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SENATE STATE AFFAIRS COMMITTEE

Bill Number HB 578 Title Whistleblowing Date received 3/29

Fiscal Position	Date requested	From	Amount	Date Rec'd	
Note	Paper			Note	Paper
<u>  </u>	<u>  </u>				

CONTACTS

Backup list

HEARING INFORMATION

NOTES

FINAL ACTION \_\_\_\_\_

DATE \_\_\_\_\_

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_, 1984  
Page 1 of 2

REQUEST

Bill/Resolution No.: HB 578  
Title: Re: Whistleblowing

FISCAL DETAIL

Agency Affected: Administration  
Program Category Affected: General Government

Sponsor: Ward  
Requestor: State Affairs  
Date of Request: \_\_\_\_\_

BRU, Program of Subprogram(s) Affected:  
Labor Relations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:	0	0	0	0	0	0
FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for an Analysis  
Prepared By: Bruce J. Ludwig, Acting Director  
Division: Labor Relations

Phone: 465-4404  
Date: March 9, 1984

Approved by Commissioner: Lisa Rudd  
Agency: DEPARTMENT OF ADMINISTRATION

Date: 3/13/84

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

12/1/83

House Bill 578  
Fiscal Note Analysis  
Prepared by Division of Labor Relations  
Department of Administration  
March 8, 1984

Page 2 of 2

Section 1 of this bill changes the use of gender descriptions to non-gender descriptors and modifies the phrasing in some instances. Paragraph 6 is added to Section 1 and continues within the same frame as the rest of the section. No changes are made in Sections 2 and 3. The final modification is in Section 4. The reference to statutes is changed to mean "through" instead of existing "and".

This department sees no fiscal impact with regard to this bill as the provisions proposed are already in effect. This bill primarily "cleans up" some of the language and does not stray from the intent of the existing statute.

7/8D2/0308-09-2



Official Business

# Alaska State Legislature

HB 578

Pouch V  
State Capitol  
Juneau, Alaska 99811

February 7, 1984

FOR IMMEDIATE RELEASE  
CONTACT: REP. JERRY WARD  
465-4939

**FILE COPY**

REP. WARD INTRODUCES BILL TO PROTECT STATE EMPLOYEES  
WHO REVEAL STATE GOVERNMENT VIOLATIONS

JUNEAU - Rep. Jerry Ward has introduced a bill which would protect state employees who help reveal fraud, waste of funds or mismanagement in the state government.

Ward, R-Anchorage, also introduced legislation which would establish an employee "incentive plan" to reward employees for suggestions which improve the efficiency or economy of state operations.

Both bills are modeled after federal laws, which Ward said have proven to be highly successful nationwide.

Ward said House Bill 578 would "protect whistleblowers" who report violations of law, mismanagement, waste of funds, or abuse of authority.

"We need this law to help end the illegal activities that sometimes happen in the realm of state government," Ward said. "Sexual harassment, embezzlement and like items must not go unreported. Unfortunately, many employees are afraid to

report these activities for fear of losing their jobs. I want all of our state employees to know that we'll protect them if they report these illegal activities."

Ward said House Bill 577 would establish an incentive plan which would reward state employees who help improve the efficiency or economy of state operations.

"We're not listening to the people who really know what's going on," Ward said. "Every state employee knows what is right and wrong with their department. But most are not coming forward as much as they could because they have no incentive to, and some have many good reasons not to.

"We have had some serious problems lately with morale in many departments and I'm confident that if these bills become law, those problems would have not escalated into such major fiascos.

"In a nutshell, both of these bills will encourage employees to enthusiastically improve the way the state government works," Ward said.

As an example for the need for this legislation, Ward cited a recent case where a tip from a state employee resulted in a legislative audit which disclosed that three airplanes were missing from the Department of Public Safety.

"An employee who puts his neck out on the line like this should be praised and deserves the protection of the government," Ward said. "However, in many similar cases, the employee ends up worrying about job security."

# # # # #




ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 463-3991

June 25, 1983

MEMORANDUM

TO: Representative Jerry Ward

FROM: Betty Barton   
Legislative Analyst

RE: Employee Protection Laws  
Research Request No. 83-163

You have asked for information about state and federal statutes that provide protection to employees who disclose information regarding an employer's violation of federal, state, or local laws. During the 1970s, there was growing public concern regarding the need for improved ethical and professional standards, including support for public disclosure of any unethical or illegal practices of governmental and private organizations. Individuals increasingly called for measures which would ensure the protection from reprisal of those employees, known as "whistle blowers," who publicly criticize their organizations for perceived wrongdoing.

Legal Background

American case law traditionally has provided some limited protections from administrative punishment to whistle blowers in public employment. According to a report prepared by the Congressional Research Service, the law generally was shaped in 1892 by Judge Wendell Holmes who ruled in McAuliffe v. Mayor of New Bedford (155 Mass. 216; 29 N.E. 519) that while there is a constitutional right to free speech, there is no constitutional right to public employment.<sup>1</sup> This position was modified in 1968 in Pickering v. Bd. of Ed. (391 U.S. 563) when the U.S. Supreme Court held that a public worker cannot be deprived of his or her constitutional rights as a condition of employment.

Some statutory protections are also found at the federal level. For example, federal employees may testify before Congress about the agencies in which they work. The right to petition Congress is established in 5 U.S.C. 7102; and 18 U.S.C. 1505 prohibits interfering with a worker who is giving testimony to Congress. However, the law does not extend to employees who disclose information to bodies other than Congress.

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<sup>1</sup> Judith H. Parris, Government Division, Congressional Research Service, The Library of Congress, Major Issues System, "Whistle Blowers' in the Executive Branch," Issue Brief Number IB78006, January 26, 1978.

Representative Ward

June 25, 1983

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There are also several notable limitations placed on an employee's freedom to disclose information. Federal officials, for example, may not disclose classified data unless specifically authorized by the Freedom of Information Act or other U.S. statutes.

#### Federal Legislation Establishing Employee Protection

In 1978, Senate Bill 2640 was enacted.<sup>2</sup> This bill, which was the culmination of President Carter's Personnel Management Project, provided an extensive reorganization of the U.S. Civil Service Commission. Included in the bill was an employee protection provision; the primary purpose of which was to "safeguard employees, tenured and nontenured, who 'blew the whistle' on illegal or improper official conduct."

As the bill was initially introduced, it prohibited Civil Service employers from dispensing any sanctions against employees who publicly disclosed a violation of a law, rule, or regulation (assuming that the disclosure in itself did not constitute a violation of the law). The bill was subsequently broadened so that an employee would be protected in disclosing any information that reflected significant mismanagement, flagrant waste of funds; abuse of authority, or a substantial and specific danger to the health and safety of the public.<sup>3</sup> The bill was also modified so that agencies would not be encouraged to establish unwarranted internal "rules or regulations" against disclosure. As amended, only those disclosures that are specifically exempted by statute, e.g., substantive data pertaining to national intelligence, are prohibited.

Under the statute, the head of each executive branch agency has responsibility for overseeing compliance with relevant civil service laws.

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<sup>2</sup> Public Law 95-454. A copy of the statute is located in Appendix A.

<sup>3</sup> According to the legislative history of the bill, the intent of Congress was to limit protection to specific and significant impairment of public safety. As an example, the legislative history states that a general criticism by an employee that the Environmental Protection Agency is inadequately protecting the environment would not be protected under the statute; however, an employee's disclosure regarding the unsafe design of the cooling system of a Nuclear Regulatory Commission reactor would presumably be protected.

### State Legislation Protecting Whistle Blowers

Essentially, there are two approaches available for states in establishing protection for whistle blowers: 1) through administrative rules and procedures -- as exemplified in the federal statute -- and 2) through the courts.

Professional opinion is divided as to whether or not a state statute is necessary if an administrative approach is utilized. By some interpretations, administrative protections can be effectively established through executive orders or regulations. Several administrative mechanisms are available for processing whistle blowing grievances, including establishing an independent personnel board to review employee grievances and establishing an inspector general or ombudsman. In addition, the federal government and some states have considered establishing incentives for employees who produce innovative or noteworthy work as well as penalties for those responsible for inefficiency or unfavorable practices.

To establish remedies through the court system, there are also several available options that have been considered at both the state and federal level. Of these, the most commonly utilized approach is to provide for civil penalties against an agency when an employer has unduly retaliated against an employee. However, legislation can also be drafted to impose civil penalties on the individual who was responsible for the retaliation. Another option, which was presented for congressional consideration, is to establish a legal defense fund to be made available to employees with alleged grievances.

Colorado has enacted legislation that provides for protection through the administrative approach, while Michigan has established remedies through the courts.

Colorado State Employee Protection Law - Colorado enacted a whistleblower protection law in the fall of 1979.<sup>4</sup> Included in the statute's legislative declaration is the following statement:

The general assembly...declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve [this and other objectives], the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

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<sup>4</sup> A copy of the Colorado statute is in Appendix B.

Representative Ward

June 25, 1983

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As enacted, the statute prohibits a state employer or supervisor from initiating a disciplinary action against an employee due to his or her disclosure of information. However, protection does not extend to an employee who knowingly discloses false information or who discloses information that is legally required to be held confidential. Under the provisions of the statute, an employee "who wishes to disclose information" is obligated to "make a good faith effort" to provide the employer or the general assembly with the information to be disclosed prior to the time of its disclosure.

The law enables any employee in the state personnel system to file a written complaint with the state personnel board if an alleged retaliatory measure has been directed against him. If upon review the charges appear to have a reasonable basis, the state personnel director is required to notify the employer of the findings. The employer may then petition the board for a hearing on the matter.

If the board determines that a violation against an employee has occurred, the board is required to order compensation to the employee for any costs incurred in the proceeding. The board also is required to order relief including, but not limited to, reinstatement, back pay, restoration of any loss in credited service, and expungement of any damaging personnel records of the employee. If a specific employer or supervisor is found to have personally initiated the retaliation initiated against the employee, a description of the offense is to be placed within the employer's personnel records.

The administrative approach is generally established in order to provide a means of resolving disputes internally. Under the Colorado law, an employer or employee who is dissatisfied with the findings of the board may take the case to district court.

According to Marilyn Heckel, who administers the employee protection law in Colorado, the statute has been used infrequently since its enactment. Only three or four cases have been filed since the program's inception in 1979. While this may be attributable in part to an absence of complaints, Ms. Heckel observed that there are also some weaknesses in the statute that may be deterring employees from utilizing it.

Ms. Heckel noted that the most significant problem is that the review and hearing process is not timely. The first case filed under the law took almost three years for a determination to be made. The board ruled against the employee, and the employee then filed a complaint in the district court. The judge dismissed the case on a technicality. According to Ms. Heckel, the employee, who presumably believed enough in the legitimacy of his complaint to pursue it for three years, was left with no available recourse and abundant legal bills.

Ms. Heckel also noted that several provisions of the statute were drafted with overly broad potential applications. As an example, Ms. Heckel noted that there is no statute of limitations included within the law. Conceivably, an employee could choose to disclose information pertaining to a violation that occurred ten years ago.

According to Ms. Heckel, staff have discussed the need for revision of the law, but the need is viewed to be a relatively low priority.

Michigan Whistleblowers' Protection Act - No state law offers as extensive protection to employees as that afforded through the Michigan statute.<sup>5</sup> Enacted in 1980, this law may apply to any employee, including individuals within both the public and private sectors of employment. Under the law's provisions, an employer shall not "discharge, threaten, or otherwise discriminate against an employee" for reporting a violation, or suspected violation, of a law, rule, or regulation.

