

# BILL

## No. 201 of 2004

### An Act to provide protection, rights and remedies for certain employees

(Assented to \_\_\_\_\_, 2004)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

#### Short title

1 *The Whistleblower Protection Act.*

#### Interpretation

2 In this Act:

- (a) **“employee”** means any individual who performs services for or under the control and direction of an employer that is a public agency or public institution for wages or other remuneration and includes applicants for employment, former employees or an authorized representative of an employee;
- (b) **“public agency”** means any department, agency, board, commission, bureau, office or other branch of the public service of the Government of Saskatchewan and includes any crown corporation or institution as the minister may designate;
- (c) **“public institution”** means:
  - (i) a regional health authority or an affiliate, as defined in *The Regional Health Services Act*;
  - (ii) a university, college, institute, board of education or conseil scolaire, the conseil général or any other educational institution or body;
  - (iii) a municipality or other local governing body;
  - (iv) an institution or body that is subject to audit by the Provincial Auditor within the meaning of *The Provincial Auditor Act*;
  - (v) any other institution or body designated by the Lieutenant Governor in Council as a public institution for the purposes of this Act;
- (d) **“reprisal”** includes threatened or actual discharge, suspension, reprimand, demotion, harassment, constructive dismissal, blacklisting, involuntary transfer, assignment or deployment or the refusal to hire an employee, or other adverse employment action taken against an employee with respect to the employee’s terms and conditions of employment, or other actions which interfere with an employee’s ability to engage in a protected activity as set out in section 3;
- (e) **“supervisor”** means any individual with an employer’s organization who has the authority to direct and control the work performance of the affected employee or who has authority to take corrective action regarding the violation of any law, rule or regulation of which the employee complains.

**Protected activity**

**3** No reprisal shall be taken against an employee of an employer that is a public agency or public institution because the employee does any of the following:

- (a) discloses, threatens to disclose or is about to disclose to a supervisor, a public agency, public body, public institution or to an independent officer of the Assembly, an activity, policy or practice of the employer, a co-employee or another employer, that the employee reasonably believes is in violation of a law, an enactment, rule or regulation promulgated pursuant to law or an enactment;
- (b) provides information to, or testifies before, any public agency, public body, public institution or the Assembly that is conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to an enactment or law by the employer or another employer;
- (c) discloses, threatens to disclose or is about to disclose to a supervisor or to a public agency, public body, public institution or to an independent officer of the Assembly an activity, policy or practice of the employer, a co-employee or another employer, that the employee reasonably believes is incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment;
- (d) discloses, threatens to disclose or is about to disclose to a supervisor, to a public agency, public body, public institution or to an independent officer of the Assembly any information regarding financial mismanagement of public money or other similar wrongdoing;
- (e) assists or participates in a proceeding to enforce the provisions of this Act;
- (f) objects to, opposes or refuses to participate in any activity, policy or practice which the employee reasonably believes:
  - (i) is in violation of a law, rule, enactment or regulation promulgated pursuant to law or an enactment;
  - (ii) is fraudulent or criminal;
  - (iii) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment; or
  - (iv) involves financial mismanagement of public money or other similar wrongdoing.

**Preservation of records**

**4** Notwithstanding any other enactment, any document, record or computer file that may be required for an investigation or disclosure pursuant to section 3 must be preserved.

**Anonymity**

**5** The anonymity of any employee who provides information, testifies or makes a disclosure pursuant to section 3 shall be maintained where circumstances warrant.

**Forum**

**6** An aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction if a violation of any provision of this Act occurs.

**Burden of proof**

**7(1)** Subject to subsection (2), a violation of this Act has occurred only if the employee demonstrates, on the balance of probabilities, that any behavior described in section 3 was a contributing factor in the reprisal alleged in the complaint by the employee.

(2) Relief may not be ordered under section 6 if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the employee's behavior.

**Remedies**

**8(1)** All remedies available in common law tort actions are available to an employee whose suit, claim or action brought pursuant to this Act is successful.

(2) A court may also, where appropriate, order any or all of the following:

- (a) an injunction to restrain continued violation of this Act;
- (b) the reinstatement of the employee to the same position held before the reprisal, or to an equivalent position;
- (c) the reinstatement of full benefits and seniority rights;
- (d) the compensation for lost wages, benefits and other remuneration;
- (e) the payment by the employer of reasonable costs, expert witness fees and legal fees;
- (f) compensatory or exemplary damages.

**Posting**

**9** Employees' protections and employers' obligations pursuant to this Act shall be conspicuously displayed and made available to employees of employers of public agencies and public institutions.

**Existing rights not affected**

**10(1)** The provisions of this Act are in addition to and not in substitution of or derogation of any rights or benefits that an employee may have pursuant to any collective agreement that governs that employee.

(2) Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or provincial Act, law or regulation or under any collective bargaining agreement or employment contract.

(3) No employee may waive by way of a private contract any right set out in this Act, except as set out in section 11.

(4) No employee may be compelled to adjudicate his or her rights under this Act pursuant to a collective bargaining agreement or any other arbitration agreement.

**Settlement**

11(1) The rights afforded employees under this Act may not be waived or modified, except through a court-approved settlement agreement reached with the voluntary participation and consent of the employee and employer.

(2) An employer may not require an employee to waive, as a condition of settlement, his or her right to reasonably engage in conduct protected pursuant to section 3 of this Act.

**Prohibition**

12 No employee shall bring or make any allegation knowing it to be frivolous or vexatious.

**Crown bound**

13 This Act binds the Crown.

**Coming into force**

14 This Act comes into force on assent.