sections 8‑17‑10 et seq., and the Whistleblower Act, Sections 8‑27‑10 et seq., is not sufficient to constitute an exception to the requirement that an employee must exhaust his administrative remedies before bringing a civil action on his grievance. Allen v. South Carolina Alcoholic Beverage Control Com’n (S.C.App. 1996) 321 S.C. 188, 467 S.E.2d 450.

In an action by an employee for damages under the Whistleblower Statute (Section 8‑27‑30), the court abused its discretion in finding as a matter of law that the employee did not have to exhaust his administrative remedies simply because the statute did not require it. Hyde v. South Carolina Dept. of Mental Health (S.C. 1994) 314 S.C. 207, 442 S.E.2d 582, rehearing denied.

A governmental agency was not entitled to a directed verdict in an action under the Whistleblower Act, Section 8‑27‑10 et seq., on the ground that the state employee failed to prove an actual violation of the Act, since the statute merely requires that the employee not report or testify to an alleged violation “without probable cause,” and imposes no requirement that the employee prove the existence of an actual violation. McGill v. University of South Carolina (S.C. 1992) 310 S.C. 224, 423 S.E.2d 109.

The statutory cap of $250,000 on damages under the Tort Claims Act, Section 15‑78‑10 et seq., does not apply to a suit brought under the Whistleblower Act, Section 8‑27‑10 et seq., since Section 15‑78‑120 of the Tort Claims Act limits the liability of the governmental agency for any action “brought under this chapter,” and no language therein indicates or infers that its statutory cap governs Whistleblower actions. McGill v. University of South Carolina (S.C. 1992) 310 S.C. 224, 423 S.E.2d 109.

A former city director’s motion for judgement n.o.v. was properly denied where the director, who made allegations of wrongdoing by the city in December 1988 and January 1989 and was terminated in March of 1989, claimed that he was terminated in violation of Section 8‑27‑20 (the whistleblower statute), but it was shown that there were several discrepancies in the payroll administered by the director, the director had been paid $12,000 more than he was entitled to, many expenditures were undocumented, and general disbursements were not managed in accordance with sound accounting practices, thus demonstrating independent causes for discharge. Gamble v. City of Manning (S.C. 1991) 304 S.C. 536, 405 S.E.2d 829.

State law claim against nuclear industry employer for intentional infliction of emotional distress upon former employee who reported safety violations was not pre‑empted by federal law, because state tort law at issue was not motivated by safety concerns, and any effect which state law might have on decisions made by those who build or operate nuclear facilities concerning radiological safety levels is neither direct nor substantial enough to place employee’s claim in pre‑empted field. English v. General Elec. Co., 1990, 110 S.Ct. 2270, 496 U.S. 72, 110 L.Ed.2d 65, on remand 765 F.Supp. 293.

**SECTION 8‑27‑40.** Dismissal, suspension, demotion or decrease in compensation for independent cause permitted.

 Notwithstanding the filing of a report pursuant to this chapter, a public body may dismiss, suspend, demote, or decrease the compensation of an employee for causes independent of the filing of a protected report as described in Section 8‑27‑20.

HISTORY: 1988 Act No. 354, eff March 14, 1988; 1993 Act No. 164, Part II, Section 37D, eff June 21, 1993, and applies with respect to any personnel actions taken after that date.

Effect of Amendment

The 1993 amendment revised this section which formerly read “Notwithstanding any action taken pursuant to this chapter, a public body may discharge, otherwise terminate, or suspend an employee for causes independent of those provided in Section 8‑27‑20”.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 43, Employers’ Rights.

NOTES OF DECISIONS

In general 1

1. In general

Public employees’ claim under Whistleblower Act prohibiting retaliation for filing good‑faith report of wrongdoing is action for injuries “arising out of violation of the First Amendment” within meaning of tort liability insurance policy that was issued to town by State Budget and Control Board and covered liability for personal injury arising out of violation of First Amendment; public employee’s reporting of misconduct will always implicate First Amendment protection because the speech is matter of public concern. Town of Duncan v. State Budget and Control Bd., Div. of Ins. Services (S.C. 1997) 326 S.C. 6, 482 S.E.2d 768, rehearing denied. Insurance 2307; Insurance 2349

A former city director’s motion for judgement n.o.v. was properly denied where the director, who made allegations of wrongdoing by the city in December 1988 and January 1989 and was terminated in March of 1989, claimed that he was terminated in violation of Section 8‑27‑20 (the whistleblower statute), but it was shown that there were several discrepancies in the payroll administered by the director, the director had been paid $12,000 more than he was entitled to, many expenditures were undocumented, and general disbursements were not managed in accordance with sound accounting practices, thus demonstrating independent causes for discharge. Gamble v. City of Manning (S.C. 1991) 304 S.C. 536, 405 S.E.2d 829.

**SECTION 8‑27‑50.** Application of Chapter 27.

 The provisions of this chapter do not apply to nonpublic, private corporations.

HISTORY: 1988 Act No. 354, eff March 14, 1988.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Labor Relations Section 41, Coverage.

S.C. Jur. Labor Relations Section 42, Employees’ Rights.

Treatises and Practice Aids

Guide to Employment Law and Regulation 2d Section 61:6, Antidiscrimination Law.

NOTES OF DECISIONS

In general 1

Public bodies 2

1. In general

Electric cooperative’s receipt of federal, low‑interest loans did not transform it into public body under the Whistleblower Act, where loans were conditioned on provision of electricity to rural areas in compliance with requirements of the Rural Electrification Act. Sutler v. Palmetto Elec. Co‑op., Inc. (S.C.App. 1997) 325 S.C. 465, 481 S.E.2d 179, rehearing denied, certiorari denied. Public Employment 286

2. Public bodies

Employer that allegedly terminated employee in retaliation for his insistence on adhering to federal and state standards for air carrier quality and safety was not corporation “supported in whole or in part by public funds or expending public funds” and thus not “public body,” as defined by South Carolina Whistleblower Act, since employer was private corporation receiving public funds from South Carolina in exchange for providing jobs, pursuant to negotiated quid pro quo agreement governed by State General Obligation Economic Development Bond Act, and employer was not related to public body, or acting as agent of or operating for sole benefit of South Carolina. Woods v. Boeing Co., 2012, 841 F.Supp.2d 925. Labor And Employment 801

**SECTION 8‑27‑60.** Summary of Chapter 27 to be made available on public body website or in writing.

 Each public body must make a summary of this chapter available on the public body’s Internet website. The summary must include an explanation of the process required to report wrongdoing, an explanation of what constitutes wrongdoing, and a description of the protections available to an employee who reports wrongdoing. If the public body does not maintain an Internet website, the public body must annually provide a written summary of this chapter to its employees and maintain copies of the summary at all times.

HISTORY: 2014 Act No. 121 (S.22), Pt IV, Section 6.C, eff January 1, 2015.