Unlike the Colorado law, the Michigan statute establishes civil action for injunctive relief or damages in the county circuit court as the first measure of recourse for employees who have experienced an alleged violation. The burden of proof is placed on an employee to "show by clear and convincing evidence" that at the time of conflict with his employer, the employee was about to report a suspected violation.

The statute also establishes remedies to be ordered as the judge considers appropriate. In rendering a judgment, a court shall order the reinstatement of the employee, the payment in the employee's favor of back wages, full reinstatement of fringe benefits and seniority, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including both attorney and witness fees.

According to Lee Schwartz, a legislative aide to Michigan Senator James Barcia who was instrumental in the law's enactment, a determination was made to use the court approach in order to make certain that employee protection was not used "frivolously" and would only be used for serious and significant cases.

Mr. Schwartz stated that there have been 10 known cases filed since the law was passed. Of these, the majority have been filed against public agencies; however, several pertain to private sector employers. According to Mr. Schwartz, his office has found no means of evaluating the effectiveness of the law or determining the extent to which the statute is being utilized. All cases are initially filed within Michigan circuit courts, which have no available system of tracking specific categories of cases.

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<sup>5</sup> A copy of the Michigan statute is located in Appendix C.

Representative Ward  
June 25, 1983  
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The U.S. Supreme Court recently ruled on a naval case pertaining to whistle blowing. To date, our research sources have been unable to obtain detailed information regarding the implications of the decision. When we are provided this information, we will transmit it to your office.

We hope this information has assisted you. Please do not hesitate to contact us if you have additional research questions.

bb

Attachments

Attachment A:

Civil Service Reform Act of 1978  
(excerpted portions pertaining to whistle blowing)

under an administrative interpretative regulation approved by the district court as reasonable and not challenged on appeal, it did not constitute "active duty" within the meaning of this section, defining who is a "preference eligible" veteran. *Hroussard v. U. S. Postal Service*, C.A.Tex.1982, 674 F.2d 1103.

§ 2100. Air traffic controller; Secretary

For the purpose of this title—

(1) "air traffic controller" or "controller" means an employee of the Department of Transportation or the Department of Defense who, as determined under regulations prescribe by the Secretary, is actively engaged in the separation and control of air traffic, or is the immediate supervisor of an employee actively engaged in the separation and control of air traffic, in an air traffic control facility; and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

As amended Pub.L. 96-347, § 1(a), Sept. 12, 1980, 94 Stat. 1150.

1980 Amendment. Pub.L. 96-347 substituted in section catchline "controller; Secretary" for "controller" and in section included employees of the Department of Defense within the meaning of air traffic controller or controller and defined the term "Secretary" to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense. Effective Date of 1980 Amendment. Section 3 of Pub.L. 96-347 provided that:

"This Act [amending sections 2100, 3307, 3381 to 3385, and 8335 of this title and enacting a provision set out as a note under section 8335 of this title] shall take effect on the later of—  
 "(1) October 1, 1980, or  
 "(2) the thirtieth day after the date of the enactment of this Act [Sept. 12, 1980]."  
 Legislative History. For legislative history and purpose of Pub.L. 96-317, see 1980 U. S. Code Cong. and Adm. News, p. 2714.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec. 2301. Merit system principles.	Sec. 2301. Responsibility of the General Accounting Office.
2302. Prohibited personnel practices.	2305. Coordination with certain other provisions of law.
2303. Prohibited personnel practices in the Federal Bureau of Investigation.	

§ 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts; and
- (3) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for superior performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance. Inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)

(2) (C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1113.

Effective Date. Section effective on day after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 523.

Cross References. Principles included in personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

Primary References

Officers 511.  
 United States 30.  
 U.S. Officers and Public Employees 140 to 51, 53 to 55.  
 U.S. United States 30, 37, 62 to 64.

Purpose

Primary purpose of this chapter was to safeguard employees, tenured and nontenured, who "blew the whistle" on illegal or improper official conduct. *Wren v. Merit Systems Protection Bd.*, C.A.D.C. 1982, 681 F.2d 807.

§ 2302. Prohibited personnel practices

(a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) "personnel action" means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 76 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reassignment.

- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of title;
- (ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this paragraph; and
- (x) any other significant change in duties or responsibility which is inconsistent with the employee's salary or grade level with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

- (i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
  - (ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.
- (C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—
- (i) a Government corporation;
  - (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
  - (iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

- (1) discriminate for or against any employee or applicant for employment—
  - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
  - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
  - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
  - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
  - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
  - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  - (B) an evaluation of the character, loyalty, or suitability of

- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—
  - (A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
    - (i) a violation of any law, rule, or regulation, or
    - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
 If such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
    - (i) a violation of any law, rule, or regulation, or
    - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or
- (11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114.

**References in Text.** Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), referred to in subsecs. (b) and (d), is classified to section 2000e-16 of Title 42, The Public Health and Welfare.

Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), referred to in subsecs. (b) and (d), are classified to sections 631 and 633a of Title 29, Labor.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), referred to in subsec. (c), is classified to section 206(d) of Title 29.

Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), referred to in subsec. (e), is classified to section 791 of Title 29.

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

**Effective Date.** Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, D. 2723.

**Cross References.** Personnel practices prohibited by personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

**Index to Notes**

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- Disclosure of protected information 4

**1. Retaliation**

In proceeding concerning job demotion of employee of Veterans Administration, United States Merit Systems Protection

to prove by a preponderance of the evidence that the demotion was a reprisal for "whistleblowing." *Alley v. Veterans Admin. Medical Center*, C.A.S. 1982, 600 F.2d 151.

In case in which special counsel contended in effect that four deputy marshals' transfers to different duty stations were in retaliation for engaging in protected activities, Board, which upheld transfers of three deputies, had not isolated principle to effect that knowledge of employees' protected activities on part of one with ultimate responsibility for a personnel action could support inference of retaliatory intent where Board had determined that those who effected the transfers had no knowledge of the protected activities and that those with knowledge had no effect. *Frazier v. Merit Systems Protection Bd.*, 1982, 672 F.2d 150, 217 U.S.App.D.C. 207.

**2. Standards**

To establish that agency action utilizing unapproved performance criteria was "based on" a prohibited personnel practice, petitioner would have to show that her performance, while falling the "unacceptable performance" standard, was satisfactory under other applicable statutory standards. *Darby v. Internal Revenue Service*, 1982, 672 F.2d 102, 217 U.S.App.D.C. 330.

**3. Whistle-blowing protections—Generally**

"Whistleblowing" provisions of this chapter work only as a defense to disciplinary action. *Martin v. Lauer*, C.A.D. C. 1982, 690 F.2d 24.

**4. Disclosure of protected information**

In regard to a government employee deciding whether to "blow the whistle" on government fraud, waste, abuse or illegality, the legal question of whether disclosure is prohibited by law is of critical importance to the whistleblower, and he must be allowed to consult his attorney for an answer to that question absent some strong governmental interest in limiting such communications. *Martin*

**5. Right of action**

In enacting this section Congress did not take away from probationary employees their preexisting right to seek redress of constitutional violations in district court actions, and limit of statutory remedy provided probationary employees governing adverse personnel action based on "whistleblowing" does not preclude resort to independent action alleging violation of rights under U.S.C.A. Const. Amend. 1 in adverse personnel action based on criticism of agency practices and/or procedures. *Borrell v. U. S. In-*

tern. Communications Agency, C.A.D.C. 1982, 682 F.2d 981.

A purported whistle blower has no private right of action under this section prohibiting an official from taking adverse personnel action against an employee as reprisal for "whistleblowing" on official violations of law, waste and abuse of authority, and in case of probationary employee, the office of special counsel in the exclusive avenue of relief for alleged prohibited personnel practices under this section. *Id.*

**§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation**

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

- (1) a violation of any law, rule, or regulation, or
- (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (1) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policy-making, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1117.

**Effective Date.** Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

**§ 2304. Responsibility of the General Accounting Office**

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

- (1) significant actions taken by the Board to carry out its functions under this title; and
- (2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.

**Effective Date.** Section effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Attachment B:  
Colorado Employee Protection Law

or until an examination  
is completed.

§ 26-2-2; L. 73, p. 426.

he termination of his self-chosen  
employment, to return to state employment  
and receive all the rights and privileges  
accrued if he had never left  
state employment. State Civil Serv.  
Fleming, 183 Colo. 71, 514 P.2d  
cert. denied, 415 U.S. 977, 94 S.  
Cl. Ed. 2d 873 (1974).

Reinstatement contingent upon returning  
to service. Reinstatement is con-  
tingent upon the employee returning to state  
employment within one year after the period  
of absence or additional service imposed.  
Civil Serv. Comm'n v. Fleming,  
183 Colo. 71, 514 P.2d 1135 (1973), cert.  
denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed.

guard. (1) The provisions  
of this section shall apply to the  
payment by this state  
of the compensation of any  
employee who is appointed  
to a position in part 3  
of this title if the employee  
retains his status after

who was a member of the  
armed forces of the United  
States and who received  
compensation from the  
armed forces for a period of time  
preceding fifteen days.

§ 26-2-3.

part 3 shall apply to any  
employee who entered the armed  
services or who was engaged in national

## HOURS

offices in the executive and  
legislative branches shall be and remain open for

business daily, except on Saturdays, Sundays, and legal holidays, from the  
hour of 8:30 a.m. until the hour of 5:00 p.m.; except that nothing in this  
section shall affect the validity of any act performed by either of said depart-  
ments before or after the hours specified in this section.

(2) Notwithstanding the provisions of subsection (1) of this section, when  
a city or city and county and the suburban area within a ten-mile radius of  
the boundaries thereof have a population in excess of fifty thousand inhabi-  
tants, the offices of any executive department of the state government locat-  
ed therein may vary its business hours from those indicated in subsection  
(1) of this section whenever the executive director of the principal depart-  
ment, with the approval of the governor, determines that such adjustment  
of hours will help alleviate peak traffic conditions and provide a more even  
flow of traffic for the purpose of creating safer highway conditions.

(3) Written notice of the variance permitted under subsection (2) of this  
section shall be given to the local news media of such cities or cities and  
counties not less than two weeks preceding the effective date of such vari-  
ance.

Source: R & RE, L. 72, p. 180, § 1; C.R.S. 1963, § 26-3-1.

24-50-402. Appointment by outgoing officers prohibited. No state, county,  
or city appointive office, the term of which expires on or after the time fixed  
by law for the qualification of the officer having the authority to make such  
appointment, shall be filled by the outgoing appointing officer.

Source: R & RE, L. 72, p. 180, § 1; C.R.S. 1963, § 26-3-2.

## ARTICLE 50.5

### State Employee Protection

24-50.5-101.	Legislative declaration.	24-50.5-105.	Civil action.
24-50.5-102.	Definitions.	24-50.5-106.	Notice to state auditor.
24-50.5-103.	Retaliation prohibited.	24-50.5-107.	Reports to general assembly and governor.
24-50.5-104.	Complaints by state personnel system employees.		

24-50.5-101. Legislative declaration. The general assembly hereby declares  
that the people of Colorado are entitled to information about the workings  
of state government in order to reduce the waste and mismanagement of  
public funds, to reduce abuses in government authority, and to prevent illegal  
and unethical practices. The general assembly further declares that employees  
of the state of Colorado are citizens first and have a right and a responsibility  
to behave as good citizens in our common efforts to provide sound manage-  
ment of governmental affairs. To help achieve these objectives, the general  
assembly declares that state employees should be encouraged to disclose  
information on actions of state agencies that are not in the public interest

and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

Source: L. 79, p. 965, § 1.

