

## Whistleblower Protection for Employees of Financial Institutions

### Section [X]. Employee Protection

(a) IN GENERAL.—No [financial institution- as defined under state law] shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any employee or any authorized representative of an employees by reason of the fact that such employee or representative whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee) has—

(1) provided information to any state, local, federal, or tribal government entity, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title or

(2) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, or regulation, or to be unfair, deceptive, or abusive and likely to cause specific and substantial injury to one or more consumers.

(b)

(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the [state department of labor] alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the [Commissioner of Labor] shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2) (A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the [Commissioner] a written response to the complaint and an opportunity to meet with a representative of the [Commissioner] to present statements from witnesses, the [Commissioner] shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the [Commissioner]'s findings. If the [Commissioner] concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the [Commissioner] shall accompany the [Commissioner]'s findings with a preliminary order providing the relief prescribed by paragraph

(3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) (i) The [Commissioner] shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the [Commissioner] that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The [Commissioner] may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the [Commissioner] shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the [Commissioner], the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the [Commissioner] determines that a violation of subsection (a) has occurred, the [Commissioner] shall order the person who committed such violation--

(i) to take affirmative action to abate the violation

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the [Commissioner], at the request of the complainant, shall

assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the [Commissioner], by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the [Commissioner] finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the [Commissioner] may award to the prevailing employer a reasonable attorneys' fee, not exceeding \$ 1,000, to be paid by the complainant.

(4) If the [Commissioner] has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the [appropriate court of law], which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including--

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5) (A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in [appropriate court of law]. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the [Commissioner]. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the [Commissioner] with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the [Commissioner] may file a civil action in the [appropriate court of law] in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7) (A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in the [appropriate court of law]

(d) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.

(1) WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.— Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under paragraph (a)(2) of this section unless the Agency determines by rule that such provision is inconsistent with the purposes of this Act.

(e) REQUIREMENT TO POST NOTICE OF RIGHTS AND REMEDIES.—Any employer covered by this title shall post notice of the rights and remedies provided under this section.