

CHAPTER 393

GOVERNMENT - LOCAL

SENATE BILL 23-111

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AN ACT

CONCERNING PUBLIC EMPLOYEES' WORKPLACE PROTECTION FROM EMPLOYER RETALIATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 33 to title 29 as follows:

ARTICLE 33
Protections For Public Workers

29-33-101. Short title. THE SHORT TITLE OF THIS ARTICLE 33 IS THE "PROTECTIONS FOR PUBLIC WORKERS ACT".

29-33-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT PUBLIC EMPLOYEES ARE THE BACKBONE OF THE STATE AND ENSURE THAT COLORADANS HAVE ACCESS TO STRONG PUBLIC SERVICES. HOWEVER, BECAUSE PUBLIC EMPLOYEES ARE EXEMPT FROM PROTECTIONS AFFORDED BY THE "NATIONAL LABOR RELATIONS ACT" AND THE "COLORADO LABOR PEACE ACT", WHEN THEY SPEAK OUT ON ISSUES IN THEIR WORKPLACE OR COME TOGETHER WITH THEIR COWORKERS TO IMPROVE THEIR WORKING CONDITIONS, THEY CAN BE DISCIPLINED AND TERMINATED. THE GENERAL ASSEMBLY FURTHER DECLARES THAT PUBLIC EMPLOYEES SHOULD HAVE THE FOLLOWING RIGHTS AND SHOULD BE PROTECTED FROM RETALIATION, INCLUDING DISCIPLINE OR TERMINATION, IF THEY CHOOSE TO EXERCISE THESE RIGHTS:

(a) TO SPEAK OUT ON ISSUES OF PUBLIC CONCERN AND FULLY ENGAGE IN THE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

POLITICAL PROCESS OUTSIDE OF WORK IN THE SAME MANNER AS OTHER CITIZENS OF COLORADO;

(b) TO SPEAK OUT ABOUT CONCERNS WITH THE TERMS AND CONDITIONS OF THEIR EMPLOYMENT;

(c) TO ENGAGE IN PROTECTED CONCERTED ACTIVITY FOR THE PURPOSE OF MUTUAL AID OR PROTECTION;

(d) TO ORGANIZE, FORM, JOIN, OR ASSIST AN EMPLOYEE ORGANIZATION OR TO REFRAIN FROM DOING SO; AND

(e) TO PURSUE AN EMPLOYEE ORGANIZATION WITH THEIR COWORKERS WITHOUT INTERFERENCE.

29-33-103. Definitions. AS USED IN THIS ARTICLE 33, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COUNTY" MEANS ONLY:

(a) A CITY AND COUNTY; AND

(b) A COUNTY WITH A POPULATION OF LESS THAN SEVEN THOUSAND FIVE HUNDRED PEOPLE PURSUANT TO THE OFFICIAL FIGURES OF THE MOST RECENT UNITED STATES DECENNIAL CENSUS.

(2) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND STATISTICS WITHIN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(3) "EMPLOYEE ORGANIZATION" MEANS AN ORGANIZATION INDEPENDENT OF THE EMPLOYER IN WHICH PUBLIC EMPLOYEES MAY PARTICIPATE AND THAT EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF ACTING ON BEHALF OF AND FOR THE BENEFIT OF THE PUBLIC EMPLOYEES CONCERNING PUBLIC EMPLOYEE GRIEVANCES, LABOR DISPUTES, WAGES, HOURS, AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT. "EMPLOYEE ORGANIZATION" INCLUDES ANY AGENTS OR REPRESENTATIVES OF THE EMPLOYEE ORGANIZATION DESIGNATED BY THE EMPLOYEE ORGANIZATION.

(4) "GOVERNING BODY" MEANS THE ELECTED OR APPOINTED REPRESENTATIVE BODY OF A PUBLIC EMPLOYER.

(5) "PUBLIC EMPLOYEE" MEANS AN INDIVIDUAL EMPLOYED BY A PUBLIC EMPLOYER; EXCEPT THOSE EMPLOYEES EMPLOYED IN THE PERSONNEL SYSTEM OF THE STATE ESTABLISHED IN SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION, OR EMPLOYEES EMPLOYED BY AN EMPLOYER, AS DEFINED IN SECTION 8-3-104 (12).

