

# MANAGEMENT DIRECTIVE

205.16 Amended  
Number

## COMMONWEALTH OF PENNSYLVANIA GOVERNOR'S OFFICE

Subject:

Compliance with the Whistleblower Law, Act 1986-169

By Direction Of:

  
Thomas G. Paese, Secretary of Administration

Date:

November 22, 1995

Agency personnel offices must notify their employees and keep them informed of the protections and obligations under the *Whistleblower Law, Act 1986-169*. This amendment adds the Office of Inspector General to Policy when reporting wrongdoing and contains minor changes.

1. SCOPE. This directive applies to all employees in agencies, boards, and commissions under the Governor's jurisdiction.

2. POLICY. *The Act of December 12, 1986 (P.L. 1559 No. 169, 43 P.S. §§1421-1428)*, known as the *Whistleblower Law*, was signed into law on December 12, 1986, and became effective on February 10, 1987. The law provides legal protections to public employees who report, in good faith, wrongdoing or waste to their employer or to an appropriate enforcement agency. The law stipulates that:

a. Employers may not discharge, threaten, or otherwise engage in employment discrimination against an employee because the employee:

(1) Reports, in good faith, an instance of wrongdoing or waste to the employer, the Office of Inspector General, or to an appropriate enforcement authority.

(2) Is requested by an appropriate enforcement authority to participate in an investigation, hearing, inquiry, or court action.

b. Within 180 days after an alleged violation of the *Whistleblower Law*, the affected employee may bring a civil action in court for injunctive relief and/or damages. The employee must show by a preponderance of evidence that, prior to the alleged reprisal, he or she had reported or was about to report an instance or wrongdoing or waste to the employer or to an appropriate law enforcement authority.

c. In defending against charges, the employer must provide a preponderance of evidence proving that action against the employee occurred for separate and legitimate reasons.

d. Remedies and penalties for violation of the law may include the following:

(1) Reinstatement of an employee, payment of back wages, reinstatement of fringe benefits and seniority rights, actual damages, or a combination of these remedies. The court may also award the complainant attorneys fees and costs of litigation.

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(2) Against a person acting under the employer's authority, a civil fine of not more than \$500 and/or suspension from the public service for not more than six months.

### 3. PROCEDURES.

a. Public employers are required to post notices and use other appropriate means to notify their employees and keep them informed of protections and obligations provided under the *Whistleblower Law*.

- b. A copy of Enclosure 1 should be posted throughout each agency. The notification includes
- the full text of the *Whistleblower Law*. Each agency
- personnel office must alert their employees of the notification and where it is posted. This can be done using payroll stuffers, an agency newsletter, or other appropriate means.
  
- c. Agency personnel offices must ensure that newly-hired employees are informed of the provisions of the *Whistleblower Law*. In addition, provisions of the law should be incorporated into appropriate supervisory and management training programs.

Enclosure:

1 -- Employee Notification -- Whistleblower Law

The directive supersedes Management Directive 205.16 dated February 20, 1987.

## EMPLOYEE NOTIFICATION

### WHISTLEBLOWER LAW

As of February 10, 1987, public employes are covered by the provisions of the Whistleblower Law, Act 1986-169. The law provides legal protections to public employes who report wrongdoing or waste to their employer or to an appropriate enforcement agency. The text of the act is as follows:

"Providing protection for employees who report a violation or suspected violation of State, local or Federal law; providing protection for employees who participate in hearings, investigations, legislative inquiries or court actions; and prescribing remedies and penalties.

"The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

"Section 1. **Short title.** This act shall be known and may be cited as the Whistleblower Law.

"Section 2. **Definitions.** The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"**Appropriate authority.**" A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.

"**Employee.**" A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for a public body.

"**Employer.**" A person supervising one or more employees, including the employee in question; a superior of that supervisor; or an agent of a public body.

"**Good faith report.**" A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

"**Public body.**" All of the following:

"(1) A State officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.

"(2) A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.

"(3) Any other body which is created by Commonwealth or political subdivision authority or which is funded IN ANY AMOUNT by or through Commonwealth or political subdivision authority or a member or employee of that body.

"**Waste.**" An employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.

"**Whistleblower.**" A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person's superiors, to an agent of the employer or to an appropriate authority.

"**Wrongdoing.**" A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

**"Section 3. Protection of employees.**

**"(a) Persons not to be discharged.** -- No employer may discharge, threaten or otherwise discriminate or retaliate 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 makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

**"(b) Discrimination prohibited.** -- No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.

**"Section 4. Remedies.**

**"(a) Civil action.** -- A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

**"(b) Necessary showing of evidence.** -- An employee alleging a violation of this act must show by a PREPONDERANCE OF THE evidence that, prior to the alleged reprisal, the employee or person acting on behalf of the employee had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.

**"(c) Defense.** -- It shall be a defense to an action under this section if the defendant proves by a preponderance of the evidence that the action by the employer occurred for separate and legitimate reasons, which are not merely pretextual.

**"(d) Civil service employees.** -- An employee covered by civil service who contests a civil service action, believing it to be motivated by his having made a good faith report, VERBALLY OR IN WRITING, of an instance of wrongdoing or waste, may submit as admissible evidence any or all material relating to the action as whistleblower and to the resulting alleged reprisal.

**"Section 5. Enforcement.** A court, in rendering a judgment in an action brought under 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.

**"Section 6. Penalties.** A person who, under color of an employer's authority, violates this act shall be liable for a civil fine or not more than \$500. Additionally, except where the person holds an elected public office, if the court specifically finds that the person, while in the employment of the Commonwealth or a political subdivision, committed a violation of this act with the intent to discourage the disclosure of criminal activity, the court may order the person's suspension from public service for not more than six months. A civil fine which is ordered under this section shall be paid to the State Treasurer for deposit into the General Fund.

**"Section 7. Construction.** This act shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by an appropriate authority, or impair the rights of any person under a collective bargaining agreement.

**"Section 8. Notice.** An employer shall post notices and use other appropriate means to notify employees and keep them informed of protections and obligations under this act.

**"Section 9. Effective date.** This act shall take effect in 60 days."