

## **Arkansas Whistle-Blower Act**

### **21-1-601. Title.**

This subchapter shall be known and may be cited as the "Arkansas Whistle-Blower Act".

History. Acts 1999, No. 1523, § 1.

### **21-1-602. Definitions.**

As used in this subchapter:

(1) "Adverse action" means to discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges;

(2) (A) "Appropriate authority" means:

(i) A state, county, or municipal government department, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or

(ii) A member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency, or organization.

(B) "Appropriate authority" includes, but is not limited to, the office of the Attorney General, the office of the Auditor of State, the Arkansas Ethics Commission, the Legislative Joint Auditing Committee and Arkansas Legislative Audit, and the offices of the various prosecuting attorneys having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste;

(3) "Communicate" means to give a verbal or written report to an appropriate authority;

(4) (A) "Public employee" means a person who performs a full or part-time service for wages, salary, or other remuneration for a public employer.

(B) "Public employee" includes without limitation a state employee under § 21-1-610;

(5) "Public employer" means any of the following:

(A) An agency, department, board, commission, division, office, bureau, council, authority, or other instrumentality of the State of Arkansas, including the offices of the various Arkansas elected constitutional officers and the General Assembly and its agencies, bureaus, and divisions;

(B) A state-supported college, university, technical college, community college, or other institution of higher education or department, division, or agency of a state institution of higher education;

(C) The Supreme Court, the Court of Appeals, the Administrative Office of the Courts, the circuit courts, and prosecuting attorneys' offices;

(D) An office, department, commission, council, agency, board, bureau, committee, corporation, or other instrumentality of a county government or a municipality or a district court, a county subordinate service district, a municipally owned utility, or a regional or joint governing body of one (1) or more counties or municipalities; or

(E) A public school district, school, or an office or department of a public school district in Arkansas;

(6) "Violation" means an infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer;

(7) "Waste" means a public employer's conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision's resources; and

(8) "Whistle-blower" means a person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

History. Acts 1999, No. 1523, § 2. 2005, No. 2190, § 21; 2013, No. 211, § 1.

#### **21-1-603. Public employer conduct prohibited - Good faith communication.**

(a) (1) A public employer shall not take adverse action against a public employee because the public employee or a person authorized to act on behalf of the employee communicates in good faith to an appropriate authority:

(A) The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or

(B) A violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state.

(2) The communication shall be made at a time and in a manner which gives the public employer reasonable notice of need to correct the waste or violation.

(b) (1) For purposes of subsection (a) of this section, a public employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation.

(2) Good faith is lacking when the public employee does not have personal knowledge of a factual basis for the communication or when the public employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous.

(c) A public employer shall not take an adverse action against a public employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.

(d) A public employer shall not take an adverse action against a public employee because an employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of the state or a political subdivision of the state.

(e) A public employer shall not take an adverse action against a public employee because of a report of a loss of public funds under § 25-1-124.

History. Acts 1999, No. 1523, § 3; 2003, No. 601, § 1; 2015, No. 1103, § 1.

#### **21-1-604. Civil liability.**

(a) A public employee who alleges a violation of this subchapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) calendar days after the occurrence of the alleged violation of this subchapter.

(b) An action commenced under this section may be brought in the circuit court for the county where the alleged violation occurred, for the county where the complainant resides, or in the Pulaski County Circuit Court if the complaint is filed against an agency, department, or institution of state government.

(c) To prevail in an action brought under the authority of this section, the public employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee or a person acting on his or her behalf engaged or intended to engage in an activity protected under this subchapter.

(d) As used in this section, "damages" means damages for a job-related injury or loss caused by each violation of this subchapter, including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys' fees.

(e) (1) A public employer shall have an affirmative defense to a civil action brought by a public employee under this subchapter if the adverse action taken against a public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication made pursuant to § 21-1-603.

(2) The public employer must prove the existence of the public employee's misconduct unrelated to the communication by a preponderance of the evidence.

(f) (1) In the event the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration implements an employee grievance mediation program, a public employee or public employer may voluntarily participate in mediation under the office's mediation program if either one wishes to resolve a dispute between them that involves an adverse action taken against the public employee.

(2) Voluntary mediation shall occur before a civil action in which the public employee and public employer are parties has been initiated in a court.

(3) The Director of the Department of Finance and Administration shall adopt voluntary mediation application and request forms.

History. Acts 1999, No. 1523, § 4.

