

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2055

Bill Subtitle: CONCERNING REMEDIES AVAILABLE TO PERSONS TERMINATED IN VIOLATION OF THE ARKANSAS WHISTLE-BLOWER ACT.

Basic Change :

Sponsor: Representative Hammer

This bill provides that in a civil case an employee who was terminated and is alleging adverse action under the Whistle-Blower law in a court case may request an expedited hearing before a judge for determining the employee's reinstatement. The court shall order the employee be reinstated until the conclusion of the civil action or reinstated and placed on administrative leave if the employee can show that a reasonable person would conclude the termination was a result of adverse action.

The bill provides that in an administrative case the promulgated grievance rules must be amended to provide an employee a hearing within 15 days of the filing of the appeal if the employee is alleging he/she was terminated under the Whistle-Blower law. This hearing occurs before a hearing under the grievance process. The employee must provide proof that he/she made a report under the Whistle-Blower law; otherwise, OPM can deny the hearing request. The burden of proof is on the employee with a reasonable person standard.

This bill would allow an employee and employer the option to mediate the grievance if the employee reported a loss of funds.

Revenue Impact :

Undetermined revenue impact.

Taxpayer Impact :

Opportunity to provide input during the 30 day public comment period required by the APA.

Resources Required :

Amending the grievance rules and establishing a process for Whistle-Blower appeal hearings.

Time Required :

Amending the promulgated grievance rules may require six to twelve months.

Procedural Changes :

An employee may request a hearing if alleging termination was a result of exercising a right under the Whistle-Blower law. An employee and employer may mediate a case if the employee reported a loss of public funds.

Other Comments :

None.

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Legal Analysis :

House Bill 2055 concerns remedies available to persons terminated in violation of the Arkansas Whistle-Blower Act. The bill would allow a public employee alleging that he or she was terminated from his or her position as the result of adverse action to 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.

DFA would be required to promulgate rules to provide for expedited hearings in the administrative process as well through the Office of Personnel Management (OPM). The rules promulgated under this subdivision would provide that an employee be afforded a hearing within fifteen (15) business days of the filing of his appeal, if the employee alleges he was terminated by a state agency for listed "whistle-blower" actions.

The bill does not provide for the agency alleged to have retaliated to rebut claims by a terminated individual until the expedited hearing and does not lay out a clear standard to be applied by whatever entity is responsible for hearing the expedited hearing. Instead, it relies on whether a "reasonable person" would have concluded without providing a guiding legal standard, such as preponderance of the evidence, or clearly erroneous.

Eligible state employees are currently allowed the opportunity to pursue a termination claim through the statewide grievance process. This is for any termination, including as a result of whistle-blowing. Eligible employees are also allowed to request mediation for adverse action taken against them for activities protected under the whistle-blower law.

The expedited hearing for the civil case is a court case and does not involve the OPM administrative grievance process, but OPM and state agencies would play a part if the court orders the employee to be reinstated pending the outcome of the civil case.

This may provide an administrative avenue for otherwise ineligible employees:

1. Certain agencies and constitutional offices are exempt from the statewide grievance process, including appeals to OPM.
2. Supervisory employees as defined in the grievance law is ineligible for the grievance process, but may be able request a hearing on the whistle-blower allegation.

The bill establishes an appeal hearing within 15 business days and does not allow for any exceptions in the event OPM is unable to assemble a panel and coordinate a hearing with the agency and employee by the 15th business day. It may be recommended to either extend the 15 business days or provide for an exception.

This would provide an extra step in the grievance process if an employee is first allowed to have an appeal hearing on the Whistle-Blower matter and then can go through the grievance steps. It may be recommended that an employee who requests an administrative hearing with OPM should not be allowed to later pursue the complaint through the grievance process. The panel assigned to the whistle-blower case will make a recommendation to the Chief Fiscal Officer of the State. The CFO's decision is final.