



State Records Center and Archives
New Mexico Commission of Public Records

SERIES: Human Resources (SRCA 400)

NUMBER: SRCA-418

TITLE: Whistleblower

PURPOSE: The purpose of the whistleblower policy is to ensure all SRCA employees are aware of their rights and responsibilities under the Whistleblower Protection Act.

SCOPE: This policy applies to all SRCA employees.

DEFINITIONS:

“Complainant” means an SRCA employee who reports internal wrongdoing.

“Good Faith Effort” means in compliance with standards of decency and honesty, reasonable belief, and making a full declaration of all material facts.

“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 source derived; any entity or instrumentality of the state specifically provided by law; and every office or officer of any entity listed above.

“SRCA” means the New Mexico Commission of Public Records - State Records Center and Archives.

“Whistleblower Protection Act” refers to 10-16C-1 NMSA 1978.

“Wrongdoing” means, for the purposes of this policy, a violation of any state or federal law and any rule or regulation of the state or federal authority; gross mismanagement or waste of funds; an abuse of authority; or a substantial and specific danger to public health or public safety.

A. GENERAL PROVISIONS: Pursuant to the Whistleblower Protection Act, public employees are the protected class of individuals. All SRCA employees have the right to disclose truthful information evidencing wrongdoing by SRCA employees and managers to the State Records Administrator. If the wrongdoing involves the State Records Administrator, it should be reported to the Deputy.

B. RESPONSIBILITY OF EMPLOYEE: Prior to making an allegation under the provisions of this policy, the employee must make a good faith effort to determine the accuracy or truthfulness of the information. This policy does not protect any employee who makes or repeats reckless, spurious or defamatory allegations without a reasonable effort to determine the accuracy or truthfulness of the allegations. Employees making allegations under the provisions of this policy who, either before or after their disclosures, violate provisions of state or federal laws, rules, regulations or SRCA policies, are not

afforded immunity from disciplinary action for such violations. Disciplinary action in such cases is not considered retaliation.

C. PROTECTIONS: The SRCA shall not take any retaliatory action against an employee who is a whistleblower. Retaliatory action means taking any discriminatory or adverse employment action against an employee in the terms and conditions of employment. If the SRCA violates provisions of the Whistleblower Act, the SRCA shall be liable to the 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 and compensation for any special damage sustained as a result of the violation.

D. 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; (2) provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or (3) objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

E. 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 shall be forever barred unless the action is filed within two years from the date on which the retaliatory action occurred. It shall be an affirmative defense to a civil action that the action taken by the public employer against a public employee was due to the employee’s misconduct, the employee’s poor job performance, a reduction in the 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.

F. UNLAWFUL/IMPROPER ACT: An unlawful or improper act on the part of the SRCA 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.

[New 7/3/2014]

APPROVED:



John Hyrum Martinez
State Records Administrator

EFFECTIVE DATE:

March 7, 2014