#### **21-1-605. Remedies.**

A court in rendering judgment under this subchapter may order any or all of the following remedies:

- (1) An injunction to restrain continued violation of the provisions of this subchapter;
- (2) The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position;
- (3) The reinstatement of full fringe benefits and retirement service credit;
- (4) The compensation for lost wages, benefits, and any other remuneration;
- (5) The payment by the public employer of reasonable court costs and attorney's fees.

History. Acts 1999, No. 1523, § 5.

#### **21-1-606. Attorney's fees.**

(a) A court may order that reasonable attorneys' fees and court costs be awarded to an employer if the court determines that an action brought by a public employee under this subchapter is without basis in law or fact.

(b) A public employee shall not be assessed attorneys' fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the public employee files a voluntary nonsuit concerning the employer within sixty (60) calendar days after determining that the employer would not be liable for damages.

History. Acts 1999, No. 1523, § 6.

**21-1-607. Protection of confidentiality.**

(a) This subchapter shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.

(b) (1) All materials and documentation, including without limitation notes, memoranda, recordings, preliminary drafts of investigation reports, and other data gathered in connection with a communication regarding the existence of waste or of a violation, are privileged and confidential and are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., except as provided in subdivisions (b)(2) and (3) of this section.

(2) Final reports issued by a public employer or an appropriate authority concerning a communication regarding the existence of waste or of a violation and any supporting documentation shall be open to public inspection and copying, except for documents that are exempt from disclosure under other law.

(3) This section does not apply to the name and identifying information of a state employee eligible to receive a reward under § 21-1-610 who does not request confidentiality under § 21-1-610(g).

(c) This section applies without limitation to communications regarding the existence of waste or of a violation received by a telephone hotline allowing for the reporting of fraud, waste, or abuse in government.

History. Acts 1999, No. 1523, § 7; 2015, No. 1103, § 2.

**21-1-608. Notification of rights.**

(a) A public employer shall use appropriate means to notify its public employees of their protection and obligations under this subchapter.

(b) (1) A public employer shall post in a conspicuous place a printed sign at least eight and one-half inches by eleven inches (8 ½" x 11") in size that:

- (A) Informs a public employee of the provisions of this subchapter;
- (B) Describes an appropriate authority to whom the public employee may communicate in good faith regarding the existence of waste or of a violation; and
- (C) If a telephone hotline exists for the reporting of fraud, waste, or abuse in government, contains the number of the telephone hotline.

(2) Arkansas Legislative Audit shall;

- (A) Prepare the printed sign under subdivision (b)(1) of this sections; and
- (B) Make the sign available electronically on its Internet website in a format that allows it to be printed by a public employer for posting in compliance with subdivision (b)(1) of this section.

History. Acts 1999, No. 1523, § 8; 2015, No. 1103, §3.

**21-1-609. [Repealed.]**

**21-1-610. Reward to state employee when communication of waste or violation results in savings of state funds - Definitions.**

(a) As used in this section:

(1) "State employee" means a person who performs a full- or part-time service for wages, salary, or other remuneration for a state employer; and

(2) "State employer" means:

(A) An agency, department, board, commission, division, office, bureau, council, authority, or other instrumentality of the State of Arkansas, including without limitation the:

(i) Offices of the various Arkansas elected constitutional officers; and

(ii) General Assembly and its agencies, bureaus, and divisions; or

(B) A state-supported college, university, technical college, community college, or other institution of higher education or department, division, or agency of a state institution of higher education.

(b) A state employee making a communication under § 21-1-603 shall be eligible to receive a reward in an amount equal to ten percent (10%) of any savings in state funds attributable to changes made based on a communication under § 21-1-603.

(c) Except as provided in subsection (g) of this section, upon the resolution of a matter communicated to an appropriate authority under § 21-1-603, the appropriate authority shall provide a written report detailing the content of the communication and the outcome of the communication to the:

(1) State employee who made the communication; and

(2) State employer that was the subject of the communication.

(d) After receiving a written report under subsection (c) of this section, a state employer shall:

(1) Document the savings in state funds attributable to changes made based on the communication filed under § 21-1-603 for one (1) full fiscal year; and

(2)(A) Within thirty (30) days of the end of the first full fiscal year in which the changes made based on the communication filed under § 21-1-603 were implemented, issue a report containing:

(i) The total savings in state funds resulting from the communication under § 21-1-603 for the first full fiscal year in which the changes were implemented;

(ii) The name of the state employee who made the communication resulting in the savings of state funds; and

(iii) The amount of the reward for which the state employee is eligible. The amount of the reward shall be equal to ten percent (10%) of the total savings in state funds reported under subdivision (d)(2)(A)(i) of this section. If the state employer concludes that the state employee is not eligible for a reward, the state employer shall state the reasons for that determination in the report.

