

6. Whistleblower's

Whistleblower's Summary

Whistleblower's Protection Act - Act 469 of 1980

Health Facility Whistleblower's Protection Act – requirements

Whistleblower's Poster for LPH/Us

ATTENTION EMPLOYEES

The Michigan Whistleblowers' Protection Act (469 P .A. 1980) creates certain protections and obligations for employees and employers under Michigan law.

PROTECTIONS:

It is illegal for employers in Michigan to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you or a person acting on your behalf reports or is about to report a violation or a suspected violation of federal, state or local laws, rules or regulations to a public body.

It is illegal for employers in Michigan to discharge, threaten or otherwise discriminate against you regarding your compensation, terms, conditions, location or privileges of employment because you take part in a public hearing, investigation, inquiry or court action.

OBLIGATIONS:

The Act does not diminish or impair either your rights or the rights of your employer under any collective bargaining agreement.

The Act does not require your employer to compensate you for your participation in a public hearing, investigation, inquiry or court action.

The Act does not protect you from disciplinary action if you make a report to a public body that you know is false.

ENFORCEMENT:

If you believe that your employer has violated this Act you may bring civil action in circuit court within 90 days of the alleged violation of the Act.

PENALTIES:

Persons found in violation of this Act may be subject to a civil fine of up to \$500.00.

If your employer has violated this Act the court can order your reinstatement, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. The court may also award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees to the complainant if the court believes such an award is appropriate.

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THE WHISTLEBLOWERS' PROTECTION ACT

Act 469 of 1980

15.361 Definitions. [M.S.A. 17.428(1)]

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, express 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.

History: 1980, Act 469, Eff. Mar. 31, 1981.

15.362 Discharging, threatening, or otherwise discriminating against employee reporting violation of law, regulation, or rule prohibited; exceptions. [M.S.A. 17.428(2)]

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.

History: 1980, Act 469, Eff. Mar. 31, 1981.

15.363 Civil action in circuit court for injunctive relief or actual damages; "damages" defined; clear and convincing evidence required. [M.S.A. 17.428(3)]

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 his or her 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 he or she or a person acting on his or her 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.

History: 1980, Act 469, Eff. Mar. 31, 1981;--Am. 1982, Act 146, Eff. Mar. 30, 1983 .

15.364 Court judgment; order; remedies; awarding costs of litigation. [M.S.A. 17.428(4)]

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.

History: 1980, Act 469, Eff. Mar. 31, 1981 .

15.365 Violation; civil fine. [M.S.A. 17.428(5)]

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.

History: 1980, Act 469, Eff. Mar. 31, 1981 .

15.366 Diminishment or impairment of rights; collective bargaining agreement; protection of confidentiality of communications; disclosures. [M.S.A. 17.428(6)]

Sec. 6. This act shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement, nor to permit disclosures which would diminish or impair the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection.

History: 1980, Act 469, Eff. Mar. 31, 1981 ;--Am. 1982, Act 146, Eff. Mar. 30, 1983 .

15.367 Employer not required to compensate employee for participation in investigation, hearing, or inquiry. [M.S.A. 17.428(7)]

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 of this act.

History: 1980, Act 469, Eff. Mar. 31, 1981 .

15.368 Posting notices of protections and obligations required. [M.S.A. 17.428(8)]

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.

History: 1980, Act 469, Eff. Mar. 31, 1981 .

15.369 Short title. [M.S.A. 17.428(9)]

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

History: 1980, Act 469, Eff. Mar. 31, 1981



Health Facility Whistleblower Protection Act (2002 PA 731) (MCL 333.20180)

The People of the State of Michigan enact:

Sec. 20180. (1) A person employed by or under contract to a health facility or agency or any other person acting in good faith who makes a report or complaint including, but not limited to, a report or complaint of a violation of this article or a rule promulgated under this article; who assists in originating, investigating, or preparing a report or complaint; or who assists the department in carrying out its duties under this article is immune from civil or criminal liability that might otherwise be incurred and is protected under the whistleblowers' protection act, 1980 PA 469, MCL15.361 to 15.369. A person described in this subsection who makes or assists in making a report or complaint, or who assists the department as described in this subsection, is presumed to have acted in good faith. The immunity from civil or criminal liability granted under this subsection extends only to acts done pursuant to this article.

