

A BILL 1

18-233 2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA 3

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To amend the Comprehensive Merit Personnel Act of 1979 to include conducting an investigation in response to a protected disclosure 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 clarify the definition of a prohibited procurement practice, to prohibit District retaliation against contractors who make protected disclosures, and to extend the limitations period for whistleblower retaliation claims; and to amend the District of Columbia Procurement Practices Act of 1985 to increase the amount that a qui tam plaintiff may receive. 5
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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”. 17
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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: 19
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(a) Section 1552(a) (D.C. Official Code § 1-615.52(a)) is amended as follows: 21

(1) Paragraph (5) is amended by striking the phrase “or retaliating” and inserting the phrase “or retaliating, including conducting or causing to be conducted an investigation of an employee or applicant for employment because of a protected disclosure made by the employee or applicant who is a whistleblower. For purposes of this paragraph, the term “investigation” 22
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ENGROSSED ORIGINAL

includes an examination of fitness for duty and excludes any ministerial or nondiscretionary factfinding activity necessary to perform the agency’s mission” in its place.

(2) Paragraph (6) is amended by striking the phrase “by statute” and inserting the phrase “by statute, without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee’s duties” in its place.

(b) Section 1553 (D.C Official Code § 1-615.53) is amended to read as follows:

“Sec. 1553. Prohibitions.

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

“(b) Except in cases where such communication would be unlawful, a person shall not interfere with or deny the right of employees, individually or collectively, to furnish information to the Council, to a Council Committee, or a Councilmember.”.

(c) Section 1554 (D.C. Official Code § 1-615.54) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a)(1) An employee aggrieved by a violation of section 1553 may bring a civil action against the District, and, in his or her personal capacity, any District employee, supervisor, or official having personal involvement in the prohibited personnel action, before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including an

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injunction, reinstatement to the same position held before the prohibited personnel action or to an
equivalent position, reinstatement of the employee’s seniority rights, restoration of lost benefits,
back pay and interest on back pay, compensatory damages, and reasonable costs and attorney
fees.

“(2) A civil action shall be filed within 3 years after a violation occurs or within
one year after the employee first becomes aware of the violation, whichever occurs 1st.

“(3) D.C. Official Code § 12-309 shall not apply to any civil action brought under
this section.”.

(2) Subsection (b) is amended by striking the phrase “employing District agency”
and inserting the word “defendant” in its place.

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

“(e)(1) If a protected disclosure assists in securing the right to recover, the actual
recovery of, or the prevention of loss of more than \$100,000 in public funds, the Mayor may pay
a reward in any amount between \$5,000 and \$50,000 to the person who made the protected
disclosure; provided, that any reward shall be recommended by the Inspector General, the
District of Columbia Auditor, or other similar law-enforcement authority.

“(2) This subsection shall not create any right or benefit, substantive or
procedural, enforceable at law or equity, by a party against any District government agency,
instrumentality, officer, employee, or other person.”.

(d) Section 1555 (D.C. Official Code § 1-615.55) is amended as follows:

ENGROSSED ORIGINAL

(1) Subsection (a) is amended as follows: 1

(A) Strike the phrase “any supervisor, including any manager, department 2
director, or other District official,” and insert the phrase “any person” in its place. 3

(B) Strike the phrase “violated section 1553” and insert the phrase 4
“violated section 1553 or section 203 of the Whistleblower Reinforcement Act of 1998, effective 5
October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.02),” in its place. 6

(2) Subsection (b) is amended to read as follows: 7

“(b) As part of the relief ordered in a judicial proceeding, any person who is found to 8
have violated section 1553 or section 203 of the Whistleblower Reinforcement Act of 1998, 9
effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2-223.02), shall be subject to 10
a civil fine not to exceed \$10,000.”. 11

(e) Section 1556(b) (D.C. Official Code § 1-615.56(b)) is amended by striking the phrase 12
“No civil action shall be brought” and inserting the phrase “An employee may bring a civil 13
action” in its place. 14

(f) Section 1557 (D.C. Official Code § 1-615.57) is amended by striking the phrase 15
“reporting documents” and inserting the phrase “reporting documents and in a letter provided to 16
employees upon commencement of employment” in its place. 17

