



WHISTLEBLOWER PROTECTION ACT

The Whistleblower Protection Act protects public employees who disclose unlawful or improper acts of public employers and officials for the good of the public.

“Public employee” means a person who works for or contracts with a public employer.

“Public employer” means any department, agency, office, institution, board, commission, committee, branch, or district of state government; any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever sources derived; any entity or instrumentality of the state specifically provided by law; and every office or officer of any entity listed above.

PROTECTIONS

A public employer shall not take any retaliatory action against a public employee who is a whistleblower. Retaliatory action means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment.

If a public employer violates provisions of the Whistleblower Protection Act, the employer can be found 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. The employer can also be required to pay the litigation costs and reasonable attorney fees of the employee.

WHISTLEBLOWER

A whistleblower is a public employee who:

- 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;
- Provides information to, or testifies before, a public body as part of an investigation, hearing, or inquiry into an unlawful or improper act; or
- Objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

The New Mexico Court of Appeals determined, however, that an employee’s personal employment grievance does not constitute protected whistleblowing activity. *Wills v. Bd. of Regents of the Univ. of N.M.*, 2015-NMCA-105

FILING A SUIT

A public employee may bring an action pursuant to the Whistleblower Protection Act in any court of competent jurisdiction. A civil action pursuant to the Act must be filed within two years from the date on which the retaliatory action occurred.

It is an affirmative defense to a Whistleblower Protection Act lawsuit that the action taken by the public employer against the public employee was due to the employee’s misconduct, the employee’s poor job performance, a reduction in the workforce or other legitimate business purpose unrelated to conduct prohibited pursuant to the Act and that retaliatory action was not a motivating factor.

UNLAWFUL/IMPROPER ACT

A practice, procedure, action, or failure to act on the part of the public employer that:

- Violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;
- Constitutes malfeasance in public office; or
- Constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.