**24-50.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

(2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.

(3) "Employee" means any person employed by a state agency.

(4) "State agency" means any board, commission, department, division, section, or other agency of the executive, legislative, or judicial branch of state government.

(5) "Supervisor" means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.

Source: L. 79, p. 965, § 1.

**24-50.5-103. Retaliation prohibited.** (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

Source: L. 79, p. 966, § 1.

**24-50.5-104. Complaints by state personnel system employees.** (1) Any employee in the state personnel system may file a written complaint with the state personnel board alleging a violation of section 24-50.5-103 if the employee demonstrates that reasonable communication to his supervisor,

appointing authority, or member of the general assembly has occurred in regard to the alleged violation. The state personnel board shall cause an investigation of the charges to be made by the state personnel director. If the investigation establishes that there is a reasonable basis for the charges, the appointing authority or supervisor shall be given written notice thereof. Within ten days after he receives such notice, the appointing authority or supervisor may petition the board for a hearing on the matter, and the board shall grant such hearing.

(2) If the state personnel board after hearing determines that a violation of section 24-50.5-103 has occurred, or if the investigation establishes a reasonable basis for the charges and no hearing is requested, the board shall order the appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee who disclosed information, and, in addition, the state personnel board shall order that the employee filing the complaint be reimbursed for any costs incurred in the proceeding. Such reimbursement shall be made out of moneys appropriated to the agency which employs such employee. Judicial review of any determination by the state personnel board under this subsection (2) may be had in accordance with section 24-4-106.

(3) It shall be a defense in any disciplinary proceeding against an employee under section 24-50-125 that such proceeding was initiated in violation of section 24-50.5-103, and the issue of the violation of section 24-50.5-103 shall be determined by the state personnel board as a part of the disciplinary proceeding.

(4) Whenever the state personnel board determines that an appointing authority or supervisor has violated section 24-50.5-103, it shall cause an entry to that effect to be made in the supervisor's personnel records.

Source: L. 79, p. 966, § 1.

**24-50.5-105. Civil action.** Any employee not in the state personnel system, or any employee in the state personnel system who has filed a complaint under section 24-50.5-104 (1) but no reasonable basis was found for the charges, may bring a civil action in the district court alleging a violation of section 24-50.5-103. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

Source: L. 79, p. 967, § 1.

**24-50.5-106. Notice to state auditor.** Whenever the state personnel board finds that a violation of section 24-50.5-103 involving the disclosure of information concerning waste of public funds or mismanagement of a state agency has occurred, it shall transmit a copy of the investigation report to the state auditor, who shall proceed in accordance with section 2-3-101 (3) (c), C.R.S. 1973.

Source: L. 79, p. 967, § 1.

24-50.5-107. Reports to general assembly and governor. The state personnel board shall report annually to the general assembly and the governor concerning the complaints filed, hearings held, and actions taken pursuant to this article.

Source: L. 79, p. 967, § 1.

**PUBLIC EMPLOYEES' RETIREMENT SYSTEMS**

**ARTICLE 51**

**Public Employees' Retirement Systems**

**PART 1**

**STATE EMPLOYEES**

- |            |   |              |   |
|------------|---|--------------|---|
| 24-51-101. | Definitions.  | 24-51-125.   | Members remaining in public service — election of option.                     |
| 24-51-102. | Public employees' retirement association.                             | 24-51-126.   | Colorado state university — U. S. department of agriculture employees.        |
| 24-51-103. | Retirement board — officers — group life insurance.                   | 24-51-127.   | Division of wildlife and the division of parks and outdoor recreation.        |
| 24-51-104. | Members' contributions.   | 24-51-128.   | Members of the general assembly.  |
| 24-51-105. | State contributions.  | 24-51-129.   | Persons eligible.   |
| 24-51-106. | Retirement fund declined — state treasurer custodian — disbursements. | 24-51-130.   | Applications.   |
| 24-51-107. | Board to direct investments of retirement fund.                       | 24-51-131.   | When emeritus retirement benefits commence.                                   |
| 24-51-108. | Legal adviser.  | 24-51-132.   | State employees' emeritus retirement fund — limitation on pension.            |
| 24-51-109. | Refunds, when made — deferred retirement annuity.                     | 24-51-133.   | Funds not subject to process.   |
| 24-51-110. | Members may be reinstated.  | 24-51-134.   | Retired state members — employment in position covered by association — when. |
| 24-51-111. | Retirement for superannuation.  | 24-51-135.   | Redetermination of benefits.  |
| 24-51-112. | Optional forms of annuities.  | 24-51-136.   | Increase in public employees' benefits — stabilization fund — creation.       |
| 24-51-113. | Military service — waiver of payments — service credit.               | 24-51-137.   | Colorado association of school boards and high school activities association. |
| 24-51-114. | Colorado state patrol.  | 24-51-138.   | Reserve fund credits.   |
| 24-51-115. | Disability retirement — annuity.                                      | 24-51-138.5. | Fire and police pension association.  |
| 24-51-116. | Medical examination for disability.                                   | 24-51-139.   | Special districts association.  |
| 24-51-117. | Heirs to receive payment, when.                                       | 24-51-139.6. | Credited service in excess of twenty years prior to July 1, 1969.             |
| 24-51-118. | Annuities to be paid monthly.   | 24-51-140.   | Prorating clause.   |
| 24-51-119. | Minimum contribution time — rights.                                   | 24-51-141.   | District attorneys covered under public employees'                            |
| 24-51-120. | Funds not subject to process.   |              |   |
| 24-51-121. | Insurance, banking laws not to apply.                                 |              |   |
| 24-51-122. | Gifts and bequests.   |              |   |

- 24-51-143. Salary deductions.  
 24-51-144. State payments.  
 24-51-145. Retirement of district attorneys.  
 24-51-146. Benefits not considered compensation or increase in emoluments.  
 24-51-147. Effective date — retroactive application limited.

**PART 2**

**PUBLIC EMPLOYEES**

- 24-51-200.5. Definitions.  
 24-51-201. Extension of coverage.  
 24-51-202. Exemption by state subdivisions.  
 24-51-203. Exemption of present employees of covered subdivisions.  
 24-51-204. Duties of public employers.  
 24-51-205. Public employer deductions.  
 24-51-206. Public employer payments.  
 24-51-207. Municipal employees' reserve fund.  
 24-51-208. School district employees' reserve fund.  
 24-51-209. Administration and management.  
 24-51-210. Retirement of municipal employee members.  
 24-51-211. Retirement of school district employee members.  
 24-51-212. Optional forms of annuities.  
 24-51-213. Disability retirement — annuity.  
 24-51-214. Medical examination for disability retirement.  
 24-51-215. General provisions.  
 24-51-216. Military service — waiver of payments — service credit.  
 24-51-217. Heirs to receive amount due member.  
 24-51-218. Annuities paid in installments.  
 24-51-219. Funds not subject to process.  
 24-51-220. Insurance and banking laws not to apply.  
 24-51-221. May receive gifts and bequests.  
 24-51-222. Rules and regulations.  
 24-51-223. Retired school district members — employment in position covered by association — when.  
 24-51-224. (Repealed).  
 24-51-225. Redetermination of benefits.  
 24-51-226. Regional library districts.  
 24-51-227. City council or other governing authority of

24-51-229. (Repealed).

**PART 3**

**COUNTY OR DISTRICT HEALTH DEPARTMENTS**

- 24-51-301. Coverage to employees of health departments — application.  
 24-51-302. Disposition of funds.  
 24-51-303. Employees in unorganized counties.

**PART 4**

**HOUSING AUTHORITIES**

- 24-51-401. Housing authorities covered.  
 24-51-402. Funds, how credited.

**PART 5**

**SCHOOL EMPLOYEES**

- 24-51-501. Legislative declaration.  
 24-51-502. School employees covered.  
 24-51-503. Arrears in payments.  
 24-51-504. Penalty for arrears.  
 24-51-505. Reciprocity of retirement systems.

**PART 6**

**JUDGES OF COURTS OF RECORD**

- 24-51-601. Courts covered under public employees' retirement association.  
 24-51-602. Exemption for present judges.  
 24-51-603. Salary deductions.  
 24-51-604. State payments.  
 24-51-605. Investment of judges' retirement fund.  
 24-51-606. Administration and management.  
 24-51-607. Retirement of judges.  
 24-51-608. Optional forms of annuities.  
 24-51-609. Disability retirement.  
 24-51-610. Medical examination for retirement.  
 24-51-611. Refunds — retention.  
 24-51-612. Heirs to receive payments — when.  
 24-51-613. Annuities paid monthly.  
 24-51-614. Redetermination of benefits.

**PART 7**

**PUBLIC EMPLOYEES' SOCIAL**

Attachment C:

Michigan Whistle Blower Protection Act

15.345 PUBLIC OFFICERS AND EMPLOYEES

(4) When a recommendation to an appointing authority is made by the board concerning an unclassified employee or appointee, the appointing authority shall take appropriate disciplinary action which may include dismissal.

P.A.1973, No. 196, § 5, Imd. Eff. Jan. 8, 1974.

Library References

States 67, 73.

C.J.S. States §§ 120, 131, 130 to 138, 140.

Notes of Decisions

In general 1  
Closed sessions 2

behalf of the agency. Op.Atty.Gen.1980, No. 5646.

1. In general

The son of a member of the barrier free design board may be employed by the board without violation of the ethical standards of § 15.341 et seq., although a member of the barrier free design board may not participate in any case in which his or her son appears on

2. Closed sessions

The state board of ethics is subject to the Open Meetings Act, § 15.261, and when it meets in closed session for the protection of individual rights, it must comply with the provisions of said act, with respect to the calling and holding of the closed session. Op.Atty.Gen. 1980, No. 5760.

15.346 Rules

Sec. 6. The board may promulgate rules governing its own procedures pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. For a period of 1 year following the effective date of this act the board shall have full authority to exercise all of its functions in accordance with temporary rules of procedure promulgated by the board. Both the temporary and permanent rules of the board shall provide that:

(a) The board may request the attendance of any witness whose testimony, in the judgment of the board, will aid in the conduct of its investigations.

(b) A person appearing before the board shall submit either sworn or unsworn testimony as the board may decide and may at all times be represented and accompanied by counsel.

(c) A record of testimony taken before the board or a hearing officer designated by it shall be made in the manner prescribed by the board.

(d) The board may, when it appears necessary for the protection of individual rights, hold its meetings and hearings in private. All other meetings and hearings shall be open to the public.

P.A.1973, No. 196, § 6, Imd. Eff. Jan. 8, 1974.

WHISTLEBLOWERS' PROTECTION 15.361

Notes of Decisions

1. In general

Records and files concerning any dismissed complaint or terminated investigation by the state board of ethics may be suppressed to protect an individual's privacy, but may only be disposed of by the state board of ethics in accordance with § 18.13c. Op.Atty.Gen. 1980, No. 5760.

15.347 Appropriation

Sec. 7. There is appropriated from the general fund of the state an amount necessary to implement this act but not to exceed \$10,000.00 for the fiscal year ending June 30, 1974.

P.A.1973, No. 196, § 7, Imd. Eff. Jan. 8, 1974.

Library References

States 131.

C.J.S. States §§ 230, 234 to 239.

15.348 Effect on other acts

Sec. 8. The provisions of this act shall not supersede the provisions of any other acts heretofore or hereinafter enacted and shall be interpreted and administered to the extent not inconsistent with other acts.

P.A.1973, No. 196, § 8, Imd. Eff. Jan. 8, 1974.

M.S.L.A.