(6) "PUBLIC EMPLOYER" MEANS:

(a) A COUNTY OR A MUNICIPALITY;

(b) A DISTRICT, BUSINESS IMPROVEMENT DISTRICT, SPECIAL DISTRICT CREATED

PURSUANT TO TITLE 32, AUTHORITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE, A COUNTY, OR A MUNICIPALITY;

(c) THE COLORADO SCHOOL FOR THE DEAF AND THE BLIND, ESTABLISHED IN ARTICLE 80 OF TITLE 22;

(d) A STATE INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN SECTION 23-18-102 (10)(a), AND A LOCAL DISTRICT COLLEGE OPERATING PURSUANT TO ARTICLE 71 OF TITLE 23;

(e) THE OFFICE OF STATE PUBLIC DEFENDER CREATED IN SECTION 21-1-101;

(f) THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY CREATED IN SECTION 23-21-503;

(g) THE DENVER HEALTH AND HOSPITAL AUTHORITY CREATED IN SECTION 25-29-103;

(h) THE JOINT BUDGET COMMITTEE STAFF, THE LEGISLATIVE COUNCIL STAFF, THE OFFICE OF LEGISLATIVE LEGAL SERVICES, THE STAFF OF THE OFFICE OF THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES, AND THE SENATE SERVICES STAFF;

(i) THE MAJORITY AND MINORITY CAUCUS STAFF OF THE HOUSE OF REPRESENTATIVES AND THE SENATE;

(j) A BOARD OF COOPERATIVE SERVICES ESTABLISHED PURSUANT TO THE "BOARDS OF COOPERATIVE SERVICES ACT OF 1965", ARTICLE 5 OF TITLE 22.

(XI) ANY SCHOOL DISTRICT AS DEFINED IN SECTION 22-7-1003 (20);

(XII) A DISTRICT CHARTER SCHOOL PURSUANT TO PART 1 OF ARTICLE 30.5 OF TITLE 22; OR

(XIII) AN INSTITUTE CHARTER SCHOOL WHICH MEANS A CHARTER SCHOOL AUTHORIZED BY THE STATE CHARTER SCHOOL INSTITUTE PURSUANT TO PART 5 OF ARTICLE 30.5 OF TITLE 22.

(7) "UNFAIR LABOR PRACTICE" MEANS A VIOLATION OF THE RIGHTS OR OBLIGATIONS DESCRIBED IN THIS ARTICLE 33. NOTHING IN THIS ARTICLE 33 SHALL BE CONSTRUED TO MEAN THE RIGHT OR OBLIGATION TO RECOGNIZE OR TO NEGOTIATE A COLLECTIVE BARGAINING AGREEMENT.

29-33-104. Protections for public workers. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A PUBLIC EMPLOYEE HAS THE RIGHT TO:

(a) DISCUSS OR EXPRESS THE PUBLIC EMPLOYEE'S VIEWS REGARDING PUBLIC EMPLOYEE REPRESENTATION, WORKPLACE ISSUES, OR THE RIGHTS GRANTED TO THE PUBLIC EMPLOYEE IN THIS ARTICLE 33;

(b) ENGAGE IN PROTECTED, CONCERTED ACTIVITY FOR THE PURPOSE OF MUTUAL AID OR PROTECTION;

(c) FULLY PARTICIPATE IN THE POLITICAL PROCESS WHILE OFF DUTY AND NOT IN UNIFORM, INCLUDING:

(I) SPEAKING WITH MEMBERS OF THE PUBLIC EMPLOYER'S GOVERNING BODY ON TERMS AND CONDITIONS OF EMPLOYMENT AND ANY MATTER OF PUBLIC CONCERN; AND

(II) ENGAGING IN OTHER POLITICAL ACTIVITIES IN THE SAME MANNER AS OTHER CITIZENS OF COLORADO, WITHOUT DISCRIMINATION, INTIMIDATION, OR RETALIATION; AND

(d) ORGANIZE, FORM, JOIN, OR ASSIST AN EMPLOYEE ORGANIZATION OR REFRAIN FROM ORGANIZING, FORMING, JOINING, OR ASSISTING AN EMPLOYEE ORGANIZATION.

(2) A PUBLIC EMPLOYER DESCRIBED IN SECTION 29-33-103 (6)(h) MAY LIMIT THE RIGHTS OF AN EMPLOYEE DESCRIBED IN 29-33-104 (1)(c) TO THE EXTENT NECESSARY TO MAINTAIN THE NONPARTISAN ROLE OF THE EMPLOYER.

(3) A PUBLIC EMPLOYER SHALL NOT:

(a) DISCRIMINATE AGAINST, COERCE, INTIMIDATE, INTERFERE WITH, OR IMPOSE REPRISALS AGAINST, OR THREATEN TO DISCRIMINATE AGAINST, COERCE, INTIMIDATE, INTERFERE WITH, OR IMPOSE REPRISALS AGAINST, ANY PUBLIC EMPLOYEE FOR ENGAGING IN ANY OF THE RIGHTS DESCRIBED IN THIS ARTICLE 33;

(b) DOMINATE OR INTERFERE IN THE ADMINISTRATION OF AN EMPLOYEE ORGANIZATION; OR

(c) DISCHARGE OR DISCRIMINATE AGAINST A PUBLIC EMPLOYEE BECAUSE THE PUBLIC EMPLOYEE HAS FILED AN AFFIDAVIT, PETITION, OR COMPLAINT OR GIVEN ANY INFORMATION OR TESTIMONY PURSUANT TO THIS ARTICLE 33, OR BECAUSE THE PUBLIC EMPLOYEE HAS FORMED, JOINED, ASSISTED, OR CHOSEN TO BE REPRESENTED BY AN EMPLOYEE ORGANIZATION.

