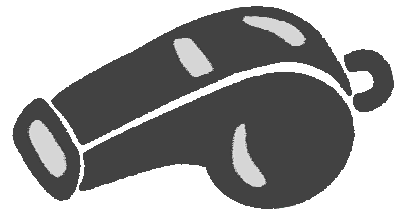


Rights & Responsibilities Under the State Government Effectiveness Act



The Nebraska State Government Effectiveness Act prohibits agencies of state government from retaliating against employees who report wrongdoing in state government to proper authorities, and provides certain protections for employees who are “whistleblowers” covered by the Act.

This protection generally applies to any state employee who makes a report of “wrongdoing” to the Nebraska Ombudsman’s Office, or to any elected state official.

Any employee who experiences retaliation from an employer for making a report of wrongdoing that is covered under the Act may make a complaint to the Nebraska Ombudsman’s Office.

What kind of “wrongdoing” is covered by the Act?

To be covered by the State Government Effectiveness Act, the employee making the report must reasonably believe that the “wrongdoing” being reported involves:

- A violation of any law;
- “Gross” mismanagement or “gross” waste of funds; or
- A situation that creates a “substantial and specific” danger to public health or safety.

Any report of information by an employee that does not meet this criteria will not be covered by the Act.

To whom should the wrongdoing be reported?

The wrongdoing must be reported by the employee either to the Nebraska Ombudsman’s Office, or to any elected state official (i.e., a member of the Nebraska Legislature, the State Auditor, the State Attorney General, etc.). Reports made to other officials or individuals are not covered by the Act.

What are the rights of a whistleblower who is covered by the Act?

An employing agency is forbidden from taking any personnel action against an employee in retaliation for making a report of wrongdoing that is covered by the Act. The prohibited retaliatory actions could consist of any actual or threatened involuntary personnel action taken against an employee, including:

- Dismissal;
- Demotion;
- Transfer;
- Reassignment;
- Suspension;
- Reprimand;
- Admonition;
- Reduction in rank;
- Reclassification;
- Withholding work; or
- Requiring a fitness-for-duty examination.



Any state employee who has grounds to believe that retaliation in violation of the Act has happened or is imminent may take their retaliation complaint to the Nebraska Ombudsman's Office for investigation and possible corrective action. The Ombudsman's Office will investigate to determine whether there was retaliation in violation of the Act and, if the Ombudsman's Office believes that a preponderance of evidence shows that retaliation occurred or is about to occur, then the Ombudsman's Office will prepare a written finding that the employee may use to challenge the employer's personnel action through grievance channels and through the courts.

What remedies are available to a whistleblower under the Act?

Once an employee has a finding from the Ombudsman's Office supporting the employee's allegation of retaliation, the employee then has the right to petition the State Personnel Board, or other relevant administrative authority, for a hearing within 90 days. The State Personnel Board, or other administrative authority, has the power to temporarily stay or reverse the employer's alleged retaliatory action against the employee pending the holding of the hearing. If personnel action against the employee is not stayed or reversed pending the hearing, then the State Personnel Board, or other administrative authority, must hold a hearing on the matter within ten days. The employee has a right to have legal counsel at this hearing. If the hearing results in a finding sustaining the employee's allegation of retaliation, then the State Personnel Board, or other administrative authority, may order the employer to pay the employee back pay, and reasonable attorney's fees, along with such other relief as is deemed appropriate. If the employee is dissatisfied with the outcome of the administrative hearing, then he or she may appeal to the courts.

Are there limits to a whistleblower's protections under the Act?

There are several important limitations under the Act that potential whistleblowers must be aware of:

- The protections of the Act only apply to employees of state administrative agencies. Legislative staff, the Governor's personal staff, and employees of the courts are not covered.
- For the protections of the Act to apply in a particular case, it must be established that the sanction taken against the employee by the employer had a retaliatory intent, that is, that the employer knew about the employee's whistle blowing activity, and was motivated by an intent to retaliate.
- An employee may not make an allegation of wrongdoing frivolously, or in an attempt to treat a personnel issue as an allegation of wrongdoing. Intentional misuse of the Act by an employee may be reported to the employing agency, and may be cause for disciplinary action against the offending employee.
- It may be important to establish that the alleged retaliatory action was taken within two years of the time of the employee's whistle blowing activities. In cases where the retaliation happened within two years of the whistle blowing, the Personnel Board has the authority to temporarily stay or reverse the employer's alleged retaliatory action against the employee pending the holding of the hearing.



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The State Government Effectiveness Act recognizes the importance of ordinary state employees in helping to protect against violations of the law, and fiscal waste and mismanagement in state government. The salvation of the state is in the watchfulness of its citizens, and the best eyes and ears of the citizens are the conscientious employees of state government.