

## Recent State Whistleblower Law Changes: 2017-2018

### Arkansas

#### **Ark. Code Ann. § 21-1-605**

**Added:** “(b)(1)(A) A public employee alleging in a civil action that he or she was terminated from his or her position as the result of adverse action prohibited under Section 21-1-603 may request an expedited hearing on the issue of the public employee being reinstated to the public employee's position until the resolution of the civil action brought under this subchapter. (2) If at an expedited hearing the public employee demonstrates that a reasonable person would conclude that his or her termination was a result of adverse action prohibited under Section 21-1-603, the court shall order that the public employee be: (A) Reinstated to his or her position until the conclusion of the civil action brought under this subchapter; or (B) Reinstated to his or her positions and placed on paid administrative leave until the conclusion of the civil action brought under this subchapter.”

#### **Ark. Code Ann. § 21-1-703**

**Added:** “(E)(b)(1)(A) The rules promulgated under subdivision (a)(1) of this section shall provide without limitation that an employee be afforded a hearing within fifteen (15) business days of the filing of his or her appeal if the employee alleges that he or she was terminated by a state agency for the following actions under Section 21-1-603: (i) Communicating in good faith to an appropriate authority: (a) The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or (b) A violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state; (ii) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; (iii) Objecting or refusing to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the laws of the state or a political subdivision of the state; or (iv) A report of loss of public funds under Section 25-1-124. (B) A hearing under subdivision (b)(1)(A) of this section shall take place before the occurrence of a state agency hearing pursuant to the grievance filed by the person. (C) (i) An employee requesting a hearing under subdivision (b)(1)(A) of this section shall submit with his or her request for a hearing evidence that he or she committed one of the actions under subdivision (b)(1)(A)(i)-(iv) of this section. Evidence under this subdivision (b)(1)(C)(i) that is confidential under Section 21-1-607 or other provisions of law shall remain confidential when submitted in support of a request for a hearing or otherwise utilized in the appeal of the grievance decision. (ii) If the person fails to demonstrate that he or she committed one of the actions under subdivision (b)(1)(A)(i)-(iv) of this section, the office shall not schedule a hearing under subdivision (b)(1)(A) of this section. (2) If the employee demonstrates at the hearing that a reasonable person would conclude that the state agency terminated the employee as a result of the employee's activities under subdivision (b)(1)(A)-(D) of this section, the employee shall be: (A) Reinstated to his or her position until the conclusion of the grievance; or (B) Reinstated to his or her position and placed on administrative leave until the conclusion of the grievance (3)

An employee filing an appeal of a grievance decision under this section does not waive his or her right to file a claim under the Arkansas Whistle-Blower Act, Section 21-1-601 et seq.

**Ark. Code Ann. § 21-1-704(a)(1)(D)(i)**

**Added:** Allows disclosures of a loss of public funds (under Ark. Code Ann. § 25-1-124) to go through nonbinding mediation.