'WHISTLEBLOWERS' PROTECTION ACT

Caption editorially supplied

Library References

M.L.P. Employment §§ 1, 23, 151.

M.L.P. State § 6.

P.A.1980, No. 469, Eff. March 31, 1981

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

The People of the State of Michigan enact:

15.361 Definitions

Sec. 1. As used in this act:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, ex-

press or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.

(b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.

(c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(d) "Public body" means all of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary.  
P.A.1980, No. 469, § 1, Eff. March 31, 1981.

### 15.362 Discharge of, threats to or discrimination against employee for reporting violations of law

Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate 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, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

P.A.1980, No. 469, § 2, Eff. March 31, 1981.

#### Library References

Labor Relations ☞7.

C.J.S. Labor Relations ¶ 2 et seq.

### 15.363 Civil actions for injunctive relief or damages

Sec. 3. (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

(4) An employee shall show by clear and convincing evidence that they or a person acting on their behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

P.A.1980, No. 469, § 3, Eff. March 31, 1981.

#### Library References

Action ☞3,  
Injunction ☞25.

C.J.S. Actions ¶ 9.  
C.J.S. Injunctions ¶¶ 41, 42, 54.

### 15.364 Remedies ordered by court

Sec. 4. A court, in rendering a judgment in an action brought pursuant to 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 may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

P.A.1980, No. 469, § 4, Eff. March 31, 1981.

#### Library References

Officers ☞78.

C.J.S. Officers and Public Employees  
¶¶ 114 to 116, 221.

## 15.365 Penalties for violations

Sec. 5. (1) A person who violates this act shall be liable for a civil fine of not more than \$500.00.

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund.

P.A.1980, No. 469, § 5, Eff. March 31, 1981.

## Library References

Labor Relations ☞1056.

C.J.S. Labor Relations § 1011.

## 15.366 Collective bargaining rights

Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

P.A.1980, No. 469, § 6, Eff. March 31, 1981.

## Library References

Labor Relations ☞257.

C.J.S. Labor Relations §§ 239 to 250.

## 15.367 Compensation for employee participation in investigation, hearing or inquiry

Sec. 7. This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2<sup>1</sup> of this act.

P.A.1980, No. 469, § 7, Eff. March 31, 1981.

<sup>1</sup> Section 15.362.

## 15.368 Notices of employee protections and obligations

Sec. 8. An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

P.A.1980, No. 469, § 8, Eff. March 31, 1981.

## Library References

Labor Relations ☞7.

C.J.S. Labor Relations § 2 et seq.

## 15.369 Short title

Sec. 9. This act shall be known and may be cited as "the whistleblowers' protection act".

P.A.1980, No. 469, § 9, Eff. March 31, 1981.

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## POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

*Caption editorially supplied*

## Library References

M.L.P. State § 6.

P.A.1976, No. 169, Imd. Eff. June 25

AN ACT to regulate certain political activities by certain public employees; to prescribe the powers and duties of certain state agencies; and to provide penalties. Amended by P.A.1979, No. 15, § 1, Imd. Eff. May 24.

*The People of the State of Michigan enact:*

## 15.401 Public employee defined

Sec. 1. As used in this act, "public employee" means an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.

P.A.1976, No. 169, § 1, Imd. Eff. June 25.

## Library References

Elections ☞311.

C.J.S. Elections § 324.

## Notes of Decisions

In general 1  
Civil service commission 2  
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ture to enact statute providing that employee of state classified civil service may engage in certain political activities. *Id.*

The Political Freedom Act was enacted to permit civil service employees and employees of political subdivisions of the state to engage in certain political activities. Council 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1978) 274 N.W.2d 804, 87 Mich.App. 420, affirmed 292 N.W.2d 442, 408 Mich. 385.

State cannot require individual to relinquish rights guaranteed him or her by U.S.C.A.Const. Amend. 1 as a condition of public employment, and when political activities of public employee are unrelated to his or her job responsibilities, the employee must be treated as a member of the general public for purpose of adjudicating U.S.C.A.Const. Amend. rights. *Id.*

## 1. In general

Legislature of state is empowered to enact laws to promote and regulate political campaigns and candidacies. Council No. 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1980) 292 N.W.2d 442, 408 Mich. 385.

There is no provision in State Constitution which plainly, or by fair implication, empowers the state civil service commission to regulate the off-duty political activity of classified civil servants or which in any manner preemptively conflicts with power of legisla-

627

HB 577, (cont'd)

Introduced February 6 and referred to State Affairs, Finance.

Whistle-  
blowing  
(reprisals)

HOUSE BILL NO. 578, by Rep. Ward. Prohibits a state department, agency, official, officer or any other state employee from taking or failing to take a personnel action as a reprisal for a disclosure of information. Disclosed information would be that type of information an employee reasonably believes constitutes a violation of state law or regulation, mismanagement, gross waste of funds, abuse of authority, or represents a substantial and specific danger to public health or safety. The head of each state agency would be responsible for the prevention of prohibited personnel practices. The head of agencies with employees who are exempt or partially exempt would be responsible for designating an employee to receive evidence of violations, and who would act on the information.

This law would not authorize the withholding of information from the legislature or the implementation of an adverse personnel action against an employee who discloses information to the legislature. Defines "personnel action" to mean ". . . (1) an appointment, (2) a promotion; (3) a disciplinary or corrective action; (4) a detail, transfer, or reassignment; (5) a reinstatement; (6) a restoration; (7) a reemployment; (8) a performance evaluation; (9) a decision concerning pay, benefits, or awards; or (10) a decision concerning education or training if the education or training would lead to appointment, promotion, performance evaluation, or other action described under this subsection."

Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced February 6 and referred to State Affairs.

Junior ROTC  
Instructors  
(included in  
Teachers'  
Retirement)

HOUSE BILL NO. 579, by Rep. Furnace. Would allow a Junior Reserve Officer Training Corps (ROTC) instructor who is responsible for student supervision, who is certified as a teacher by the Dept. of Education, and who has direct student contact for five or more hours a day to be eligible under the Teachers' Retirement System. The Junior ROTC instructor would also be included in the definition of "teacher" under AS 14.20 (Teachers and School Officials). Does not provide for an effective date (becomes law 90 days after Governor signs bill).

Introduced February 6 and referred to Health, Education & Social Services.

Water  
Pollution  
(prevention/  
abatement)

HOUSE BILL NO. 580, by Rep. Ringstad. Relates to the prevention and abatement of water pollution. Amends the policy of the state in relation to water, land and air pollution, stating that it is the policy of the state ". . . to develop and manage the basic resources of water, land and air in an economically and environmentally sound manner to the end that the state may fulfill its responsibility as trustee of the environment



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

HB 578

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

June 25, 1983

MEMORANDUM

TO: Representative Jerry Ward

FROM: Betty Barton *BB*  
Legislative Analyst

RE: Employee Protection Laws  
Research Request No. 83-163

You have asked for information about state and federal statutes that provide protection to employees who disclose information regarding an employer's violation of federal, state, or local laws. During the 1970s, there was growing public concern regarding the need for improved ethical and professional standards, including support for public disclosure of any unethical or illegal practices of governmental and private organizations. Individuals increasingly called for measures which would ensure the protection from reprisal of those employees, known as "whistle blowers," who publicly criticize their organizations for perceived wrongdoing.

Legal Background

American case law traditionally has provided some limited protections from administrative punishment to whistle blowers in public employment. According to a report prepared by the Congressional Research Service, the law generally was shaped in 1892 by Judge Wendell Holmes who ruled in McAuliffe v. Mayor of New Bedford (155 Mass. 216; 29 N.E. 519) that while there is a constitutional right to free speech, there is no constitutional right to public employment.<sup>1</sup> This position was modified in 1968 in Pickering v. Bd. of Ed. (391 U.S. 563) when the U.S. Supreme Court held that a public worker cannot be deprived of his or her constitutional rights as a condition of employment.

Some statutory protections are also found at the federal level. For example, federal employees may testify before Congress about the agencies in which they work. The right to petition Congress is established in 5 U.S.C. 7102; and 18 U.S.C. 1505 prohibits interfering with a worker who is giving testimony to Congress. However, the law does not extend to employees who disclose information to bodies other than Congress.

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<sup>1</sup> Judith H. Parris, Government Division, Congressional Research Service, The Library of Congress, Major Issues System, "Whistle Blowers' in the Executive Branch," Issue Brief Number IB78006, January 26, 1978.

*Memo/ House Research 6/25/83*

There are also several notable limitations placed on an employee's freedom to disclose information. Federal officials, for example, may not disclose classified data unless specifically authorized by the Freedom of Information Act or other U.S. statutes.

#### Federal Legislation Establishing Employee Protection

In 1978, Senate Bill 2640 was enacted.<sup>2</sup> This bill, which was the culmination of President Carter's Personnel Management Project, provided an extensive reorganization of the U.S. Civil Service Commission. Included in the bill was an employee protection provision; the primary purpose of which was to "safeguard employees, tenured and nontenured, who 'blew the whistle' on illegal or improper official conduct."

As the bill was initially introduced, it prohibited Civil Service employers from dispensing any sanctions against employees who publicly disclosed a violation of a law, rule, or regulation (assuming that the disclosure in itself did not constitute a violation of the law). The bill was subsequently broadened so that an employee would be protected in disclosing any information that reflected significant mismanagement, flagrant waste of funds; abuse of authority, or a substantial and specific danger to the health and safety of the public.<sup>3</sup> The bill was also modified so that agencies would not be encouraged to establish unwarranted internal "rules or regulations" against disclosure. As amended, only those disclosures that are specifically exempted by statute, e.g., substantive data pertaining to national intelligence, are prohibited.

Under the statute, the head of each executive branch agency has responsibility for overseeing compliance with relevant civil service laws.

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<sup>2</sup> Public Law 95-454. A copy of the statute is located in Appendix A.

<sup>3</sup> According to the legislative history of the bill, the intent of Congress was to limit protection to specific and significant impairment of public safety. As an example, the legislative history states that a general criticism by an employee that the Environmental Protection Agency is inadequately protecting the environment would not be protected under the statute; however, an employee's disclosure regarding the unsafe design of the cooling system of a Nuclear Regulatory Commission reactor would presumably be protected.

### State Legislation Protecting Whistle Blowers

Essentially, there are two approaches available for states in establishing protection for whistle blowers: 1) through administrative rules and procedures -- as exemplified in the federal statute -- and 2) through the courts.

Professional opinion is divided as to whether or not a state statute is necessary if an administrative approach is utilized. By some interpretations, administrative protections can be effectively established through executive orders or regulations. Several administrative mechanisms are available for processing whistle blowing grievances, including establishing an independent personnel board to review employee grievances and establishing an inspector general or ombudsman. In addition, the federal government and some states have considered establishing incentives for employees who produce innovative or noteworthy work as well as penalties for those responsible for inefficiency or unfavorable practices.

To establish remedies through the court system, there are also several available options that have been considered at both the state and federal level. Of these, the most commonly utilized approach is to provide for civil penalties against an agency when an employer has unduly retaliated against an employee. However, legislation can also be drafted to impose civil penalties on the individual who was responsible for the retaliation. Another option, which was presented for congressional consideration, is to establish a legal defense fund to be made available to employees with alleged grievances.

Colorado has enacted legislation that provides for protection through the administrative approach, while Michigan has established remedies through the courts.

Colorado State Employee Protection Law - Colorado enacted a whistleblower protection law in the fall of 1979.<sup>4</sup> Included in the statute's legislative declaration is the following statement:

The general assembly...declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve [this and other objectives], the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

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<sup>4</sup> A copy of the Colorado statute is in Appendix B.

