

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject: Compliance with the <i>Whistleblower Law, Act 1986-169, as Amended</i>	Number: 205.16 Amended
Date: September 17, 2014	By Direction of:  Kelly Powell Logan, Secretary of Administration
Contact Agency: Office of Administration, Legal Office, Telephone 717.783.2590	

This directive establishes policy, responsibilities, and procedures for agency human resource offices to notify their employees and keep them informed of the protections and obligations under the *Whistleblower Law, Act 1986-169, as amended*. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish the policy, responsibilities, and procedures for agency human resource offices to notify their employees and keep them informed of the protections and obligations under the *Whistleblower Law, Act 1986-169 as amended by Act 2014-87, 43 P.S. §1421 et seq.*
- 2. SCOPE.** This directive applies to all departments, boards, commissions, and councils (hereinafter referred to "agencies") under the Governor's jurisdiction.
- 3. OBJECTIVE.** To ensure that agencies take the necessary steps to apprise employees of their rights and responsibilities pursuant to the *Whistleblower Law*.
- 4. DEFINITIONS.**
 - a. Appropriate Enforcement Authority.** A federal, state or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of Inspector General, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

- b. **Good Faith Report.** A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true. An employer is not barred from taking disciplinary action against the employee who completed the report if the employee's report was submitted in bad faith.
 - c. **Waste.** An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from commonwealth or political subdivision sources.
 - d. **Whistleblower.** A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority.
 - e. **Wrongdoing.** A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.
5. **POLICY.** *The Act of December 12, 1986, as amended (P.L. 1559 No. 169, 43 P.S. §§1421–1428), known as the Whistleblower Law, provides legal protections to public employees who report, in good faith, wrongdoing or waste to their employer or to an appropriate enforcement agency. The Whistleblower Law stipulates that:*
- a. Employers may not discharge, threaten, or otherwise engage in employment discrimination against an employee because the employee:
 - (1) Reports, in good faith, an instance of wrongdoing or waste to the employer or to an appropriate enforcement authority.
 - (2) Is requested by an appropriate enforcement authority to participate in an investigation, hearing, inquiry, or court action.
 - b. An appropriate enforcement authority to which a violation of the *Whistleblower Law* was reported may not disclose the identity of a whistleblower without the whistleblower's consent, unless the disclosure is unavoidable in the investigation of the alleged violation.
 - c. Within 180 days after an alleged violation of the *Whistleblower Law*, the affected employee may bring a civil action in court for injunctive relief and/or damages. The employee must show by a preponderance of evidence that, prior to the alleged reprisal, he or she had reported or was about to report an instance of wrongdoing or waste to the employer or to an appropriate law enforcement authority.
 - d. In defending against charges, the employer must provide a preponderance of evidence proving that action against the employee occurred for separate and legitimate reasons.

- e. Remedies and penalties for violation of the law may include the following:
 - (1) Reinstatement of an employee, payment of back wages, reinstatement of fringe benefits and seniority rights, actual damages, or a combination of these remedies. The court may also award the complainant attorney fees and costs of litigation.
 - (2) Against a person acting under the employer's authority, a civil fine of not more than \$10,000 and/or suspension from the public service for not more than seven years.

6. RESPONSIBILITIES.

- a. **Office of Administration** shall ensure that newly-hired employees are informed of the provisions of the *Whistleblower Law* during the enterprise on-boarding process.
- b. **Agency Human Resource Offices** shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations established under the *Whistleblower Law*.

7. PROCEDURES. Agency Human Resources Offices.

- a. Post a copy of Enclosure 1, which includes the full text of the *Whistleblower Law* throughout the agency.
- b. Inform agency employees of the notification and where it is posted, using the employee bulletin board, agency newsletter or other appropriate means.
- c. Include the *Whistleblower Law* into appropriate supervisory and management training programs.

The directive replaces, in its entirety, *Management Directive 205.16* dated November 22, 1995.

Enclosure 1 – Employee Notification Whistleblower Law

EMPLOYEE NOTIFICATION WHISTLEBLOWER LAW

As of February 10, 1987, public employees are covered by the provisions of the *Whistleblower Law, Act 1986-169, as amended by Act 2014-87*. The law provides legal protections to public employees who report wrongdoing or waste to their employer or to an appropriate enforcement agency. The text of the act is as follows:

Providing protection for employees who report a violation or suspected violation of State, local or Federal law; providing protection for employees who participate in hearings, investigations, legislative inquiries or court actions; and prescribing remedies and penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title. This act shall be known and may be cited as the Whistleblower Law.

Section 2. Definitions. The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Appropriate authority." A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of Inspector General, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

"Employee." A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

"Employer." A public body or any of the following which receives money from a public body to perform work or provide services relative to the performance of work for or the provision of services to a public body:

- (1) An individual.
- (2) A partnership.
- (3) An association.
- (4) A corporation for profit
- (5) A corporation not for profit.

"Good faith report." A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true. An employer is not barred from taking disciplinary action against the employee who completed the report if the employee's report was submitted in bad faith.

"Public body." All of the following:

- (1) A State officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.
- (2) A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.
- (3) Any other body which is created by Commonwealth or political subdivision authority or which is funded IN ANY AMOUNT by or through Commonwealth or political subdivision authority or a member or employee of that body.

"Waste." An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.

"Whistleblower." A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority.

"Wrongdoing." A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

Section 3. Protection of employees.

- (a) Persons not to be discharged. – No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste by a public body or an instance of waste by any other employer as defined in this Act.
- (b) Discrimination prohibited. – No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.
- (c) Disclosure prohibition. – An appropriate authority to which a violation of this act was reported may not disclose the identity of a whistleblower without the whistleblower's consent unless disclosure is unavoidable in the investigation of the alleged violation.

Section 4. Remedies.

- (a) Civil action. – A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.
- (b) Necessary showing of evidence. – An employee alleging a violation of this act must show by a PREPONDERANCE OF THE evidence that, prior to the alleged reprisal, the employee or person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.
- (c) Defense. – It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.
- (d) Civil service employees. – An employee covered by civil service who contests a civil service action, believing it to be motivated by his having made a good faith report, VERBALLY OR IN WRITING, of an instance of wrongdoing or waste, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal.

Section 5. Enforcement. A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court shall also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if complainant prevails in the civil action.

Section 6. Penalties. A person who, under color of an employer's authority, violates this act shall be liable for a civil fine or not more than \$10,000. Additionally, except where the person holds an elected public office, if the court specifically finds that the person, while in the employment of the Commonwealth or a political subdivision, committed a violation of this act with the intent to discourage the disclosure of criminal activity, the court may order the person's suspension from public service for not more than seven years. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

Section 7. Construction. This act 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 impair the rights of any person under a collective bargaining agreement.

Section 8. Notice. An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this act.

Section 9. Effective Date. This act shall take effect in 60 days."