**California**

**Cal. Gov't Code § 8547.5**

**Added:** “(c) (1) The California State Auditor shall create an alternative system for submission to an independent investigator of allegations of improper governmental activity engaged or participated in by employees of the California State Auditor’s Office. The system shall allow for submission of allegations both by delivery to a specified mailing address and electronic submission through an Internet Web site portal. The system may request that people submitting allegations provide their name and contact information and the names and contact information for any persons who could help to substantiate the claim. However, the system shall not require people submitting an allegation to provide their name or contact information and shall clearly state that this information is not required to submit an allegation. The system shall ensure that all submissions are promptly and directly delivered to the Employment and Administrative Mandate Section of the Department of Justice without prior review by the California State Auditor. The Employment and Administrative Mandate Section of the Department of Justice shall review submissions. If the Employment and Administrative Mandate Section of the Department of Justice determines that a submission constitutes an allegation of improper governmental activity, it shall transmit the submission to the independent investigator for further action in accordance with this section. (2) (A) The independent investigator shall conduct investigations in a manner consistent with the provisions of this article relating to other state civil service employees. If the independent investigator finds that the facts support a conclusion that an employee engaged or participated in improper governmental activities, the investigator shall prepare a confidential investigative report and, subject to the limitations of this section, send a copy of the report and all evidence gathered during the investigation to the California State Auditor, the Chief Deputy California State Auditor, and the California State Auditor’s Office chief counsel and human resource manager. (B) If the independent investigator determines it to be appropriate, the independent investigator shall report this information to the Attorney General, to the policy committees of the Senate and Assembly having jurisdiction over the subject involved, and to any other authority that the independent investigator determines appropriate. Subject to the limitations of this section, the independent investigator may provide to the California State Auditor any evidence gathered during the investigation that, in the judgment of the independent investigator, is necessary to support any of the report’s recommendations. Within 60 days of receiving the independent investigator’s report, the California State Auditor shall report to the independent investigator any actions that it has taken or that it intends to take to implement the recommendations. The California State Auditor shall file subsequent reports on a monthly basis until final action has been taken. (3) (A) Within 60 days after receiving a copy of the

independent investigator's report, the California State Auditor's Office shall either serve a notice of adverse action upon the employee who is the subject of the investigative report, or submit to the independent investigator in writing its reasons for not taking adverse action. (B) If the California State Auditor's Office elects not to serve a notice of adverse action upon the employee who is the subject of the investigative report, then, within 10 days of receiving the reasons provided by the California State Auditor's Office pursuant to subparagraph (A), the independent investigator shall: (i) Notify the Joint Legislative Audit Committee, as described in Section 10501, that it has provided a report to the California State Auditor's Office pursuant to this paragraph. (ii) Upon request, provide a copy of the report described in this paragraph, redacted to remove all information that could identify any reporting party, witness, or employee, to the Joint Legislative Audit Committee, as described in Section 10501. (C) If the California State Auditor's Office does not take adverse action, the independent investigator may seek consent from the State Personnel Board to file charges in accordance with Section 19583.5. (D) The following shall not be confidential: (i) A notice of adverse action served by the California State Auditor. (ii) A request to file charges filed by the independent investigator with the State Personnel Board. (4) The California State Auditor's Office shall reimburse the Employment and Administrative Mandate Section of the Department of Justice for the costs of retaining the independent investigator. (5) For purposes of this subdivision and any investigation conducted pursuant thereto, "improper governmental activity" has the same meaning as set forth in subdivision (c) of Section 8547.2, except that it shall not include violations of an executive order of the Governor, any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or any other rule, regulation, or requirement that the California State Auditor's Office, because of its independence from executive branch and legislative control, is not required to follow. (d) For purposes of this section, "independent investigator" means an investigator who is retained by the Employment and Administrative Mandate Section of the Department of Justice who is all of the following: (1) An attorney who is licensed to practice law in this state or a certified fraud examiner. (2) A person who is experienced in investigating allegations of improper governmental activity in a confidential manner. (3) A person who is outside of, and independent from, the California State Auditor's Office and also independent of the executive branch and legislative control.

### **Cal Lab Code § 98.7**

**Added:** "If a complainant files an action in court against an employer based on the same or similar facts as a complaint made under this section, the Labor Commissioner may, at his or her discretion, close the investigation. If a complainant has already challenged his or her discipline or discharge through the State Personnel Board, or other internal governmental procedure, or through a collective bargaining agreement grievance procedure that incorporates antiretaliation provisions under this code, the Labor Commissioner may reject the complaint." "An action by the Labor Commissioner seeking injunctive relief, reimbursement of lost wages and interest thereon, payment of penalties, and any other appropriate relief, shall not accrue until a respondent fails to comply with the order for more than 30 days following notification of the commissioner's determination. The Labor Commissioner shall commence an action within three years of its accrual, regardless of whether the commissioner seeks penalties in the action." "If the