As enacted, the statute prohibits a state employer or supervisor from initiating a disciplinary action against an employee due to his or her disclosure of information. However, protection does not extend to an employee who knowingly discloses false information or who discloses information that is legally required to be held confidential. Under the provisions of the statute, an employee "who wishes to disclose information" is obligated to "make a good faith effort" to provide the employer or the general assembly with the information to be disclosed prior to the time of its disclosure.

The law enables any employee in the state personnel system to file a written complaint with the state personnel board if an alleged retaliatory measure has been directed against him. If upon review the charges appear to have a reasonable basis, the state personnel director is required to notify the employer of the findings. The employer may then petition the board for a hearing on the matter.

If the board determines that a violation against an employee has occurred, the board is required to order compensation to the employee for any costs incurred in the proceeding. The board also is required to order relief including, but not limited to, reinstatement, back pay, restoration of any loss in credited service, and expungement of any damaging personnel records of the employee. If a specific employer or supervisor is found to have personally initiated the retaliation initiated against the employee, a description of the offense is to be placed within the employer's personnel records.

The administrative approach is generally established in order to provide a means of resolving disputes internally. Under the Colorado law, an employer or employee who is dissatisfied with the findings of the board may take the case to district court.

According to Marilyn Heckel, who administers the employee protection law in Colorado, the statute has been used infrequently since its enactment. Only three or four cases have been filed since the program's inception in 1979. While this may be attributable in part to an absence of complaints, Mr. Heckel observed that there are also some weaknesses in the statute that may be deterring employees from utilizing it.

Ms. Heckel noted that the most significant problem is that the review and hearing process is not timely. The first case filed under the law took almost three years for a determination to be made. The board ruled against the employee, and the employee then filed a complaint in the district court. The judge dismissed the case on a technicality. According to Ms. Heckel, the employee, who presumably believed enough in the legitimacy of his complaint to pursue it for three years, was left with no available recourse and abundant legal bills.

Ms. Heckel also noted that several provisions of the statute were drafted with overly broad potential applications. As an example, Ms. Heckel noted that there is no statute of limitations included within the law. Conceivably, an employee could choose to disclose information pertaining to a violation that occurred ten years ago.

According to Ms. Heckel, staff have discussed the need for revision of the law, but the need is viewed to be a relatively low priority.

Michigan Whistleblowers' Protection Act - No state law offers as extensive protection to employees as that afforded through the Michigan statute.<sup>5</sup> Enacted in 1980, this law may apply to any employee, including individuals within both the public and private sectors of employment. Under the law's provisions, an employer shall not "discharge, threaten, or otherwise discriminate against an employee" for reporting a violation, or suspected violation, of a law, rule, or regulation.

Unlike the Colorado law, the Michigan statute establishes civil action for injunctive relief or damages in the county circuit court as the first measure of recourse for employees who have experienced an alleged violation. The burden of proof is placed on an employee to "show by clear and convincing evidence" that at the time of conflict with his employer, the employee was about to report a suspected violation.

The statute also establishes remedies to be ordered as the judge considers appropriate. In rendering a judgment, a court shall order the reinstatement of the employee, the payment in the employee's favor of back wages, full reinstatement of fringe benefits and seniority, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including both attorney and witness fees.

According to Lee Schwartz, a legislative aide to Michigan Senator James Barcia who was instrumental in the law's enactment, a determination was made to use the court approach in order to make certain that employee protection was not used "frivolously" and would only be used for serious and significant cases.

Mr. Schwartz stated that there have been 10 known cases filed since the law was passed. Of these, the majority have been filed against public agencies; however, several pertain to private sector employers. According to Mr. Schwartz, his office has found no means of evaluating the effectiveness of the law or determining the extent to which the statute is being utilized. All cases are initially filed within Michigan circuit courts, which have no available system of tracking specific categories of cases.

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<sup>5</sup> A copy of the Michigan statute is located in Appendix C.

Representative Ward  
June 25, 1983  
Page 6

The U.S. Supreme Court recently ruled on a naval case pertaining to whistle blowing. To date, our research sources have been unable to obtain detailed information regarding the implications of the decision. When we are provided this information, we will transmit it to your office.

We hope this information has assisted you. Please do not hesitate to contact us if you have additional research questions.

bb

Attachments

Attachment A:

Civil Service Reform Act of 1978  
(excerpted portions pertaining to whistle blowing)

Attachment A:

Civil Service Reform Act of 1978  
(excerpted portions pertaining to whistle blowing)

*Civil Service Reform Act of 1978*

under an administrative interpretative regulation approved by the district court as reasonable and not challenged on appeal, it did not constitute "active duty"

within the meaning of this section, defining who is a "preference eligible" veteran. *Hroussard v. U. S. Postal Service*, C.A.Tex.1982, 674 F.2d 1103.

§ 2109. Air traffic controller; Secretary

For the purpose of this title—

(1) "air traffic controller" or "controller" means an employee of the Department of Transportation or the Department of Defense who, as determined under regulations prescribed by the Secretary, is actively engaged in the separation and control of air traffic, or is the immediate supervisor of an employee actively engaged in the separation and control of air traffic, in an air traffic control facility; and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

As amended Pub.L. 96-347, § 1(a), Sept. 12, 1980, 94 Stat. 1150.

1980 Amendment. Pub.L. 96-347 substituted in section catchline "controller; Secretary" for "controller" and in section included employees of the Department of Defense within the meaning of air traffic controller or controller and defined the term "Secretary" to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense. Effective Date of 1980 Amendment. Section 3 of Pub.L. 96-347 provided that:

"This Act [amending sections 2109, 3307, 3381 to 3385, and 5335 of this title and enacting a provision set out as a note under section 5335 of this title] shall take effect on the later of—

"(1) October 1, 1980, or  
 "(2) the ninetieth day after the date of the enactment of this Act [Sept. 12, 1980]."

Legislative History. For legislative history and purpose of Pub.L. 96-347, see 1980 U. S. Code Cong. and Adm. News, p. 2754.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec. 2301. Merit system principles.  
 2302. Prohibited personnel practices.  
 2303. Prohibited personnel practices in the Federal Bureau of Investigation.

Sec. 2301. Responsibility of the General Accounting Officer.  
 2305. Coordination with certain other provisions of law.

§ 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts; and
- (3) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for superior performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)

(2) (C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1113.

Effective Date. Section effective 90 days after Oct. 13, 1978, see section 607 of Pub.L. 95-454, set out as a note under section 1101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 723.

Cross References. Principles included in personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

Library References

Officers and Personnel, United States G-33.  
 C.J.S. Officers and Public Employees II 49 to 51, 53 to 55.  
 C.J.S. United States II 36, 37, 62 to 64.

Purpose

Primary purpose of this chapter was to safeguard employees, tenured and non-tenured, who "blew the whistle" on illegal or improper official conduct. *Wren v. Merit Systems Protection Bd.*, C.A.D.C. 1982, 681 F.2d 807.

§ 2302. Prohibited personnel practices

(a) (1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) "personnel action" means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

- (vii) a reemployment;
- (viii) a performance evaluation 43 of title;
- (ix) a decision concerning pay, or concerning education or training if the employee reasonably be expected to lead to an promotion, performance evaluation, or other action described in this paragraph; and

(x) any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service or a position in the excepted service, but does not include—

- (i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making or policy-advocating character; or
- (ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

(C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

- (i) a Government corporation;
- (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
- (iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

- (1) discriminate for or against any employee or applicant for employment—
  - (A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);
  - (B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
  - (C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));
  - (D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
  - (E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
  - (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  - (B) an evaluation of the character, loyalty, or suitability of

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3130(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—
  - (A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
    - (i) a violation of any law, rule, or regulation, or
    - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

If such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

- (B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
  - (i) a violation of any law, rule, or regulation, or
  - (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114.

**References in Text.** Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), referred to in subsections (b) and (d), is classified to section 2000e-16 of Title 42, The Public Health and Welfare.

Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), referred to in subsections (b) and (d), are classified to sections 631 and 633a of Title 29, Labor.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), referred to in subsections (b) and (d), is classified to section 206(d) of Title 29.

Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), referred to in subsections (b) and (d), is classified to section 791 of Title 29.

The civil service laws, referred to in subsection (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

**Effective Date.** Section effective 60 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 2723.

**Cross References.** Personnel practices prohibited by personnel management system of General Accounting Office, see section 732 of Title 31, Money and Finance.

**Index to Notes**

- Retaliation 1
- Right of action 5
- Standards 2
- Whistle-blowing protections Generally 3
- Disclosure of protected information 4

**1. Retaliation**

In proceeding concerning job demotion of employee of Veterans Administration, United States Merit Systems Protection

to prove by a preponderance of the evidence that the demotion was a reprisal for "whistleblowing." *Alley v. Veterans Admin. Medical Center*, C.A.8, 1982, 690 F.2d 151.

In case in which special counsel contended in effect that four deputy marshals' transfers to different duty stations were in retaliation for engaging in protected activities, Board, which upheld transfers of three deputies, had not violated principle to effect that knowledge of employees' protected activities on part of one with ultimate responsibility for a personnel action could support inference of retaliatory intent where Board had determined that those who effected the transfers had no knowledge of the protected activities and that those with knowledge had no effect. *Frazier v. Merit Systems Protection Bd.*, 1982, 672 F.2d 150, 217 U.S.App.D.C. 297.

**2. Standards**

To establish that agency action utilizing unapproved performance criteria was "based on" a prohibited personnel practice, petitioners would have to show that their performance, while falling the "no-acceptable performance" standard, was satisfactory under other applicable statutory standards. *Darby v. Internal Revenue Service*, 1982, 672 F.2d 102, 217 U.S.App.D.C. 330.

**3. Whistle-blowing protections—General**

"Whistleblowing" provisions of this chapter work only as a defense to disciplinary action. *Martin v. Lauer*, C.A.11, C.1982, 680 F.2d 24.

**4. Disclosure of protected information**

In regard to a government employee deciding whether to "blow the whistle" on government fraud, waste, abuse or illegality, the legal question of whether disclosure is prohibited by law is of critical importance to the whistleblower, and he must be allowed to consult his attorney for an answer to that question absent some strong governmental interest in limiting such communications. *Martin*

**3. Right of action**

In enacting this section Congress did not take away from probationary employees their preexisting right to seek redress of constitutional violations in district court actions, and limit of statutory remedy provided probationary employees governing adverse personnel action based on "whistleblowing" does not preclude resort to independent action alleging violation of rights under U.S.C.A. Const. Amend. 1 in adverse personnel action based on criticism of agency practices and/or procedures. *Borrell v. U. S. In-*

tern. Communications Agency, C.A.D.C. 1982, 682 F.2d 981.

A purported whistle blower has no private right of action under this section prohibiting an official from taking adverse personnel action against an employee as reprisal for "whistleblowing" on official violations of law, waste and abuse of authority, and in case of probationary employee, the office of special counsel is the exclusive avenue of relief for alleged prohibited personnel practices under this section. *Id.*

**§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation**

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

- (1) a violation of any law, rule, or regulation, or
- (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policy-making, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1117.

**Effective Date.** Section effective 60 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as a note under section 1101 of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 2723.

**§ 2304. Responsibility of the General Accounting Office**

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

- (1) significant actions taken by the Board to carry out its functions under this title; and
- (2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

Added Pub.L. 95-454, Title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.

<sup>1</sup> No in original.

**Effective Date.** Section effective 60 days after Oct. 13, 1978, see section 907 of

**Legislative History.** For legislative history and purpose of Pub.L. 95-454, see 1978 U.S. Code Cong. and Adm. News, p. 2723.