(B) A report under subdivision (d)(2)(A) of this section shall be submitted to the:

(i) Performance Evaluation and Expenditure Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Review/PEER Subcommittee of the Joint Budget Committee;

(ii) State employee who made the communication under § 21-1-603 unless the state employee has elected to maintain confidentiality under subsection (g) of this section. The report to the state employee shall include a notice to the state employee of the right to an appeal under subsection (e) of this section; and

(iii) Clerk of the Arkansas State Claims Commission.

(e)(1) A state employee may appeal to the Arkansas State Claims Commission in the same manner for filing a claim under § 19-10-208 if the state employee believes that:

(A) A report under subdivision (d)(2)(A) of this section does not accurately reflect the savings attributable to the changes made based on the communication under § 21-1-603; or

(B) The state employer did not accurately assess the determination of a reward under this section, including without limitation denying a reward to the state employee.

(2) A state employee who pursues an appeal under subdivision (e)(1) of this section is granted the same protection provided to a public employee under § 21-1-603.

(3)(A) A written request for an appeal under subdivision (e)(1) of the section shall be filed within forty (40) days of the submission of the report under subdivision (d)(2)(A) of this section.

(B) The state employer did not accurately assess the determinations of a reward under this section, including without limitation denying a reward to the state employee.

(4) In an appeal to the commission, a state employee shall have the burden of proving by a preponderance of the evidence that the:

(A) Amount of savings reported by the state employer under subdivision (d)(2)(A) of this section does not accurately reflect the savings attributable to the changes made based on the communication under § 21-1-603; or

(B) State employer did not accurately assess the determination of a reward under this section.

(5)(A) The decision of the commission in a matter appealed under this subsection may be appealed only to the Claims Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Claims Subcommittee of the Joint Budget Committee.

(B)(i) Notice of appeal under subdivision (e)(5)(A) of this section shall be filed with the commission within forty (40) days after the commission renders a decision.

(ii) The commission, in a timely manner, shall notify the Legislative Council or the Joint Budget Committee and all parties to the matter when a notice of appeal to the Claims Review Subcommittee of the Legislative Council or Claims Subcommittee of the Joint Budget Committee is filed with the commission.

(iii) When the commission notifies parties of a decision of the commission, it shall advise the parties of the right of appeal.

(f)(1)(A) Except as provided in subdivision (f)(2) of this section, within thirty (30) days of the end of the period for appeal under subdivision (e)(3)(A) of this section or the resolution of an appeal under subsection (e) of this section, whichever is later, the clerk of the commission shall notify a state employer of the amount of a reward to be paid to a state employee.

(B) Upon receipt of notification under subdivision (f)(1) of this section, the state employer shall deliver a check to the clerk of the commission who shall deposit the same as a nonrevenue receipt into the Miscellaneous Revolving Fund from which he or she shall disburse the amount of the reward to the state employee.

(2)(A) No reward under this section shall be paid in excess of twelve thousand five hundred dollars (\$12,500).

(B) If the amount of a reward is greater than twelve thousand five hundred dollars (\$12,500), the reward shall be referred to the General Assembly for an appropriation.

(C) If a reward is appropriated to a state employer for the benefit of a state employee, it shall be paid from the funds available to the state employer.

(g)(1) A state employee wishing to maintain confidentiality under § 21-1-607 or who otherwise chooses to forego a reward under this section shall request to the appropriate authority that the report under subsection (c) of this section not include the state employee's name or identifying information.

(2) A state employee making a request under subdivision (g)(1) of this section shall not receive a reward under this section.

(3) The name and identifying information of a state employee who requests confidentiality under subdivision (g)(1) of this section is not disclosable under applicable state or federal law.

(h)(1) Except as provided in subdivision (h)(2) and (3) of this section, a reward under this section shall not be payable for a communication made by a state employee in the normal course of the state employee's job duties.

(2) If a communication in the normal course of a state employee's job duties detailing waste or a violation is not acted upon by the state employer within ninety (90) days, the state employee may make a communication under § 21-1-603 to an appropriate authority and be eligible for a reward under this section.

(3) A report by a state employee of a loss of public funds under § 25-1-124 shall be considered a communication in the normal course of the state employee's job duties if the state employee:

(A) Handles or exerts control over the funds of the state employer;

(B) Participates in making decisions or recommendations concerning the deposit, investment, or expenditure of the funds of the state employer; or

(C) Is responsible for auditing the funds of the state employer.

History. Acts 2013, No. 211, § 2; 2013, No. 1080, § 1; 2015, No. 1103, § 4.

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