Labor Commissioner is a prevailing party in an enforcement action pursuant to this section, the court shall determine the reasonable attorney's fees incurred by the Labor Commissioner in prosecuting the enforcement action and assess that amount as a cost upon the employer. An employer who willfully refuses to comply with an order of a court pursuant to this section to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such relief, or who refuses to comply with an order to post a notice to employees or otherwise cease and desist from the violation shall, in addition to any other penalties available, be subject to a penalty of one hundred dollars (\$100) per day for each day the employer continues to be in noncompliance with the court order, up to a maximum of twenty thousand dollars (\$20,000). Any penalty pursuant to this section shall be paid to the affected employee." "Any time limitation for a complainant to bring an action in court shall be tolled from the time of filing the complaint with the division until the issuance of the Labor Commissioner's determination." "Determinations by the Labor Commissioner under subdivision (c) or (d) shall be final and not subject to administrative appeal except for cases arising under Sections 6310 and 6311, which may be appealed by the complainant or respondent to the Director of Industrial Relations ~~within 10 days following notification of the Labor Commissioner's determination~~ pursuant to an appeal process, including time limitations, that is consistent with the mandates of the United States Department of Labor."

#### **Cal Lab Code § 226.4**

**Added:** "If, upon inspection or investigation, the Labor Commissioner determines that an employer is in violation of subdivision (a) of Section 226, the Labor Commissioner may issue a citation to the person in violation. The citation may be served personally, in the same manner as provided for service of a summons as described in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, by certified mail with return receipt requested [ . . . ]"

#### **Cal Lab Code § 98.7**

**Added:** "(2) The division may, with or without receiving a complaint, commence investigating an employer, in accordance with this section, that it suspects to have discharged or otherwise discriminated against an individual in violation of any law under the jurisdiction of the Labor Commissioner. The division may proceed without a complaint in those instances where suspected retaliation has occurred during the course of adjudicating a wage claim pursuant to Section 98, or during a field inspection pursuant to Section 90.5, in accordance with this section, or in instances of suspected immigration-related threats in violation of Section 244, 1019, or 1019.1."

**Added:** "(2) (A) The Labor Commissioner, during the course of an investigation pursuant to this section, upon finding reasonable cause to believe that any person has engaged in or is engaging in a violation, may petition the superior court in any county in which the violation in question is alleged to have occurred or in which the person resides or transacts business, for appropriate temporary or preliminary injunctive relief, or both temporary and preliminary injunctive relief. (B) Upon filing of a petition pursuant to this paragraph, the Labor Commissioner shall cause

notice of the petition to be served on the person, and the court shall have jurisdiction to grant temporary injunctive relief as the court determines to be just and proper. (C) In addition to any harm resulting directly to an individual from a violation of any law under the jurisdiction of the Labor Commissioner, the court shall consider the chilling effect on other employees asserting their rights under those laws in determining if temporary injunctive relief is just and proper. (D) If an employee has been discharged or faced adverse action for raising a claim of retaliation for asserting rights under any law under the jurisdiction of the Labor Commissioner, a court shall order appropriate injunctive relief on a showing that reasonable cause exists to believe that an employee has been discharged or subjected to adverse action for raising a claim of retaliation or asserting rights under any law under the jurisdiction of the Labor Commissioner. (E) The temporary injunctive relief shall remain in effect until the Labor Commissioner issues a determination or citations, or until the completion of review pursuant to subdivision (b) of Section 98.74, whichever period is longer, or at a time certain set by the court. Afterwards, the court may issue a preliminary or permanent injunction if it is shown to be just and proper. Any temporary injunctive relief shall not prohibit an employer from disciplining or terminating an employee for conduct that is unrelated to the claim of the retaliation. (F) Notwithstanding Section 916 of the Code of Civil Procedure, injunctive relief granted pursuant to this section shall not be stayed pending appeal. (c) (1) If the Labor Commissioner determines a violation has occurred, the Labor Commissioner may issue a determination in accordance with this section or issue a citation in accordance with Section 98.74. If the Labor Commissioner issues a determination, [. . . ]”

