



New York State Department of Labor
David A. Paterson, *Governor*
M. Patricia Smith, *Commissioner*

August 11, 2008

[REDACTED]

Re: Request for Opinion
Whistleblowers
RO-08-0070

Dear [REDACTED]

I have been asked to respond to your e-mail of July 12, 2008 in which you ask for assistance for your friend who was forced to resign from her position as a manager of a group home for disabled citizens in Rochester. Your e-mail stated that your friend reported abuse to her immediate supervisor, who you state, did nothing, prompting her to bring it to the attention of her supervisor's superiors. After an investigation and the termination of the participants of the abuse, her superior sent her unprofessional emails and placed her on a performance intervention plan with what you describe as "unrealistic expectations." Your e-mail seeks any assistance or advice the Department of Labor may have to help your friend in dealing with an understandably difficult situation.

Although your e-mail does not indicate grounds upon which this Department may take action, please take note of the following sections of the Labor Law under which your friend may be able to take legal recourse:

Section 740 of the Labor Law authorizes civil actions by an employee where "retaliatory personnel action" is taken against an employee because an employee discloses or threatens to, provides information or testifies, or objects to or refuses to participate in an action that violates law, rule, or regulation or presents a substantial and specific danger to public health or safety. Please take note that the right to bring such an action only exists for one year after the alleged retaliatory personnel action was taken. The Department would not have jurisdiction to take action on your friend's behalf; she would have to seek the assistance of private counsel.

Section 741 of the Labor Law authorizes civil actions by any employee performing health care services for "retaliatory action" taken against such an employee because an employee discloses or threatens to disclose to a supervisor, or to a public body an activity, policy or practice of the employer or agent or objects to, or refuses to participate in any activity that the employee, in good faith, reasonably believes constitutes "improper quality of patient care." Please take note that the right to bring such an action only exists for two years after the alleged retaliatory personnel action was taken. Again, your friend would have to seek the assistance of private counsel to pursue such an action as the Department is not authorized to pursue these claims on her behalf.

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The types of relief that may be granted under sections 740 and 741 are contained in section 740(5), which provides:

- (a) an injunction to restrain continued violation of this section;
- (b) reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;
- (c) the reinstatement of full fringe benefits and seniority rights;
- (d) the compensation for lost wages, benefits and seniority rights;
- (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

However, please take note that section 740 specifically authorizes a court, in its discretion, to award reasonable attorneys' fees and court costs, and disbursements to an employer if the court determines that an action brought by an employee under section 740 was without basis in law or fact.

You indicated in your email that your friend has been unable to retain an attorney. The Department of Labor is unable to provide your friend with a reference for an attorney, or any legal advice for the pursuit of any civil action against her employer. You may wish to contact the following organizations for such advice and representation:

New York State Bar Association - Tel: (800)342-3661, Web: www.nysb.org

Legal Assistance of Western New York – Web: www.lawny.org

Monroe County Legal Assistance Center – Tel: (585)325-2520


The New York LawHelp Consortium - Web: www.lawhelp.org/ny

Empire Justice Center - Tel:(585)454-4060, Web: www.empirejustice.org

This opinion is based on the information provided in your letter of July 12, 2008. A different opinion might result if the facts provided were not accurate, or if any other relevant fact was not provided.

Very truly yours,

Maria L. Golavito, Counsel


By: Jeffrey G. Shapiro
Associate Attorney

cc: Carmine Ruberto

