

# PROTECTION OF EMPLOYEES WHO REPORT VIOLATIONS OF LAW

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## “WHISTLEBLOWERS”

A Minnesota employer cannot discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because:

- The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any government body or law enforcement official;
- The employee is requested by a public body or office to participate in an investigation, hearing or inquiry; or
- The employee refuses an employer’s order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason.
- The employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm.

An employee whose employment is involuntarily terminated may, within five working days following termination, request in writing that the employer provide the reason for the termination. The employer must provide the truthful reason for the termination in writing within five working days following receipt of the request. If the employee was terminated for “whistleblowing” activities, and the employer fails to provide the written reason for termination within the time period specified by law, the employer may be subject to a civil penalty of \$25 per day per injured employee, up to a maximum of \$750 per injured employee. Communication of the statement furnished by the employer cannot be the subject of a defamation action by the employee against the employer.

The identity of an employee making a report or providing information must be kept confidential by the public official or law enforcement officer unless the employee consents to identification or the investigator determines that disclosure is necessary for prosecution. If disclosure is necessary for prosecution, the employee must be informed prior to the disclosure. The law does not permit an employee to make statements or disclosures knowing they are false or that they are in reckless disregard of the truth. The law also does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

Employers must notify employees of their rights by posting a summary of the law. A summary is included on the minimum wage poster available from the Minnesota Department of Labor and Industry.

## OTHER STATUTORY PROTECTIONS

In addition to the protections of the “whistleblower” law discussed above, other Minnesota laws prohibit employers from discriminating, retaliating, or taking adverse action against employees for exercising their legal rights. Some of these laws include the Minnesota Human Rights Act, the federal Age Discrimination in Employment Act, the Americans with Disabilities Act, the state and federal Fair Labor Standards Acts, the Occupational Safety and Health Act, Workers’ Compensation laws, the Employee Retirement Income Security Act, and the Minnesota Parenting Leave law. Employers also may not take adverse employment action against employees whose wages are subject to garnishment, employees who are required to report child abuse and who do so, employees who participate in a strike, employees who are called to jury duty or who are summoned to court, and employees who request access to their personnel files as permitted by state law.

The Clean Air Act, the federal Water Pollution Control Act, the Energy Reorganization Act, the Age Discrimination in Employment Act, the Asbestos Hazard Emergency Response Act, Asbestos School Hazard Detection Act, the Civil Rights Act of 1991, the Civil Service Reform Act, the Employee Polygraph Protection Act, the Employee Retirement Income Security Act, the False Claims Act, the Federal Mine Safety and Health Act, the Financial Institution Reform, Recovery and Enforcement Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Resource Conservation and Recovery Act, the Sarbanes-Oxley Act of 2002, the Surface Mine Reclamation And Control Act, the Toxic Substance Control Act and the Whistleblower Protection Program of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century all provide specific protections from termination for employees who report violations of these federal laws.

The Sarbanes-Oxley Act protects investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. The law includes a whistleblower provision aimed at protecting employees of publicly traded companies who report fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against publicly traded companies relating to any securities law or other federal law pertaining to fraud against shareholders or any alleged violation. While Sarbanes-Oxley and the related rulemaking by the SEC and the stock exchanges has profoundly impacted the corporate governance and financial reporting processes at public companies, private companies should also pay attention to the provisions of these regulations and may realize benefits from improving their processes in order to respond effectively to internal or external complaints.