**Added:** “(2) If the Labor Commissioner is a prevailing party in an enforcement action pursuant to this section, the court shall determine the reasonable attorney’s fees incurred by the Labor Commissioner in prosecuting the enforcement action and assess that amount as a cost upon the employer. (3) An employer who willfully refuses to comply with an order of a court pursuant to this section to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such relief, or who refuses to comply with an order to post a notice to employees or otherwise cease and desist from the violation shall, in addition to any other penalties available, be subject to a penalty of one hundred dollars (\$100) per day for each day the employer continues to be in noncompliance with the court order, up to a maximum of twenty thousand dollars (\$20,000). Any penalty pursuant to this section shall be paid to the affected employee.”

## **Colorado**

### **Colo. Rev. Stat. § 2-3-110.5**

**Added:** “(1) As used in this section, unless the context otherwise requires: (a) "Committee" means the legislative audit committee created in section 2-3-101 (1). (b) "Contracted individual" means an individual currently or formerly acting under a contract, purchase order, or other similar agreement for the procurement of goods and services with a state agency; except that "contracted individual" does not include individuals or entities that provide services or receive benefits under Title XIX or Title XXI of the federal "Social Security Act". (c) "Employee" means an individual currently or formerly employed by a state agency; except that "employee"

does not include individuals or entities that provide services or receive benefits under Title XIX or Title XXI of the federal "Social Security Act". (d) "Fraud" means occupational fraud or the use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization's resources or assets. The definition of fraud specified in this subsection (1)(d) is used exclusively for purposes of the fraud hotline to be administered by the state auditor in accordance with this section and shall not be construed to apply to any other section of the Colorado Revised Statutes. (e) "Fraud hotline" or "hotline" means the system created and maintained by the state auditor pursuant to subsection (2)(a) of this section. (f) "Hotline call" means a report of information to the fraud hotline regardless of whether such report is made by telephone, fax, email, or another internet-based format. (g) "Investigation" means an investigation of a report to the fraud hotline of an allegation of fraud committed by an employee or a contracted individual. "Investigation" does not constitute a criminal investigation. (h) "State agency" or "agency" means all departments, institutions, and agencies of state government, including the office of the governor, institutions of higher education, and the legislative and judicial departments of the state. (i) "State auditor" means the state auditor or his or her designee. (2) (a) The state auditor shall establish and administer a telephone number, fax number, email address, mailing address, or internet-based form whereby any individual may report an allegation of fraud committed by an employee or a contracted individual. (b) (I) The state auditor may request that an individual submitting an allegation to the fraud hotline provide his or her name and contact information, but no person who submits an allegation to the hotline is required to provide his or her name and contact information. In addition, in accordance with federal laws and regulations, nothing in this section permits an employee of a financial institution to disclose personally identifiable or confidential information when making a report to the hotline. (II) The state auditor shall not disclose publicly, or when making a referral to another state agency in accordance with subsection (3)(b) of this section, the identity of any individual who contacts the fraud hotline unless the individual grants the state auditor express permission to make such disclosure. The restrictions imposed by this subsection (2)(b)(II) shall not apply when the state auditor makes a disclosure to a law enforcement agency, a district attorney, or the attorney general, in connection with a criminal investigation, or to the department of health care policy and financing or the attorney general in accordance with subsection (3)(a)(II) of this section. (c) The state auditor is responsible for administering the hotline, including the screening of hotline calls and, in accordance with subsection (3)(b) of this section, consulting and coordinating with state agencies to refer allegations of fraud by an employee or a contracted individual that are reported to the hotline. (d) The state auditor shall staff the hotline with one or more individuals who possess professional knowledge and expertise in the areas of fraud prevention and detection, fraud examination, forensic accounting, or another related field. The state auditor may also contract with any private entity to assist in the execution of his or her powers and duties under this section. The state auditor shall consult and use accepted professional guidelines and best practices, such as those established by other state audit organizations or the association of certified fraud examiners, when developing internal operating policies and procedures for carrying out activities of his or her office in connection with the hotline. (e) The state auditor shall publicize the existence and purpose of the hotline on the official website of the office of the state auditor and through other means as determined by the