29-33-105. Enforcement - rules. (1) AN AGGRIEVED PARTY IS BARRED FROM FILING A CLAIM THAT ALLEGES THAT A PUBLIC EMPLOYER HAS VIOLATED THIS ARTICLE 33 UNLESS THE CLAIM IS FILED WITHIN SIX MONTHS AFTER THE DATE ON WHICH THE AGGRIEVED PARTY KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED VIOLATION.

(2) THE DIVISION SHALL ENFORCE THE RIGHTS AND OBLIGATIONS OF THIS ARTICLE 33 AND PROMULGATE RULES AS MAY BE NECESSARY TO IMPLEMENT THIS ARTICLE 33. THE DIVISION MUST CONSIDER THE UNIQUE CIRCUMSTANCES OF RURAL COUNTIES AS DEFINED IN SECTION 29-33-103 (1)(b) IN ASSIGNING REMEDIES DURING THE RULEMAKING PROCESS. THE DIVISION SHALL CREATE AND ADMINISTER A PROCESS TO ACCEPT, REVIEW, AND INVESTIGATE COMPLAINTS OR OTHER LEADS CONCERNING A VIOLATION THAT, IN THE DIRECTOR'S GOOD FAITH DISCRETION AND JUDGMENT, WARRANTS INVESTIGATION. THE DIVISION ALSO MAY:

(a) PUBLISH GUIDANCE ON OTHER POSSIBLE EMPLOYEE REDRESS FOR THOSE WHOSE CLAIMS ARE NOT INVESTIGATED; AND

(b) AT ITS DISCRETION, PROVIDE ALTERNATIVE DISPUTE RESOLUTION CONSISTENT WITH SECTIONS 8-3-112 AND 8-3-113.

(3) THE DIVISION HAS THE AUTHORITY TO ADJUDICATE UNFAIR LABOR PRACTICE CHARGES AND ISSUE DECISIONS PURSUANT TO ARTICLE 3 OF TITLE 8.

(4) A PARTY MAY APPEAL THE DIVISION'S FINAL DECISION TO THE COLORADO COURT OF APPEALS AND THE COURT'S REVIEW MUST BE LIMITED TO DETERMINING WHETHER THE DIVISION HAS EXCEEDED ITS JURISDICTION OR ABUSED ITS DISCRETION BASED ON THE EVIDENCE IN THE RECORD BEFORE THE DIVISION.

(5) THE COURT OF APPEALS SHALL UPHOLD THE ACTION OF THE DIVISION AND TAKE APPROPRIATE STEPS TO ENFORCE THE ACTION UNLESS THE COURT CONCLUDES THAT THE FINAL DECISION IS:

(a) ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION; OR

(b) OTHERWISE NOT IN ACCORDANCE WITH LAW.

(6) THE DIVISION MAY ENFORCE PROVISIONS OF THIS ARTICLE 33 THROUGH THE IMPOSITION OF APPROPRIATE ADMINISTRATIVE REMEDIES, INCLUDING REMEDIES TO ADDRESS ANY LOSS SUFFERED BY A PUBLIC EMPLOYEE OR GROUP OF PUBLIC EMPLOYEES FROM UNLAWFUL CONDUCT.

(7) ANY FUNDS APPROPRIATED TO COVER THE DIVISION'S COSTS RELATING TO THE ENFORCEMENT OF THIS ARTICLE 33 MUST BE FROM THE GENERAL FUND.

(8) NO PUBLIC EMPLOYER HAS THE AUTHORITY TO WAIVE ANY PROVISIONS OF THIS ARTICLE, AND ANY LAW, RULE, OR POLICY THAT AUTHORIZES A WAIVER IS NULL AND VOID.

SECTION 2. In Colorado Revised Statutes, **add** 29-5-215 as follows:

29-5-215. Protect public workers. ON AND AFTER THE EFFECTIVE DATE OF ARTICLE 33 OF THIS TITLE 29, FIREFIGHTERS SHALL HAVE ALL THE RIGHTS AND PROTECTIONS ENUMERATED UNDER ARTICLE 33 OF THIS TITLE 29.

SECTION 3. Appropriation. (1) For the 2023-24 state fiscal year, \$151,751 is appropriated to the department of labor and employment. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$94,651 for use by the division of labor standards and statistics for program costs related to labor standards, which amount is based on an assumption that the division will require an additional 0.9 FTE; and

(b) \$57,100 for the purchase of legal services.

(2) For the 2023-24 state fiscal year, \$57,100 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of labor and employment under subsection (1)(b) of this section and is

based on an assumption that the department of law will require an additional 0.3 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of labor and employment.

SECTION 4. Act subject to petition - effective date. Section 29-33-105 (3) of this act takes effect on July 1, 2024, and the remainder of this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 6, 2023