Attachment B:  
Colorado Employee Protection Law

... or until an examination  
...

63, § 26-2-2; L. 73, p. 426.

... the termination of his self-chosen  
... er, to return to state employment  
... ded all the rights and privileges  
... ave accrued if he had never left  
... ian employment. State Civil Serv.  
... Fleming, 183 Colo. 71, 514 P.2d  
... cert. denied, 415 U.S. 977, 94 S.  
... .. Ed. 2d 873 (1974).

... ment contingent upon returning  
... ter service. Reinstatement is con-  
... the employee returning to state  
... within one year after the period  
... ice or additional service imposed  
... : Civil Serv. Comm'n v. Fleming,  
... '1, 514 P.2d 1135 (1973), cert.  
... J.S. 977, 94 S. Ct. 1564, 39 L. Ed.

... guard. (1) The provisions  
... the payment by this state  
... the compensation of any  
... as provided in this part 3  
... ee retains his status after

... ho was a member of the  
... med forces of the United  
... or compensation from the  
... orces for a period of time  
... ceeding fifteen days.

... § 26-2-3.

... part 3 shall apply to any  
... n who entered the armed  
... rvice engaged in national

**HOURS**

... fices in the executive and  
... l be and remain open for

business daily, except on Saturdays, Sundays, and legal holidays, from the hour of 8:30 a.m. until the hour of 5:00 p.m.; except that nothing in this section shall affect the validity of any act performed by either of said departments before or after the hours specified in this section.

(2) Notwithstanding the provisions of subsection (1) of this section, when a city or city and county and the suburban area within a ten-mile radius of the boundaries thereof have a population in excess of fifty thousand inhabitants, the offices of any executive department of the state government located therein may vary its business hours from those indicated in subsection (1) of this section whenever the executive director of the principal department, with the approval of the governor, determines that such adjustment of hours will help alleviate peak traffic conditions and provide a more even flow of traffic for the purpose of creating safer highway conditions.

(3) Written notice of the variance permitted under subsection (2) of this section shall be given to the local news media of such cities or cities and counties not less than two weeks preceding the effective date of such variance.

Source: R & RE, L. 72, p. 180, § 1; C.R.S. 1963, § 26-3-1.

24-50-102. Appointment by outgoing officers prohibited. No state, county, or city appointive office, the term of which expires on or after the time fixed by law for the qualification of the officer having the authority to make such appointment, shall be filled by the outgoing appointing officer.

Source: R & RE, L. 72, p. 180, § 1; C.P.S. 1963, § 26-3-2.

**ARTICLE 50.5**

**State Employee Protection**

24-50.5-101.	Legislative declaration.	24-50.5-105.	Civil action.
24-50.5-102.	Definitions.	24-50.5-106.	Notice to state auditor.
24-50.5-103.	Retaliation prohibited.	24-50.5-107.	Reports to general assembly and governor.
24-50.5-104.	Complaints by state personnel system employees.		

24-50.5-101. Legislative declaration. The general assembly hereby declares that the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The general assembly further declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest

and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

Source: L. 79, p. 965, § 1.

**24-50.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Disciplinary action" means any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.

(2) "Disclosure of information" means the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.

(3) "Employee" means any person employed by a state agency.

(4) "State agency" means any board, commission, department, division, section, or other agency of the executive, legislative, or judicial branch of state government.

(5) "Supervisor" means any board, commission, department head, division head, or other person who supervises or is responsible for the work of one or more employees.

Source: L. 79, p. 965, § 1.

**24-50.5-103. Retaliation prohibited.** (1) Except as provided in subsection (2) of this section, no appointing authority or supervisor shall initiate or administer any disciplinary action against an employee on account of the employee's disclosure of information. This section shall not apply to:

(a) An employee who discloses information that he knows to be false or who discloses information with disregard for the truth or falsity thereof;

(b) An employee who discloses information from public records which are closed to public inspection pursuant to section 24-72-204;

(c) An employee who discloses information which is confidential under any other provision of law.

(2) It shall be the obligation of an employee who wishes to disclose information under the protection of this article to make a good faith effort to provide to his supervisor or appointing authority or member of the general assembly the information to be disclosed prior to the time of its disclosure.

Source: L. 79, p. 966, § 1.

**24-50.5-104. Complaints by state personnel system employees.** (1) Any employee in the state personnel system may file a written complaint with the state personnel board alleging a violation of section 24-50.5-103 if the employee demonstrates that reasonable communication to his supervisor,

appointing authority, or member of the general assembly has occurred in regard to the alleged violation. The state personnel board shall cause an investigation of the charges to be made by the state personnel director. If the investigation establishes that there is a reasonable basis for the charges, the appointing authority or supervisor shall be given written notice thereof. Within ten days after he receives such notice, the appointing authority or supervisor may petition the board for a hearing on the matter, and the board shall grant such hearing.

(2) If the state personnel board after hearing determines that a violation of section 24-50.5-103 has occurred, or if the investigation establishes a reasonable basis for the charges and no hearing is requested, the board shall order the appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, and expungement of the records of the employee who disclosed information, and, in addition, the state personnel board shall order that the employee filing the complaint be reimbursed for any costs incurred in the proceeding. Such reimbursement shall be made out of moneys appropriated to the agency which employs such employee. Judicial review of any determination by the state personnel board under this subsection (2) may be had in accordance with section 24-4-106.

(3) It shall be a defense in any disciplinary proceeding against an employee under section 24-50-125 that such proceeding was initiated in violation of section 24-50.5-103, and the issue of the violation of section 24-50.5-103 shall be determined by the state personnel board as a part of the disciplinary proceeding.

(4) Whenever the state personnel board determines that an appointing authority or supervisor has violated section 24-50.5-103, it shall cause an entry to that effect to be made in the supervisor's personnel records.

Source: L. 79, p. 966, § 1.

**24-50.5-105. Civil action.** Any employee not in the state personnel system, or any employee in the state personnel system who has filed a complaint under section 24-50.5-104 (1) but no reasonable basis was found for the charges, may bring a civil action in the district court alleging a violation of section 24-50.5-103. If the employee prevails, the employee may recover damages, together with court costs, and the court may order such other relief as it deems appropriate.

Source: L. 79, p. 967, § 1.

**24-50.5-106. Notice to state auditor.** Whenever the state personnel board finds that a violation of section 24-50.5-103 involving the disclosure of information concerning waste of public funds or mismanagement of a state agency has occurred, it shall transmit a copy of the investigation report to the state auditor, who shall proceed in accordance with section 2-3-101 (3) (c), C.I.S. 1973.

Source: L. 79, p. 967, § 1.

24-50.5-107. Reports to general assembly and governor. The state personnel board shall report annually to the general assembly and the governor concerning the complaints filed, hearings held, and actions taken pursuant to this article.

Source: L. 79, p. 967, § 1.

## PUBLIC EMPLOYEES' RETIREMENT SYSTEMS

### ARTICLE 51

#### Public Employees' Retirement Systems

##### PART I

##### STATE EMPLOYEES

24-51-101.	Definitions.	24-51-125.	Members remaining in public service — election of option.
24-51-102.	Public employees' retirement association.	24-51-126.	Colorado state university — U. S. department of agriculture employees.
24-51-103.	Retirement board — officers — group life insurance.	24-51-127.	Division of wildlife and the division of parks and outdoor recreation.
24-51-104.	Members' contributions.	24-51-128.	Members of the general assembly.
24-51-105.	State contributions.	24-51-129.	Persons eligible.
24-51-106.	Retirement fund defined — state treasurer custodian — disbursements.	24-51-130.	Applications.
24-51-107.	Board to direct investments of retirement fund.	24-51-131.	When emeritus retirement benefits commence.
24-51-108.	Legal adviser.	24-51-132.	State employees' emeritus retirement fund — limitation on pension.
24-51-109.	Refunds, when made — deferred retirement annuity.	24-51-133.	Funds not subject to process.
24-51-110.	Members may be reinstated.	24-51-134.	Retired state members — employment in position covered by association — when.
24-51-111.	Retirement for superannuation.	24-51-135.	Redetermination of benefits.
24-51-112.	Optional forms of annuities.	24-51-136.	Increase in public employees' benefits — stabilization fund — creation.
24-51-113.	Military service — waiver of payments — service credit.	24-51-137.	Colorado association of school boards and high school activities association.
24-51-114.	Colorado state patrol.	24-51-138.	Reserve fund credits.
24-51-115.	Disability retirement — annuity.	24-51-138.5.	Fire and police pension association.
24-51-116.	Medical examination for disability.	24-51-138.6.	Special districts association.
24-51-117.	Heirs to receive payment, when.	24-51-139.	Credited service in excess of twenty years prior to July 1, 1969.
24-51-118.	Annuities to be paid monthly.	24-51-140.	Prorating clause.
24-51-119.	Minimum contribution time — rights.	24-51-141.	District attorneys covered under public employees'
24-51-120.	Funds not subject to process.		
24-51-121.	Insurance, banking laws not to apply.		
24-51-122.	Gifts and bequests.		

24-51-143.	Salary deductions.
24-51-144.	State payments.
24-51-145.	Retirement of district attorneys.
24-51-146.	Benefits not considered compensation or increase in emoluments.
24-51-147.	Effective date — retroactive application limited.

##### PART 2

##### PUBLIC EMPLOYEES

24-51-200.5.	Definitions.
24-51-201.	Extension of coverage.
24-51-202.	Exemption by state subdivisions.
24-51-203.	Exemption of present employees of covered subdivisions.
24-51-204.	Duties of public employers.
24-51-205.	Public employee deductions.
24-51-206.	Public employer payments.
24-51-207.	Municipal employees' reserve fund.
24-51-208.	School district employees' reserve fund.
24-51-209.	Administration and management.
24-51-210.	Retirement of municipal employee members.
24-51-211.	Retirement of school district employee members.
24-51-212.	Optional forms of annuities.
24-51-213.	Disability retirement — annuity.
24-51-214.	Medical examination for disability retirement.
24-51-215.	General provisions.
24-51-216.	Military service — waiver of payments — service credit.
24-51-217.	Heirs to receive amount due member.
24-51-218.	Annuities paid in installments.
24-51-219.	Funds not subject to process.
24-51-220.	Insurance and banking laws not to apply.
24-51-221.	May receive gifts and bequests.
24-51-222.	Rules and regulations.
24-51-223.	Retired school district members — employment in position covered by association — when.
24-51-224.	(Repealed).
24-51-225.	Redetermination of benefits.
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24-51-227.	City council or other governing authority of

24-51-229. (Repealed).

##### PART 3

##### COUNTY OR DISTRICT HEALTH DEPARTMENTS

24-51-301.	Coverage to employees of health departments — application.
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24-51-303.	Employees in unorganized counties.

##### PART 4

##### HOUSING AUTHORITIES

24-51-401.	Housing authorities covered.
24-51-402.	Funds, how credited.

##### PART 5

##### SCHOOL EMPLOYEES

24-51-501.	Legislative declaration.
24-51-502.	School employees covered.
24-51-503.	Arrears in payments.
24-51-504.	Penalty for arrears.
24-51-505.	Reciprocity of retirement systems.

##### PART 6

##### JUDGES OF COURTS OF RECORD

24-51-601.	Courts covered under public employees' retirement association.
24-51-602.	Exemption for present judges.
24-51-603.	Salary deductions.
24-51-604.	State payments.
24-51-605.	Investment of judges' retirement fund.
24-51-606.	Administration and management.
24-51-607.	Retirement of judges.
24-51-608.	Optional forms of annuities.
24-51-609.	Disability retirement.
24-51-610.	Medical examination for retirement.
24-51-611.	Refunds — retention.
24-51-612.	Heirs to receive payments — when.
24-51-613.	Annuities paid monthly.
24-51-614.	Redetermination of benefits.