state auditor. (f) (I) The state auditor shall prepare and maintain workpapers for the purpose of documenting the activities of his or her office in connection with hotline calls and investigations. (II) All workpapers prepared or maintained by the state auditor in connection with hotline calls must be held as strictly confidential by the state auditor and not for public release. The restrictions imposed by this subsection (2)(f)(II) shall not prevent communication by and among the state auditor, a state agency, the governor, the committee, a law enforcement agency, a district attorney, or the attorney general in accordance with the requirements of this section. Notwithstanding any other provision of law, all workpapers prepared or maintained by the state auditor in connection with hotline calls shall not constitute public records for purposes of the "Colorado Open Records Act", part 2 of article 72 of title 24. (3) (a) (I) Upon receiving a hotline call, the state auditor shall conduct an initial screening of the call to determine whether the matter being reported constitutes an allegation of fraud committed by an employee or a contracted individual. (II) The state auditor shall forward all hotline calls alleging fraud by a medicaid recipient to the department of health care policy and financing and all calls alleging fraud by a medicaid provider or contractor to the medicaid fraud control unit of the office of the attorney general. (b) If the state auditor determines through the initial screening that a hotline call constitutes an allegation of fraud committed by an employee or a contracted individual, the state auditor shall consult and coordinate with management or management's designee of the affected state agency or, in the case of alleged fraud involving a gubernatorial appointee, the governor's office for the purpose of referring the hotline call and any related workpapers to the affected agency. Upon receiving a referred hotline call from the state auditor, the state agency is responsible for determining and taking appropriate action to respond to the referred hotline call and reporting back to the state auditor in accordance with subsection (4) of this section. In determining appropriate action, the state agency may request either the assistance of the state auditor to participate in an investigation or request that the state auditor conduct the entire investigation. (c) When, at the request of a state agency, the state auditor either participates in or conducts an investigation of a hotline call pursuant to subsection (3)(b) of this section, the following additional requirements apply: (I) The state auditor has access at all times to all of the books, accounts, reports, vouchers, or other records or information maintained by the agency that are directly related to the scope of the investigation. (II) The state auditor shall report the results of the investigation to the head of the affected agency or, in the case of alleged fraud involving a gubernatorial appointee, to the governor's office. The state auditor shall also provide any workpapers prepared or maintained by the state auditor during the investigation. (III) If the investigation finds evidence that the amount of the alleged fraud exceeds one hundred thousand dollars, the state auditor shall also report the results of the investigation to the committee and, with the approval of the committee, to the governor. (IV) If the investigation finds evidence of apparently illegal transactions or misuse or embezzlement of public funds or property, the state auditor shall immediately report the matter to a law enforcement agency, a district attorney, or the attorney general, as appropriate. The state auditor shall also provide any workpapers prepared or maintained by the state auditor during the investigation. (4) When a state agency is referred a hotline call by the state auditor pursuant to subsection (3)(b) of this section and has not requested that the state auditor either participate in or conduct the entire investigation, the state agency shall report back to the state auditor within ninety days on the disposition of the referral,

including action the agency has taken to respond to the fraud allegation and the results of any subsequent investigation by the agency. If the state agency has not reached a disposition of the referred hotline call within ninety days, the agency shall report to the state auditor the current status of the referral as of the ninety-day deadline. This reporting requirement continues every ninety days thereafter until the agency has reached a disposition of the referred hotline call.

(5) Commencing with state fiscal year 2018-19, the state auditor shall prepare an annual report to the committee summarizing, in the aggregate, activity relating to the fraud hotline during the preceding state fiscal year, such as the number, type, nature, and disposition of reports made to the hotline. The annual report shall not contain detailed information, confidential or otherwise, about any specific reports made to the hotline or that would enable the identification of either any specific individual involved in a matter reported to the hotline or any subsequent investigation. The annual report must be accessible to the public and posted on the official website of the office of the state auditor.”

