

CHAPTER 9: REPORTING IMPROPER GOVERNMENTAL ACTION (WHISTLEBLOWER POLICY)

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Latest Review: 10/19/10

9.1 Introduction

The Local Government Whistleblower Act was enacted by the 1992 session of the Washington State Legislature and was codified as RCW 42.41. Its purpose is to encourage local government employees to disclose improper governmental actions of local government officials and employees, to protect local government employees who make good-faith reports to appropriate governmental bodies, and to provide remedies for such individuals who are subjected to retaliation for having made such reports.

The District's Board of Trustees has given the Director the authority to develop, implement, and administer procedures to carry out the intent of this statute.

9.2 Definitions

Improper Governmental Action: any action by a District officer or employee that (a) is undertaken in the performance of her/his official duties, and (b) is in violation of any law, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. It does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, re-employment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, or reprimands.

Retaliatory Action: any adverse change in an employee's employment status or the terms and conditions of employment.

Emergency: a circumstance that if not immediately changed may cause damage to persons or property.

9.3 Reporting Procedure

District employees who become aware of improper governmental actions should raise the issue first with their supervisor. The employee shall submit a written report to the Human Resources Manager, stating in detail the basis for the employee's belief that improper governmental action has occurred. Where the employee reasonably believes that an improper governmental action involves his or her supervisor, the employee may raise the issue directly with the District's Human Resources Manager or Director. If the report involves the Director, it shall be submitted to the chairman of the District's Board of Trustees.

In the case of an emergency, where the employee believes that damage to persons or property may result if action is not taken immediately, the employee may report the improper governmental action directly to the appropriate governmental agency with responsibility for investigating the improper action.

The Human Resources Manager, Director, director's designee, or Board chairman, as the case may be, shall take prompt action to assist the District in properly investigating the report. District officials and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under the law, unless the employee authorizes the disclosure of his or her identity in writing. After the investigation has been completed, the employee reporting the improper governmental action shall be advised of a summary of the results of the investigation, except that personnel actions taken as a result of the investigation may be kept confidential.

District employees may report information about alleged improper governmental action directly to the appropriate government agency with responsibility for investigating the improper action if the employee reasonably believes that an adequate investigation was not undertaken by the District to determine whether an improper governmental action occurred, or that insufficient action has been taken by the District to address the improper governmental action, or that for other reasons the improper governmental action is likely to recur.

Employees who fail to make a good-faith attempt to follow the District procedures in reporting improper governmental action shall not receive the protection provided by the District in these procedures.

9.4 Protection Against Alleged Retaliatory Action

It is unlawful for any District official or employee to take retaliatory action against an employee because the employee provided information in good faith in accordance with the provisions of state law that an improper governmental action occurred.

Employees who believe that they have been retaliated against for reporting an improper governmental action should advise the Human Resources Manager, the Director or the director's designee. District officials shall take appropriate action to investigate and address complaints of retaliation.

If the employee's complaint of retaliation is not satisfactorily resolved, the employee may obtain protection under the District's policy and pursuant to state law in the following manner set forth in RCW 42.41.040.

To seek relief for alleged retaliatory action, the employee shall provide a written notice of the charge of retaliatory action to the chairman of the Board of Trustees that: (a) specifies the alleged retaliatory action; and (b) specifies the relief requested.

The charge shall be delivered to the District's Director no later than thirty (30) days after the occurrence of the alleged retaliatory action. The District has thirty (30) days to respond to the charge of retaliatory action and request for relief.

Upon receipt of either the District's response or after the last day upon which the District could respond, the employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief as defined by state law. The request for a hearing shall be delivered to the District within fifteen (15) days of delivery of the District's response or within fifteen (15) days of the last day on which the District could respond.

Within five (5) working days of the receipt of the request for hearing, the District shall apply to the State Office of Administrative Hearings for an adjudicative proceeding before an administrative law judge. The proceedings shall comply with appropriate state laws.

The employee, as the initiating party, must prove his or her claim by a preponderance of the evidence. The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five (45) days after the date the request for hearing was delivered to the District. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee

to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action.

The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to superior court.

9.5 Responsibilities

The Director is responsible for implementing this policy/procedure (1) for reporting improper governmental action and (2) for protecting employees against retaliatory actions. This includes ensuring that the policy/procedure is available to any employee upon request, provided to all newly hired employees, and posted at all work sites. Officials, managers, and supervisors are responsible for implementing the policy/procedure within their areas of responsibility. Violations of the policy/procedure may result in disciplinary action, up to and including dismissal.

9.6 List of Agencies

The following agencies are responsible for enforcing federal, state, and local laws and investigating issues involving improper governmental action.

COUNTY, STATE AND FEDERAL ENFORCEMENT AGENCIES

SPOKANE COUNTY AGENCIES

Spokane County Commissioner's Office
1116 West Broadway Avenue
Spokane, WA 99260
(509) 477-2265

Spokane County Prosecuting Attorney
1100 West Mallon Avenue
Spokane, WA 99260
(509) 477-3662

WASHINGTON STATE AGENCIES

Attorney General's Office
Consumer Protection Division
2000 Bank of California Center
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-6684

Auditor's Office
Legislative Building
P.O. Box 40021
Olympia, WA 98504-0021
(360) 753-5280

Department of Ecology
300 Desmond Drive
Lacey, WA 98503
(360) 407-6000

FEDERAL AGENCIES:

Alcohol Tobacco & Firearms
Criminal Enforcement
915 Second Avenue
Seattle, WA 98104
(206) 389-5800

U. S. Attorney
800 Fifth Avenue
Seattle, WA 98104
(206) 553-7970

Government Accounting Office
Fraud Hot Line
(800) 424-5454

Environmental Protection Agency
Criminal Investigations
1200 Sixth Avenue
Seattle, WA
(206) 553-8306

Equal Employment Opportunity Commission
2815 Second, Suite 500
Seattle, WA
(206) 220-6883

WASHINGTON STATE AGENCIES

Human Rights Commission

1511 Third Avenue
Seattle, WA 98101
1-800-233-3247 or
(206) 464-6500

Department of Health

Health Consumer Assistance
P.O. Box 47890
Olympia, WA 98504-7890
800-525-0127

Department of Labor & Industries

315 5th Ave S # 200
Seattle, WA 98104
(206) 515-2800

Department of Social and Health Services

Community Services Office
4710 Auto Center Blvd.
Bremerton, WA 98312-3300
(360) 473-2200

FEDERAL AGENCIES:

Federal Emergency Management Agency

130 228th Street S.W.
Bothell, WA
(425) 487-4600

Department of Labor

Occupational Safety & Health (OSHA)
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212
(206) 553-5930
Office of Inspector General
Audits
(206) 553-4880
Investigations (206) 553-4504
Office of Women's Bureau
(206) 553-1534

Department of Veterans Affairs

Office of Inspector General
915 Second Avenue
Seattle, WA 98174
(800) 488-8244