##### PART 7

##### PUBLIC EMPLOYEES' SOCIAL

Attachment C:  
Michigan Whistle Blower Protection Act

(4) When a recommendation to an appointing authority is made by the board concerning an unclassified employee or appointee, the appointing authority shall take appropriate disciplinary action which may include dismissal.

P.A.1973, No. 196, § 5, Imd. Eff. Jan. 8, 1974.

## Library References

States 67, 73.

C.J.S. States §§ 120, 121, 130 to 138, 140.

## Notes of Decisions

In general 1  
Closed sessions 2

behalf of the agency. Op.Atty.Gen.1980, No. 5640.

## 1. In general

The son of a member of the barrier free design board may be employed by the board without violation of the ethical standards of § 15.341 et seq., although a member of the barrier free design board may not participate in any case in which his or her son appears as

## 2. Closed sessions

The state board of ethics is subject to the Open Meetings Act, § 15.261, and when it meets in closed session for the protection of individual rights, it must comply with the provisions of said act, with respect to the calling and holding of the closed session. Op.Atty.Gen. 1980, No. 5760.

## 15.346 Rules

Sec. 6. The board may promulgate rules governing its own procedures pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. For a period of 1 year following the effective date of this act the board shall have full authority to exercise all of its functions in accordance with temporary rules of procedure promulgated by the board. Both the temporary and permanent rules of the board shall provide that:

(a) The board may request the attendance of any witness whose testimony, in the judgment of the board, will aid in the conduct of its investigations.

(b) A person appearing before the board shall submit either sworn or unsworn testimony as the board may decide and may at all times be represented and accompanied by counsel.

(c) A record of testimony taken before the board or a hearing officer designated by it shall be made in the manner prescribed by the board.

(d) The board may, when it appears necessary for the protection of individual rights, hold its meetings and hearings in private. All other meetings and hearings shall be open to the public.

P.A.1973, No. 196, § 6, Imd. Eff. Jan. 8, 1974.

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## Notes of Decisions

## 1. In general

Records and files concerning any dismissed complaint or terminated investigation by the state board of ethics may be suppressed to protect an individual's privacy, but may only be disposed of by the state board of ethics in accordance with § 18.13c. Op.Atty.Gen. 1980, No. 5760.

## 15.347 Appropriation

Sec. 7. There is appropriated from the general fund of the state an amount necessary to implement this act but not to exceed \$10,000.00 for the fiscal year ending June 30, 1974.

P.A.1973, No. 196, § 7, Imd. Eff. Jan. 8, 1974.

## Library References

States 131.

C.J.S. States §§ 230, 234 to 239.

## 15.348 Effect on other acts

Sec. 8. The provisions of this act shall not supersede the provisions of any other acts heretofore or hereinafter enacted and shall be interpreted and administered to the extent not inconsistent with other acts.

P.A.1973, No. 196, § 8, Imd. Eff. Jan. 8, 1974.

MCLA.

## WHISTLEBLOWERS' PROTECTION ACT

*Caption editorially supplied*

## Library References

M.L.P. Employment §§ 1, 23, 131.

M.L.P. State § 6.

P.A.1980, No. 469, Eff. March 31, 1981

AN ACT to provide protection to employees who report a violation or suspected violation of state, local, or federal law; to provide protection to employees who participate in hearings, investigations, legislative inquiries, or court actions; and to prescribe remedies and penalties.

*The People of the State of Michigan enact:*

## 15.361 Definitions

Sec. 1. As used in this act:

(a) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, ex-

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press or implied. Employee includes a person employed by the state or a political subdivision of the state except state classified civil service.

(b) "Employer" means a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.

(c) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(d) "Public body" means all of the following:

(i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.

(ii) An agency, board, commission, council, member, or employee of the legislative branch of state government.

(iii) A county, city, township, village, intercounty, intercity, or regional governing body, a council, school district, special district, or municipal corporation, or a board, department, commission, council, agency, or any member or employee thereof.

(iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.

(v) A law enforcement agency or any member or employee of a law enforcement agency.

(vi) The judiciary and any member or employee of the judiciary.  
P.A.1980, No. 469, § 1, Eff. March 31, 1981.

### 15.362 Discharge of, threats to or discrimination against employee for reporting violations of law

Sec. 2. An employer shall not discharge, threaten, or otherwise discriminate 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, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

P.A.1980, No. 469, § 2, Eff. March 31, 1981.

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#### Library References

Labor Relations ¶7.

C.J.S. Labor Relations § 2 et seq.

### 15.363 Civil actions for injunctive relief or damages

Sec. 3. (1) A person who alleges a violation of this act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.

(2) An action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has their principal place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney fees.

(4) An employee shall show by clear and convincing evidence that they or a person acting on their behalf was about to report, verbally or in writing, a violation or a suspected violation of a law of this state, a political subdivision of this state, or the United States to a public body.

P.A.1980, No. 469, § 3, Eff. March 31, 1981.

#### Library References

Action ¶3.  
Injunction ¶25.

C.J.S. Actions § 9.  
C.J.S. Injunctions §§ 41, 42, 54.

### 15.364 Remedies ordered by court

Sec. 4. A court, in rendering a judgment in an action brought pursuant to 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 may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

P.A.1980, No. 469, § 4, Eff. March 31, 1981.

#### Library References

Officers ¶76.

C.J.S. Officers and Public Employees  
§§ 114 to 116, 221.

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## 15.365 PUBLIC OFFICERS AND EMPLOYEES

### 15.365 Penalties for violations

Sec. 5. (1) A person who violates this act shall be liable for a civil fine of not more than \$500.00.

(2) A civil fine which is ordered pursuant to this act shall be submitted to the state treasurer for deposit in the general fund.

P.A.1980, No. 469, § 5, Eff. March 31, 1981.

#### Library References

Labor Relations ⇨1056.

C.J.S. Labor Relations § 1011.

### 15.366 Collective bargaining rights

Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

P.A.1980, No. 469, § 6, Eff. March 31, 1981.

#### Library References

Labor Relations ⇨257.

C.J.S. Labor Relations §§ 219 to 250.

### 15.367 Compensation for employee participation in investigation, hearing or inquiry

Sec. 7. This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 2<sup>1</sup> of this act.

P.A.1980, No. 469, § 7, Eff. March 31, 1981.

<sup>1</sup> Section 15.362.

### 15.368 Notices of employee protections and obligations

Sec. 8. An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act.

P.A.1980, No. 469, § 8, Eff. March 31, 1981.

#### Library References

Labor Relations ⇨7.

C.J.S. Labor Relations § 2 et seq.

### 15.369 Short title

Sec. 9. This act shall be known and may be cited as "the whistle-blowers' protection act".

P.A.1980, No. 469, § 9, Eff. March 31, 1981.

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## POLITICAL ACTIVITIES

15.401

### POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

*Caption editorially supplied*

#### Library References

M.L.P. State § 6.

P.A.1976, No. 169, Imd. Eff. June 25

AN ACT to regulate certain political activities by certain public employees; to prescribe the powers and duties of certain state agencies; and to provide penalties. Amended by P.A.1979, No. 15, § 1, Imd. Eff. May 24.

*The People of the State of Michigan enact:*

### 15.401 Public employee defined

Sec. 1. As used in this act, "public employee" means an employee of the state classified civil service, or an employee of a political subdivision of the state who is not an elected official.

P.A.1976, No. 169, § 1, Imd. Eff. June 25.

#### Library References

Elections ⇨311.

C.J.S. Elections § 324.

#### Notes of Decisions

In general 1  
Civil service commission 2  
Job performance 5  
Public employees 3  
Rules and regulations 6  
Volunteers 4

ture to enact statute providing that employee of state classified civil service may engage in certain political activities. Id.

The Political Freedom Act was enacted to permit civil service employees and employees of political subdivisions of the state to engage in certain political activities. Council 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1978) 274 N.W.2d 804, 87 Mich.App. 420, affirmed 292 N.W.2d 442, 408 Mich. 385.

State cannot require individual to relinquish rights guaranteed him or her by U.S.C.A.Const. Amend. 1 as a condition of public employment, and when political activities of public employee are unrelated to his or her job responsibilities, the employee must be treated as a member of the general public for purpose of adjudicating U.S.C.A.Const. Amend. rights. Id.

#### 1. In general

Legislature of state is empowered to enact laws to promote and regulate political campaigns and candidacies. Council No. 11, Am. Federation of State, County and Municipal Emp. (AFSCME), AFL-CIO v. Michigan Civil Service Commission (1980) 292 N.W.2d 442, 408 Mich. 385.

There is no provision in State Constitution which plainly, or by fair implication, empowers the state civil service commission to regulate the off-duty political activity of classified civil servants which in any manner preemptively conflicts with power of legisla-

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# ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



## MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Staff

DATE: May 3, 1984

RE: HB 578 Whistleblowing

HB 578 would prohibit state employees from acting or failing to act on personnel matters when the action would be a reprisal for whistleblowing.

### Sectional Analysis

Section 1: The first substantive change to the bill is on page 2, lines 8-12. Subsection (6) amends state statutes to prohibit personnel action that would be a reprisal to a state employee for disclosure of certain information.

Section 2: (page 2, lines 13-19) adds a new section to statute that determines the head of each agency or the person to whom they delegate the authority as the person responsible for preventing personnel actions used to punish whistleblowers.

Section 3. Subsection(a) outlines the type of information state employees may disclose and be protected from personnel action based on the disclosure.

Subsection (b), page 3, lines 5-10, allows a state employee to disclose the information outlined in (a) to the appropriate person in the agency.

Subsection (c), page, lines 11-21, allows the head of each agency to the employee within the agency who is to receive the information.

Subsection (d), page 3, lines 21-26, clarifies that nothing in the section authorizes withholding information from the legislature or any adverse personnel action for whistleblowing.

Subsection (e), page 3, line 26- page 4, line 9, defines "personnel action."

Section 4: defines that this section apply to employees in the classified and partially exempt service.

### Fiscal information

This bill has a zero fiscal note.

# ALASKA STATE LEGISLATURE

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## SENATE STATE AFFAIRS

### MEETING SCHEDULE

May 1, Tuesday 3:00 pm

Butrovich Room  
Capitol Building

N O M E E T I N G

May 3, Thursday 3:00 pm

Butrovich Room  
Capitol Building

- HB 498 Military Retirement benefits *FIN*
- HB 556 Complaints alleging retaliation before the State  
Commission for Human Rights *JVD*
- HB 578 Whistleblowing *JVD*
- V* SJR 28 The right of a person to keep and bear arms *- JVD*
- HCR 53 Requesting the State Geographic Board to name an  
unnamed lake near Ketchikan as "Ed Todd Lake" *X*

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§ 39.25.070

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§ 39.25.080 PUBLIC OFFICERS AND EMPLOYEES § 39.25.110

**Sec. 39.25.080. Public records.** The state personnel records, except those records which the rules require to be held confidential for reasons of public policy, are public records and are open to public inspection, subject to reasonable regulations as to the time and manner of inspection. (§ 18 ch 144 SLA 1960)

**Article 2. Coverage of Personnel.**

**Section**

- |                         |  |
|-------------------------|--|
| 90. Coverage of chapter | 120. Partially exempt service                              |
| 100. Classified service | 130. Extension of partially exempt and classified services |
| 110. Exempt service     |  |

**Sec. 39.25.090. Coverage of chapter.** This chapter and the rules adopted under it apply to all positions in (1) the classified service, and (2) the partially exempt service as specifically provided. (§ 3 ch 144 SLA 1960)

**Sec. 39.25.100. Classified service.** The classified service consists of all positions in the state service not included in the exempt service or in the partially exempt service. (§ 4 ch 144 SLA 1960)

Quoted in *Mueller v. Alaska State Bd. of Personnel*, Sup. Ct. Op. No. 396 (File No. 738), 425 P.2d 145 (1967); *State v. Bogenrife*, Sup. Ct. Op. No. 918 (File No. 1665), 513 P.2d 13 (1973).