### **Colo. Rev. Stat. § 24-50.5-103**

**Added:** “(2.5) An appointing authority or supervisor shall not initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information to the fraud hotline administered by the state auditor in accordance with section 2-3-110.5; except that this subsection (2.5) does not apply to an employee who discloses information with disregard for the truth or falsity of the information.”

### **Colo. Rev. Stat. § 24-114-102**

**Added:** “(3) An entity under contract with a state agency shall not initiate or administer any disciplinary action against any employee on account of the employee's disclosure of information to the fraud hotline administered by the state auditor in accordance with section 2-3-110.5; except that this subsection (3) does not apply to an employee who discloses information with disregard for the truth or falsity of the information.”

## **Connecticut**

### **Conn. Gen. Stat. § 4-61dd**

**Amended:** Included Probate Court employees in whistleblowing protection law.

## **Idaho**

### **Idaho Code § 6-2104**

**Added:** “(b) For purposes of paragraph (a) of this subsection, an employee participates or gives information in good faith if there is a reasonable basis in fact for the participation or the provision of the information. Good faith is lacking where the employee knew or reasonably ought to have known that the employee's participation or the information provided by the employee is malicious, false or frivolous.”

## **Nevada**

### **Nev. Rev. Stat. Ann. § 284.387**

**Added:** Notice of internal administrative investigation allegations must be provided to employee “within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations.”

**Added:** “3. If the appointing authority does not make a determination within 90 days after the employee is provided notice of the allegations or within any extended time period approved pursuant to subsection 2, the appointing authority shall not take any disciplinary action against the employee pursuant to NRS 284.385 which is based on those allegations.”

**Nev. Rev. Stat. Ann. § 284.390**

**Added:** “Upon verification that a request for a hearing has been made pursuant to subsection 1, the appointing authority of the employee who was the subject of the internal administrative investigation shall, within 5 days after receiving a request by the employee or his or her representative, produce and allow the employee or his or her representative to inspect or receive a copy of any document concerning the internal administrative investigation, including, without limitation, any recordings, notes, transcripts of interviews or other documents or evidence related to the internal administrative investigation.”

**Oklahoma**

**Okla. Stat. tit. 40, § 418**

**Amended:** Clarified that certain payment and requirements and procedures apply to the Workers’ Compensation Committee.

**Oregon**

**Or. Rev. Stat. Ann. § 659A.200**

**Added:** “(1) An employee’s good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by the employer shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to the violation, including information that is exempt from disclosure as provided in ORS 192.501 to 192.505 or by employer policy, if the information is provided to: (a) A state or federal regulatory agency; (b) A law enforcement agency; (c) A manager employed by the public or nonprofit employer of the employee; or (d) An attorney licensed to practice law in this state if a confidential communication is made in connection with the alleged violation described in this section and in furtherance of the rendition of professional legal services to the employee that are subject to ORS 40.225. (2) An employee may not assert the affirmative defense described under subsection (1) of this section if the information described in subsection (1) of this section: (a) Is disclosed or redisclosed by the employee or at the employee’s direction to a party other than the parties listed in subsection (1) of this section; (b) Is stated in a commercial exclusive negotiating agreement with a public or nonprofit employer, provided that the agreement is not related to the employee’s employment with the employer; or (c) Is stated in a commercial nondisclosure agreement with a public or nonprofit employer, provided that the agreement is not related to the employee’s employment with the employer. (3) The affirmative

