

OCCUPATIONAL SAFETY AND HEALTH AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill modifies the Utah Occupational Safety and Health Act to address discharge of or retaliation against an employee.

Highlighted Provisions:

This bill:

- ▶ prohibits discharge of or retaliation against an employee under certain circumstances;
- ▶ addresses the procedures to be followed if there is a claim of prohibited discharge or retaliation, including an investigative and appellate process; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-6-203, as renumbered and amended by Laws of Utah 1997, Chapter 375

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-6-203** is amended to read:

34A-6-203. Discharge or retaliation against employee prohibited.

(1) A person may not discharge or in any [~~manner discriminate~~] way retaliate against

30 ~~[any]~~ an employee because the employee:

31 (a) ~~[the employee has filed any]~~ files a complaint or ~~[instituted or caused]~~ institutes or
32 causes to be instituted ~~[any proceedings]~~ a proceeding under or related to this chapter;

33 (b) ~~[the employee has testified]~~ testifies or is about to testify in any proceeding under
34 or related to this chapter; or

35 (c) ~~[the employee has exercised any]~~ exercises a right granted by this chapter on behalf
36 of the employee or others.

37 (2) (a) ~~[Any]~~ An employee who believes that the employee has been discharged or
38 otherwise ~~[discriminated]~~ retaliated against by any person in violation of this section may,
39 within 30 days after the violation occurs, file a complaint with the division ~~[in the commission~~
40 alleging discrimination] alleging discharge or retaliation in violation of this section.

41 (b) (i) Upon receipt of the complaint, the division shall cause an investigation to be
42 made.

43 (ii) The division may employ investigators as necessary to carry out the purpose of this
44 Subsection (2).

45 ~~[(c) If the investigator reports a violation and the employer requests a hearing on the~~
46 ~~alleged violation, the Division of Adjudication shall hold an evidentiary hearing to determine if~~
47 ~~provisions of this section have been violated.]~~

48 ~~[(d) (i) If the Division of Adjudication determines that a violation has occurred, it may~~
49 ~~order:]~~

50 ~~[(A) the violation to be restrained; and]~~

51 ~~[(B) all appropriate relief, including reinstatement of the employee to the employee's~~
52 ~~former position with back pay.]~~

53 ~~[(ii) A determination under this Subsection (2)(d) may be appealed in accordance with~~
54 ~~Section [34A-6-304](#).]~~

55 (c) Upon completion of the investigation, the division shall issue an order:

56 (i) (A) finding a violation of this section has occurred;

57 (B) requiring that the violation cease; and

58 (C) which may include other appropriate relief, such as reinstatement of the employee
59 to the employee's former position with back pay; or

60 (ii) finding that a violation of the section has not occurred.

61 (d) An order issued under Subsection (2)(c) is the final order of the commission unless
62 a party to the claim of a violation of this section seeks further review as provided in Subsection
63 (3).

64 (3) (a) A party to a claim of a violation of this section may seek review of the order
65 issued under Subsection (2)(c) within 30 days from the date the order is issued by filing a
66 request for review with the Division of Adjudication.

67 (b) The request for review shall comply with Subsection [63G-4-301\(1\)](#).

68 (c) If the request for review is made, the Division of Adjudication shall conduct a de
69 novo review of the underlying order.

70 (d) If the request for review is based on a finding that a violation of this section
71 occurred, the division shall appear in the review proceeding to defend the division's finding.

72 (e) If the request for review is based on a finding that a violation of this section did not
73 occur, the division may not participate in the review proceeding.

74 (f) (i) If the Division of Adjudication determines a violation of this section has
75 occurred, it may order relief as provided in Subsection (2)(c).

76 (ii) If the Division of Adjudication determines that a violation of this section has not
77 occurred, it shall issue an order stating the determination.

78 (4) A party may appeal an order issued by the Division of Adjudication under
79 Subsection (3)(f) in accordance with Subsection [34A-6-304\(1\)](#).