(g) A new section 1558a is added to read as follows: 18

“Sec. 1558a. Restrictions on Council whistleblowers. 19

“District funds shall not be available for the payment of the salary of any officer or 20

employee of the District, who: 1

“(1) Prohibits or prevents, or attempts or threatens to prohibit or prevent, any 2
other officer or employee of the District from having any direct oral or written communication or 3
contact with any member, committee, or subcommittee of the Council in connection with any 4
matter pertaining to the employment of the other officer or employee or pertaining to the 5
department or agency of the other officer or employee in any way, irrespective of whether the 6
communication or contact is at the initiative of the other officer or employee or in response to the 7
request or inquiry of the member, committee, or subcommittee, of the Council except where the 8
communication or contact would be unlawful; or 9

“(2) Removes; suspends from duty without pay; demotes; reduces in rank, 10
seniority, status, pay, or performance rating; denies promotion to; relocates; reassigns; transfers; 11
disciplines; or discriminates in regard to any employment right, entitlement, or benefit, or any 12
term or condition of employment, of any other officer or employee of the District, or attempts or 13
threatens to commit any of the foregoing actions with respect to the other officer or employee, by 14
reason of any communication or contact of the other officer or employee with any member, 15
committee, or subcommittee of the Council as described in paragraph (1) of this section.”. 16

Sec. 3. The Employees of District Contractors and Instrumentality Whistleblower 17
Protection Act of 1998, effective October 7, 1998 (D.C. Law 12-160; D.C. Official Code § 2- 18
223.01 *et seq.*), is amended as follows: 19

(a) Section 202 (D.C. Code § 2-223.01) is amended as follows: 20

(1) Paragraph (6) is amended as follows: 1

(A) The existing text is designated as subparagraph (A). 2

(B) A new subparagraph (B) is added to read as follows: 3

“(B) The term “prohibited procurement action” includes any 4
recommended, threatened, or actual proceeding, based wholly or in part on a protected disclosure 5
made by an employee, officer, or owner of a contractor, to terminate a contract by default or 6
convenience without adequate and documented justification, to unreasonably delay or withhold 7
payment on legitimate vouchers or claims of a contractor, to impose conditions or requirements 8
on the contractor not required by the contract, to take any action designed to or having the effect 9
of impeding a contractor’s performance, or to take any other action designed to or having the 10
effect of injuring the business or reputation of a contractor.”. 11

(2) Paragraph (10) is amended by striking the phrase “an employee” and inserting 12
the phrase “an employee or contractor” in its place. 13

(b) Section 203 (D.C. Code § 2-223.02) is amended to read as follows: 14

“Sec. 203. Prohibitions. 15

“(a) A supervisor shall not threaten to take or take a prohibited personnel action or 16
otherwise retaliate against an employee because of the employee’s protected disclosure or 17
because of an employee’s refusal to comply with an illegal order. 18

“(b) A District government official or employee having the responsibility to evaluate, 19
award, authorize payments, terminate, or otherwise administer a contract for goods or services 20

between the District government and a contractor shall not threaten to take or take a prohibited procurement action against a contractor, or a contractor competing for a contract, based wholly or in part on a protected disclosure made by an employee, officer, or owner of the contractor to a public body.”.

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

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

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

“(e) A government contractor aggrieved by a violation of section 203(b) may bring a civil action before a court or a jury in the Superior Court of the District of Columbia seeking relief and damages, including injunction, compensatory damages, reasonable costs, and attorney fees. A civil action shall be filed within 2 years after a violation occurs or within one year after the contractor first becomes aware of the violation, whichever occurs 1st.”.

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

Sec. 5. Fiscal impact statement 1

The Council adopts the fiscal impact statement in the committee report as the fiscal 2
impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, 3
approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)). 4

Sec. 6. Effective date 5

This act shall take effect following approval by the Mayor (or in the event of veto by the 6
Mayor, action by Council to override the veto), a 30-day period of Congressional review as 7
provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 8
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of 9
Columbia Register. 10