

SERIES: General Agency Operations (CPR-100)

NUMBER: CPR-104

TITLE: Whistleblower Protection

PURPOSE:

The purpose of the whistleblower policy is to provide employees of the New Mexico Commission of Public Records (CPR) with information about the Whistleblower Protection Act [Section 10-16C-1 NMSA 1978 et seq.].

SCOPE:

This policy applies to all employees of the CPR.

DEFINITIONS:

“Unlawful or improper act” means a practice, procedure, action or failure to act on the part of a 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.

“Retaliatory action” means taking any discriminatory or adverse employment action against a public employee in terms and conditions of public employment.

“Whistleblower” means 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.

A. GENERAL PROVISIONS:

CPR employees are encouraged to report conduct that the employee in good faith believes is unlawful or improper to the State Records Administrator (SRA), the Deputy State Records Administrator, the Office of the Attorney General or the State Auditor. A form to report such conduct to the SRA or the Deputy SRA is available from the CPR personnel officer.

B. INVESTIGATION OF COMPLAINTS:

All reports given to the SRA or Deputy SRA of conduct that is unlawful or improper shall be investigated. The identity of anyone filing such a report will not be disclosed and the report will be confidential, to the extent permitted by law.

C. PROTECTION:

The CPR shall not take any retaliatory action against an employee who is a whistleblower. Pursuant to the Whistleblower Protection Act, a public employer that violates the provisions of the 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.

D. FILING A SUIT:

An employee may bring an action pursuant to this section in any court of competent jurisdiction. 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. The remedies provided for in the Whistleblower Protection Act are not exclusive and are in addition to any other remedies provided for in any other law or available under common law.

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 the act.

E. DISCIPLINARY ACTION:

Any person who is found to be responsible for or involved in conduct that is unlawful or improper may be subject to disciplinary action, up to and including suspension, demotion or termination, which shall not be considered to be retaliation for reporting such improper activity.

F. POSTING OF LAW AND INFORMATION:

The CPR personnel officer shall keep posted, in a conspicuous place on each CPR premises, notices that set forth the provisions of the Whistleblower Protection Act.

[12/21/12 adopted; 01/21/2016 revised]

APPROVED:

EFFECTIVE DATE:

Linda M Trujillo, State Records Administrator

January 21, 2016