**Sec. 39.25.110. Exempt service.** The following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

- (1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;
- (2) justices of the supreme court, judges of the superior court, judges and magistrates of other state courts established by law;
- (3) the administrative director and all other employees of the state court system, and employees and members of the Judicial Council;
- (4) the chief administrative officer of each house of the legislature;
- (5) all employees of the state legislature and its agencies;
- (6) the head of each principal department in the executive branch;
- (7) officers, members of the teaching staff, and employees of the University of Alaska;
- (8) certificated teachers employed by the state to teach in schools operated by the state;
- (9) patients and inmates employed in state institutions;
- (10) persons employed in a professional capacity to make a temporary and special inquiry, study, or examination as authorized by the governor, the legislature, or a legislative committee;
- (11) members of boards, commissions, or authorities, except as otherwise provided by law;

paragraph (21) of this section as amended by ch. 112, SLA 1982.

The second 1982 amendment rewrote this section.

The 1983 amendment rewrote paragraph (13).

Editor's notes. — AS 47.30.340, referred to in paragraph (13) was repealed by § 7, ch. 84, SLA 1981.

**Sec. 39.25.120. Partially exempt service.** (a) Positions in the partially exempt service are included in the position classification plan established under this chapter and are compensated according to the pay plan (AS 39.27.011).

(b) A person holding a position in the partially exempt service is not required to take an examination or qualify or earn a place on a register, and is not eligible for a hearing by the personnel board in case of dismissal, demotion, or suspension. Positions in the partially exempt service are specifically exempt from the rules established under AS 39.25.150(3) — (10), (13), (14), and (17).

(c) The following positions in the state service constitute the partially exempt service:

(1) deputy and assistant commissioners of the principal departments of the executive branch, including the assistant adjutant general of the Department of Military Affairs;

(2) the directors of the major divisions of the principal departments of the executive branch and the regional directors of the Department of Transportation and Public Facilities;

(3) attorney members of the staff of the Department of Law and of the public defender agency;

(4) one private secretary for each head of a principal department in the executive branch;

(5) employees of councils, boards, or commissions established by statute in the Office of the Governor or the office of the lieutenant governor, unless a different classification is provided by statute;

(6) the executive director, deputy director, hearing officers, and administrative law judges of the Alaska Public Utilities Commission;

(7) the director, deputy director, staff legal counsel, and hearing officers of the Alaska Transportation Commission;

(8) not more than two special assistants to the commissioner of each of the principal departments of the executive branch, but the number may be increased if the partially exempt service is extended under AS 39.25.130 to include the additional special assistants;

(9) the principal executive officer of the following boards, councils, or commissions:

- (A) Alaska Public Broadcasting Commission;
- (B) Professional Teaching Practices Commission;
- (C) Parole Board;
- (D) Board of Nursing;
- (E) Real Estate Commission;

- (F) Alaska Royalty C
- (G) Alaska Historical
- (H) Alaska State Co
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§ 39.25.120

— AS 47.30.340, paragraph (13) was repealed 1981.

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§ 39.25.120

PUBLIC OFFICERS AND EMPLOYEES

§ 39.25.120

(F) Alaska Royalty Oil and Gas Development Advisory Board;

(G) Alaska Historical Commission;

(H) Alaska State Council on the Arts;

(I) Alaska Police Standards Council;

(J) Council on Science and Technology;

(K) Older Alaskans Commission;

(10) Alaska Pioneers' Home managers;

(11) hearing examiners in the Department of Revenue;

(12) the comptroller in the division of treasury, Department of Revenue;

(13) investment officers in the Department of Revenue;

(14) airport managers in the Department of Transportation and Public Facilities employed at the Anchorage and Fairbanks International Airports;

(15) the deputy director of the division of tourism and the deputy director of the division of insurance in the Department of Commerce and Economic Development;

(16) the executive director and staff of the Alaska Public Offices Commission;

(17) the director, deputy director, personnel analysts II, labor relations analysts I, labor relations analysts II, senior negotiators, and research directors of the division of labor relations in the Department of Administration;

(18) the rehabilitation administrator of the Workers' Compensation Board. (§ 6 ch 144 SLA 1960; am § 2 ch 48 SLA 1961; am § 2 ch 133 SLA 1961; am § 4 ch 5 SLA 1966; am § 3 ch 104 SLA 1969; am § 2 ch 109 SLA 1969; am § 4 ch 78 SLA 1971; am § 9 ch 47 SLA 1974; am § 4 ch 82 SLA 1975; am § 10 ch 207 SLA 1975; am § 2 ch 157 SLA 1976; am § 19 ch 263 SLA 1976; am Executive Order No. 39 § 6 (1977); am § 1 ch 103 SLA 1978; am § 2 ch 108 SLA 1978; am Executive Order No. 41 § 3 (1980); am Executive Order No. 42 §§ 3, 4 (1980); am Executive Order No. 43 § 4 (1980); am Executive Order No. 44 § 5 (1980); am Executive Order No. 45 § 3 (1980); am Executive Order No. 46 § 4 (1980); am § 18 ch 115 SLA 1980; am § 3 ch 79 SLA 1981; am § 4 ch 110 SLA 1981; am Executive Order No. 48 § 3 (1981); am § 4 ch 50 SLA 1982; am § 26 ch 93 SLA 1982; am § 8 ch 112 SLA 1982)

Effect of amendments. — The first 1981 amendment added a paragraph (19) to this section as it existed prior to the third 1982 amendment. These provisions are now contained in subparagraph (c)(9)(K).

The second 1981 amendment substituted a comma for "and" preceding "deputy director" and added "hearing officers, and administrative law judges" following "deputy director" in present paragraph (11).

The third 1981 amendment substituted "Department of Administration" for "Department of Environmental Conservation" in paragraph (17) of this section as it existed prior to the third 1982 amendment of this section. The provisions of that paragraph are now contained in subparagraph (c)(9)(J).

The first 1982 amendment added paragraph (c)(17).

The second 1982 amendment added paragraph (c)(18).

**Sec. 39.26.020. Application of provisions.** The provisions of AS 39.26.010 and 39.26.015 apply to those state employees in the classified and partially exempt services. (§ 1 ch 102 SLA 1971; am § 2 ch 13 SLA 1976)

**Chapter 27. Pay Plan for State Employees.**

<b>Section</b>	<b>Section</b>
10. [Repealed]	25. Swing and graveyard shift differentials
11. Salary schedule	30. Annual salary survey
12. Temporary salary schedules	35. Preparation and submission of pay schedules
15. [Repealed]	40. University salary survey
20. Pay step differentials by election district and in other states	45. Definitions
22. Pay increments for longevity in state service	

**Sec. 39.27.010. Basic salary schedule.**

Repealed by § 12 ch 80 SLA 1978.

**Cross reference.** — For present provisions covering the subject matter of the repealed section, see AS 39.27.011.

**Editor's note.** — The repealed section derived from § 1, ch. 127, SLA 1962; § 1,

ch. 112, SLA 1966; § 3, ch. 123, SLA 1967; § 7, ch. 101, SLA 1969; § 7, ch. 193, SLA 1970; § 1, ch. 87, SLA 1971; § 1, ch. 47, SLA 1974; § 1, ch. 138, SLA 1975.

**Sec. 39.27.011. Salary schedule.** (a) [Effective until January 1, 1981] The following monthly basic salary schedule is approved as the pay plan for classified and partially exempt employees in the executive branch of the state government who are not members of a collective bargaining unit established under the authority of the Public Employment Relations Act:

Range No.	Step A	Step B	Step C	Step D	Step E	Step F
05	1,075	1,106	1,140	1,173	1,207	1,240
06	1,140	1,173	1,207	1,240	1,277	1,315
07	1,207	1,240	1,277	1,315	1,355	1,399
08	1,277	1,315	1,355	1,399	1,440	1,487
09	1,355	1,399	1,440	1,487	1,533	1,577
10	1,440	1,487	1,533	1,577	1,628	1,678
11	1,533	1,577	1,628	1,678	1,731	1,787
12	1,628	1,678	1,731	1,787	1,850	1,915
13	1,731	1,787	1,850	1,915	1,984	2,058
14	1,850	1,915	1,984	2,058	2,132	2,215
15	1,984	2,058	2,132	2,215	2,289	2,377
16	2,132	2,215	2,289	2,377	2,465	2,556
17	2,289	2,377	2,465	2,556	2,652	2,746
18	2,465	2,556	2,652	2,746	2,845	2,953

Range No.	Step
19	2,652
20	2,845
21	3,040
22	3,240
23	3,445
24	3,655
25	3,870
26	4,090
27	4,315
28	4,545
29	4,780
30	5,020

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Range No.	Step
05	1,075
06	1,140
07	1,207
08	1,277
09	1,355
10	1,440
11	1,533
12	1,628
13	1,731
14	1,850
15	2,058
16	2,215
17	2,377
18	2,556
19	2,746
20	3,040
21	3,340
22	3,645
23	3,955
24	4,270
25	4,590
26	4,915
27	5,245
28	5,580

§ 39.25.220

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§ 39.26.010 PUBLIC OFFICERS AND EMPLOYEES § 39.26.015

## Chapter 26. Rights of State Employees.

### Section

- 10. Prohibited acts
- 15. Dress codes and appearance standards
- 20. Application of provisions

**Sec. 39.26.010. Prohibited acts.** (a) No department, agency, official, officer, or any person employed by the state may directly or indirectly:

(1) require or coerce any employee of the state to participate in any way in any activity or undertaking unless the activity or undertaking is related to the performance of official duties;

(2) require or coerce any employee of the state to make any report concerning any of his activities or undertakings unless the activity or undertaking is related to the performance of his official duties;

(3) except as directly related to the performance of his official duties, require or coerce any employee of the state to submit to any interrogation or examination or psychological test which is designed to elicit from him information concerning

(A) his personal relationship with any person connected with him by blood or marriage,

(B) his religious beliefs or practices,

(C) sexual matters,

(D) his political affiliation or philosophy;

(4) coerce any employee of the state to invest or contribute his earnings in any manner or for any purpose;

(5) restrict or attempt to restrict after-working-hour statements, pronouncements or other activities, not otherwise prohibited by law or personnel rule, of any employee of the state, if the employee does not purport to speak or act in an official capacity.

(b) The heads of the administrative departments of the state may adopt internal management regulations for their respective departments, specifying exceptions to (a) (5) of this section. These regulations shall be submitted for approval to the personnel board provided for in AS 39.25.060.

(c) The provisions of (a) of this section do not diminish the authority of an authorized law enforcement agency to conduct criminal investigations of state employees suspected of being involved in criminal activity. (§ 1 ch 12 SLA 1971)

**Sec. 39.26.015. Dress codes and appearance standards.** Dress codes and appearance standards adopted by a department, division, agency, official, or other employee of the state, which are to be applied to state employees shall be in the form of a regulation subject to legislative review under the Administrative Procedure Act (AS 44.62). (§ 1 ch 13 SLA 1976)