defense described in subsection (1) of this section is available to an employee who discloses information related to an alleged violation by a coworker or supervisor described in subsection (1) of this section if the disclosure relates to the course and scope of employment of the coworker or supervisor. (4) The affirmative defense described in subsection (1) of this section may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to subsection (1) of this section is related to the representation of a client. (5) This section and ORS 659A.203, including disclosures under subsection (1) of this section, are subject to the rules of professional conduct established pursuant to ORS 9.490. (6) Public and nonprofit employers shall establish and implement a policy regarding employees who invoke their rights under this section or ORS 659A.203. The policy shall delineate all rights and remedies provided to employees under this section and ORS 659A.203. The employer shall deliver a written or electronic copy of the policy to each employee. (7) Subject to the rules of professional conduct established pursuant to ORS 9.490, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation by the public employer. (8) Disclosure of information pursuant to subsection (1) of this section does not waive attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under ORS 192.501 to 192.505. (9) Notwithstanding subsection (1) of this section, information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law."

**Added:** [beginning in "Employee" entry in definitions section] "(f) Employed by a nonprofit organization; or (g) Serving as a member of a board of directors of a nonprofit organization who is not otherwise considered an employee. (3) "Information" includes public and private records, documents and electronically stored data. (4) "Knowledge" means actual knowledge. (5) "Nonprofit organization" or "nonprofit" means an organization or group of organizations that: (a) Receives public funds by way of grant or contract; and (b) Is exempt from income tax under section 501(c)(3) of the Internal Revenue Code." [in "Public employer" definition section] "; or (c) An employer who employs an employee described in subsection (2)(a) to (e) of this section."

### **Or. Rev. Stat. Ann. § 659A.203**

**Amended:** Includes nonprofit employers in whistleblower law.

**Added:** "(3) The remedies provided by this section are in addition to any remedy provided to an employee under ORS 659A.199 or other remedy that may be available to an employee for the conduct alleged as a violation of this section. (4) A violation of this section is a Class A misdemeanor."

### **Or. Rev. Stat. Ann. § 654.086**

**Added:** "In setting maximum penalties, the director or the director's representative shall consider, but may not exceed, the maximum penalties under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)."

**Amended:** Employer violating OSHA requirements may be assessed penalty not less than “the minimum penalty under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)”

### **South Dakota**

#### **S.D. Codified Laws § 3-6D-22**

**Amended:** “An employee may file a grievance with the Civil Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department, to the attorney general's office, the State Government Accountability Board, or because the employee has filed a suggestion pursuant to this section.”

### **Utah**

#### **Utah Code Ann. § 67-21-3**

**Amended:** Employees can now disclose adverse action to Office of Legislative Auditor General and be considered in “good faith”.

#### **Utah Code Ann. § 67-21-3.5**

**Added:** “(1) (a) As used in this section, ‘independent personnel board’ means a board where no member of the board: (i) is in the same department as the complainant; (ii) is a supervisor of the complainant; or (iii) has a conflict of interest in relation to the complainant or an allegation made in the complaint.” [ . . . ] “(b) An independent personnel board that receives a complaint under Subsection (2)(a) shall hear the matter, resolve the complaint, and take action under Subsection (3) within the later of: (i) 30 days after the day on which the employee files the complaint; or (ii) a longer period of time, not to exceed 30 additional days, if the employee and the independent personnel board mutually agree on the longer time period.”

**Amended:** (3) Independent personnel board can now make recommendations to final decision makers in addition to ordering reinstatement/payment.

**Added:** “(4) A final decision maker who receives a recommendation under Subsection (3) shall render a decision and enter an order within seven days after the day on which the final decision maker receives the recommendation.”

#### **Utah Code Ann. § 67-21-4**

**Added:** “(d) (i) A claimant may bring an action after the 180-day limit described in this Subsection (1) if: (A) the claimant originally brought the action within the 180-day time limit; (B) the action described in Subsection (1)(d)(i)(A) failed or was dismissed for a reason other than on the merits; and (C) the claimant brings the new action within 180 days after the day on which the claimant originally brought the action under Subsection (1)(d)(i)(A). (ii) A claimant may commence a new action under this Subsection (1)(d) only once.”

#### **Utah Code Ann. § 67-21-4**

**Amended:** Employers are now required to provide a copy of the state whistleblower law to employees when the employee is hired.

###