

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 271

An Act to amend the Code of Virginia by adding in Article 2 of Chapter 3 of Title 40.1 a section numbered 40.1-33.1, relating to prohibiting employers from retaliating against employees for reporting employee misclassification; civil penalty.

[S 662]

Approved March 11, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 3 of Title 40.1 a section numbered 40.1-33.1 as follows:

§ 40.1-33.1. Retaliatory actions prohibited; civil penalty.

A. An employer shall not discharge, discipline, threaten, discriminate against, or penalize an employee or independent contractor, or take other retaliatory action regarding an employee or independent contractor's compensation, terms, conditions, location, or privileges of employment, because the employee or independent contractor:

1. Has reported or plans to report to an appropriate authority that an employer, or any officer or agent of the employer, has failed to properly classify an individual as an employee and failed to pay required benefits or other contributions; or

2. Is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

B. The provisions of subsection A shall apply only if an employee or independent contractor who discloses information about suspected worker misclassification has done so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be subject to the protections provided by subsection A.

C. Any employee who is discharged, disciplined, threatened, discriminated against, or penalized in a manner prohibited by this section may file a complaint with the Commissioner. The Commissioner, with the written and signed consent of such an employee, may institute proceedings against the employer for appropriate remedies for such action, including reinstatement of the employee and recovering lost wages.

D. Any employer who discharges, disciplines, threatens, discriminates against, or penalizes an employee in a manner prohibited by this section shall be subject to a civil penalty not to exceed the amount of the employee's wages that are lost as a result of the violation. Civil penalties under this section shall be assessed by the Commissioner and paid to the Literary Fund.