

SB22-097 Whistleblower Protection Health & Safety

Wednesday, February 16 2022

SENATE BUSINESS, LABOR, & TECHNOLOGY COMMITTEE

1:30 PM SCR 352

(1) in senate calendar.

Written LAC Testimony: Oppose

- My name is Sean Gallagher. I am an attorney in the Denver office of Polsinelli, where I handle all aspects of employment counseling and litigation.
- Testifying today on behalf of the Denver Metro Chamber of Commerce and the Colorado Competitive Council
- Managing Editor of Practitioner’s Guide to Colorado Employment Law
- I oppose SB97 – which addressed workplace violations of health and safety rules
- Although SB97 is [concise], it dramatically expands the potential liability of employers while actually providing very little additional protections for Colorado’s employees
- It is a solution in search of a problem
- Colorado already has robust safety net of worker protections against retaliation against employees who complain about workplace health and safety issues
- Federal Occupational Health and Safety Administration – OSHA – regulates workplace safety.
 - OSHA has a whistleblower protection program that enforces more than 20 federal laws that protect employees from retaliation
- Colorado common law of public policy discharge.
 - Applies to employers of all sizes
- In addition, the amendments in SB97 would likely not be the first options exercised by an aggrieved employee
 - SB97 requires that aggrieved employee’s file a charge with the Colorado Civil Rights Division
 - Investigates
 - Issues right to sue letter
 - Only then can the employee sue
- Qui Tam provisions don’t fit well here

- Qui tam provision allow an employee who knows about an HSW violation to file a complaint with Division and later a lawsuit
 - Damages are \$100-1,000 per violation + reasonable attorney's fees
 - Employee gets to keep 25% of the bounty
 - The bounty is likely not great enough to warrant the effort – there would have to be dozens of violations to warrant an action
 - Especially problematic is the “Tag Along Effect” -- No “original source requirement” would allow anyone in the workplace to file a lawsuit based on alleged injury to someone who is already suing