

Chapter 21.40 RCW
WHISTLEBLOWER AWARD AND PROTECTION ACT

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RCW 21.40.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Monetary sanction" means any moneys, including penalties, disgorgement, and interest, ordered to be paid as a result of an administrative or judicial action.

(2) "Original information" means information that is:

(a) Derived from the independent knowledge or analysis of a whistleblower;

(b) Not already known to the securities administrator or the securities division from any other source, unless the whistleblower is the original source of the information;

(c) Not exclusively derived from an allegation made in an administrative or judicial hearing, in a government report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and

(d) Provided to the securities division for the first time after July 23, 2023.

(3) "Securities administrator" means the administrator of the securities act of Washington, chapter 21.20 RCW, designated pursuant to RCW 21.20.460.

(4) "Securities division" means the division of the department of financial institutions that administers the securities act of Washington, chapter 21.20 RCW.

(5) "Whistleblower" means an individual who, alone or jointly with others, provides the state or other law enforcement agency with information pursuant to the provisions set forth in this chapter, and the information relates to a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur. [2023 c 149 s 2.]

RCW 21.40.010 Rules and regulations. The securities administrator may adopt such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter consistent with its purpose. [2023 c 149 s 11.]

RCW 21.40.020 Award—Original material—Successful enforcement.

Subject to the provisions of this chapter, the securities administrator may award an amount to one or more whistleblowers who voluntarily provide original information in writing, and in the form and manner required by the securities administrator, to the securities division that leads to the successful enforcement of an administrative or judicial action under chapter 21.20 RCW. [2023 c 149 s 3.]

RCW 21.40.030 Disclosure of whistleblower identity.

Any individual who anonymously makes a claim must be represented by counsel. Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the securities division may require, directly or through counsel, for the whistleblower. [2023 c 149 s 4.]

RCW 21.40.040 Amount of award limited.

If the securities administrator determines to make one or more awards under RCW 21.40.020, the aggregate amount of awards that may be awarded in connection with an administrative or judicial action may not be less than 10 percent nor more than 30 percent of the monetary sanctions imposed and collected in the related administrative or judicial action. [2023 c 149 s 5.]

RCW 21.40.050 Authority to determine award amount—Securities administrator.

The determination of the amount of an award made under this chapter shall be in the discretion of the securities administrator consistent with RCW 21.40.040 and 21.40.060. [2023 c 149 s 6.]

RCW 21.40.060 Payment from securities prosecution fund.

Any whistleblower awards paid under this chapter shall be paid from the securities prosecution fund established in RCW 43.320.115. [2023 c 149 s 7.]

RCW 21.40.070 Determination of award amount—Factors.

In determining the amount of an award under this chapter, the securities administrator shall consider:

- (1) The significance of the original information provided by the whistleblower to the success of the administrative or judicial action;
- (2) The degree of assistance provided by the whistleblower in connection with the administrative or judicial action;
- (3) The programmatic interest of the securities administrator in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and
- (4) Any other factors the securities administrator considers relevant. [2023 c 149 s 8.]

RCW 21.40.080 Prohibition on awards for certain whistleblowers.

The securities administrator shall not provide an award to a whistleblower under this section if the whistleblower:

- (1) Is convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award;
- (2) Acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates 15 U.S.C. 78j-1;
- (3) Fails to submit information to the securities division in such form as the securities administrator may prescribe;
- (4) Knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation as part of, or in connection with, the original information provided or the administrative or judicial proceeding for which the original information was provided;
- (5) In the whistleblower's submission, the whistleblower's other dealings with the securities administrator, or in the whistleblower's dealings with another authority in connection with a related action, knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the securities administrator or another authority;
- (6) Knows that, or has a reckless disregard as to whether, the original information provided is false, fictitious, or fraudulent;
- (7) Has a legal duty to report the original information to the securities administrator or securities division;
- (8) Is, or was at the time the whistleblower acquired the original information submitted to the securities division, a member, officer, or employee of the department of financial institutions, the securities and exchange commission, any other state securities regulatory authority, a self-regulatory organization, the public company accounting oversight board, or any law enforcement organization;
- (9) Is, or was at the time the whistleblower acquired the original information submitted to the securities division, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in 15 U.S.C. 78c(a)(52);
- (10) Is the spouse, parent, child, or sibling of the securities administrator or an employee of the department of financial institutions, or resides in the same household as the securities administrator or an employee of the department of financial institutions; or
- (11) Directly or indirectly acquires the original information provided to the securities division from a person:
 - (a) Who is subject to subsection (2) of this section, unless the information is not excluded from that person's use, or provides the securities division with information about possible violations involving that person;
 - (b) Who is a person described in subsection (8), (9), or (10) of this section; or
 - (c) With the intent to evade any provision of this chapter.

[2023 c 149 s 9.]

RCW 21.40.090 Retaliatory action unlawful—Exceptions—Action for relief—Miscellaneous. (1) No employer may directly or indirectly terminate, discharge, demote, suspend, threaten, harass, or in any other manner retaliate against, an individual because of any lawful act done by the individual:

(a) In providing information to the state or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur;

(b) In initiating, testifying in, or assisting in any investigation or administrative or judicial action of the securities administrator, securities division, or other law enforcement agency based upon or related to such information;

(c) In making disclosures that are required or protected under the Sarbanes-Oxley act of 2002, 15 U.S.C. 7201 et seq.; the securities act of 1933, 15 U.S.C. 77a et seq.; the securities exchange act of 1934, 15 U.S.C. 78a et seq.; 18 U.S.C. 1513(e); any other law, rule, or regulation subject to the jurisdiction of the securities and exchange commission; or chapter 21.20 RCW or a rule adopted thereunder; or

(d) In making disclosures to a person with supervisory authority over the employee, or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct, regarding matters subject to the jurisdiction of the securities administrator, securities division, or the securities and exchange commission.

(2) Notwithstanding subsection (1) of this section, an individual is not protected under this section if:

(a) The individual knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;

(b) The individual uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information; or

(c) The individual knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous.

(3) An individual who alleges any act of retaliation in violation of subsection (1) of this section may bring an action for the relief provided in subsection (6) of this section in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection (3) of this section may be served at any place in the United States, in compliance with applicable court rules and the law of the other jurisdiction.

(5) An action under subsection (3) of this section may not be brought:

(a) More than six years after the date on which the violation of subsection (1) of this section occurred; or

(b) More than three years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subsection (1) of this section. Notwithstanding the above limitations, an action under subsection (3) of this section may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(6) A court may award as relief for an individual prevailing in an action brought under this section:

(a) Reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;

(b) Two times the amount of back pay otherwise owed to the individual, with interest;

(c) Compensation for litigation costs, expert witness fees, and reasonable attorneys' fees;

(d) Actual damages;

(e) An injunction to restrain a violation; or

(f) Any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under chapter 42.56 RCW. This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) No person may take any action to impede an individual from communicating directly with the securities division staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(a) Agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(b) Information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in this chapter may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement. [2023 c 149 s 10.]

RCW 21.40.900 Short title—2023 c 149. Chapter 149, Laws of 2023 may be known and cited as the whistleblower award and protection act. [2023 c 149 s 1.]