

Public Officers and Employees – Whistleblower Protection Act

Section 10-16C-1 - Short title.

This act [10-16C-1 to 10-16C-4 NMSA 1978] may be cited as the "Whistleblower Protection Act".

Section 10-16C-2 - Definitions.

As used in the Whistleblower Protection Act:

- A. "good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the public employee;
- B. "public employee" means a person who works for or contracts with a public employer;
- C. "public employer" means:
 - (1) any department, agency, office, institution, board, commission, committee, branch or district of state government;
 - (2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived;
 - (3) any entity or instrumentality of the state specifically provided for by law; and
 - (4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection;
- D. "retaliatory action" means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment; and
- E. "unlawful or improper act" means a practice, procedure, action or failure to act on the part of a public employer that:
 - (1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;
 - (2) constitutes malfeasance in public office; or
 - (3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

Section 10-16C-3 - Public employer retaliatory action prohibited.

A public employer shall not take any retaliatory action against a public employee because the public employee:

- A. communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- B. provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- C. objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

Section 10-16C-4 - Right to civil action for damages; affirmative defenses; remedy not exclusive.

A. A public employer that violates the provisions of the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

B. It shall be an affirmative defense to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.

C. The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

D. Nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that act.

Section 10-16C-5 - Posting of law and information.

Every public employer shall keep posted in a conspicuous place on the public employer's premises notices prepared by the employer that set forth the provisions of the Whistleblower Protection Act.

Section 10-16C-6 - Limitation on actions.

A civil action pursuant to the Whistleblower Protection Act shall be forever barred unless the action is filed within two years from the date on which the retaliatory action occurred.