

WHISTLE-BLOWER LAW

I. PURPOSE: The purpose of this interpretive bulletin is to provide advice and guidance to employers and employees of the State of West Virginia on the application and interpretation of the Whistle-blower Law. This law prohibits discrimination or retaliatory actions against a full- or part-time public employee or any person acting on behalf of or under the direction of a public employee who reports or is about to report an action or suspected violation of State, local, or federal law. The law also protects those who participate in any hearing, investigation, legislative inquiry, or court action.

II. DEFINITIONS

- A. Employee: Any full- or part-time public employee or any person acting on behalf of or under the direction of a public employee.
- B. Good Faith Report: A report made without malice or consideration of personal benefit where the individual reporting the incident has reasonable cause to believe the report is true.
- C. Waste: Conduct or omissions which result in substantial abuse, misuse, destruction, or loss of funds or resources.
- D. Wrongdoing: A violation of a State or federal statute, regulation, or a code of conduct or ethics (not of a merely technical or minimal nature) designed to protect the interest of the public or the employer.

III. INTERPRETIVE MATERIAL

- A. Discriminatory and retaliatory actions against employees are prohibited.
 - 1. No employer may take retaliatory action affecting the compensation, terms, conditions, location, or privileges of employment against an employee.
 - 2. No employer shall discharge, threaten, or otherwise discriminate or retaliate against an employee for any of the following reasons.
 - a. Because an employee who witnesses or has evidence of wrongdoing or waste while employed by the State makes or is about to make a good faith report to the employer or other authority an instance of wrongdoing or waste, either verbally or in writing.
 - b. Because the employee is requested or subpoenaed to participate in an investigation, hearing, or inquiry held by an appropriate authority or in a court action.
- B. An employee who alleges to be a victim of a violation of the Whistle-blower Law may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both.
 - 1. An employee alleging to be a victim under this article must file a civil action within 180 days after the occurrence of the alleged violation.

2. The employee must show by a preponderance of the evidence that prior to the alleged reprisal, the individual had reported or was about to report an instance of wrongdoing or waste to the employer or an appropriate authority.
 3. An employee of the merit system who contests any merit system action that the individual believes was motivated by the disclosure of information may submit evidence of any or all material relating to the individual's action as a whistle-blower and the resulting alleged reprisal.
 4. A defense to a court action under the Whistle-blower Law shall be declared lawful if the defendant proves by a preponderance of the evidence that the action complained of occurred as a result of separate and legitimate reasons that are not merely pretexts.
- C. Employees making such good faith reports may appeal any retaliatory actions affecting their compensation, terms, conditions, locations, or privileges of employment. Judgment for the complainant (employee) may include, as the court deems appropriate, the following (individually or in any combination):
1. Reinstatement of the employee.
 2. Payment of back wages.
 3. Full reinstatement of fringe benefits and seniority rights.
 4. Payment of actual damages.
 5. Payment of all or partial costs of litigation, including reasonable attorney fees, and witness fees.
- D. An employer or employer's designee who violates the Whistle-blower Law may incur one or both of the following:
1. The liability for a civil fine of not more than \$500, which shall be paid to the State treasurer for deposit into the general fund.
 2. Suspension from public service for not more than 6 months.
- E. The provisions of the Whistle-blower Law shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing, or inquiry held by an appropriate authority or to impair the rights of any person under a collective bargaining or other labor-management agreement.
- F. The employer shall be responsible for posting this policy on all public and employee bulletin boards and for providing its employees copies thereof.

IV. REFERENCES

A. Chapter 6C, Article 1 of the *WV Code*, as amended.

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Approved and Issued By:

Michael T. Smith

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