(2) Unless a person described in subsection (1) otherwise agrees in writing, the department shall keep the person's identity confidential until disciplinary proceedings under this article are initiated against the subject of the report or complaint and the person making or assisting in originating, investigating, or preparing the report or complaint is required to testify in the disciplinary proceedings. If disclosure of the person's identity is considered by the department to be essential to the disciplinary proceedings and if the person is the complainant, the department shall give the person an opportunity to withdraw the complaint before disclosure

(3) Subject to subsection (4), a person employed by or under contract to a hospital is immune from civil or criminal liability that might otherwise be incurred and shall not be discharged, threatened, or otherwise discriminated against by the hospital regarding that person's compensation or the terms, conditions, location, or privileges of that person's employment if that person reports to the department, verbally or in writing, an issue related to the hospital that is an unsafe practice or condition that is not a violation of this article or a rule promulgated under this article. The protections afforded under this subsection do not limit, restrict, or diminish, in any way, the protections afforded under the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

(4) Except as otherwise provided in subsection (5), a person employed by or under contract to a hospital is eligible for the immunity and protection provided under subsection (3) only if the person meets all of the following conditions before reporting to the department the issue related to the hospital that is an unsafe practice or condition that is not a violation of this article or a rule promulgated under this article:

(a) The person gave the hospital 60 days' written notice of the issue related to the hospital that is an unsafe practice or condition that is not a violation of this article or a rule promulgated under this article. A person who provides a hospital written notice as provided under this subdivision shall not be discharged, threatened, or otherwise discriminated against by the hospital regarding that person's compensation or the terms, conditions, location, or privileges of that person's employment. Within 60 days after receiving a written notice of an issue related to the hospital that is an unsafe practice or condition, the hospital shall provide a written response to the person who provided that written notice.

(b) The person had no reasonable expectation that the hospital had taken or would take timely action to address the issue related to the hospital that is an unsafe practice or condition that is not a violation of this article or a rule promulgated under this article.

(5) Subsection (4) does not apply if the person employed by or under contract to a hospital is required by law to report the issue related to the hospital that is an unsafe practice or condition that is not a violation of this article or a rule promulgated under this article before the expiration of the 60 days' notice required under subsection (4).

(6) A hospital shall post notices and use other appropriate means to keep a person employed by or under contract to the hospital informed of their protections and obligations under this section. The notices shall be in a form approved by the department. The notice shall be made available on the department's internet website and shall be posted in 1 or more conspicuous places where notices to persons employed by or under contract to a hospital are customarily posted.

(7) As used in this section, "hospital" means a hospital licensed under article 17.



Notice of Employee and Contractor “Whistleblower” Protections And Obligations



Violations of Hospital Licensing Laws or Rules

An employee, contractor or other person acting in good faith who makes or assists in making a report or complaint of a violation of hospital licensing standards, or who assists the Department in its licensing activities, is immune from civil or criminal liability that might otherwise be incurred and is protected under the Whistleblowers' Protection Act, 1980 PA 469, MCL15.361 to 15.369. Unless the person agrees in writing, the Department will keep the person's identity confidential until disciplinary proceedings under this article are initiated and the person is required to testify in the disciplinary proceedings. If disclosure of the person's identity is considered by the department to be essential to the disciplinary proceedings and if the person is the complainant, the Department shall give the person an opportunity to withdraw the complaint before disclosure.

Other Unsafe Hospital Practices Or Conditions

A hospital employee or contractor is immune from civil or criminal liability that might otherwise be incurred-- and shall not be discharged, threatened, or otherwise discriminated against by the hospital regarding that person's compensation or the terms, conditions, location, or privileges of that person's employment-- if that person reports to the Department, verbally or in writing, an issue related to the hospital that is an unsafe practice or condition that is not a violation of hospital licensing laws. These protections do not limit, restrict, or diminish, in any way, the protections afforded under the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 to 15.369.

Unless the person is required by law to report earlier, a hospital employee or contractor is eligible for this immunity and protection only if they meet both of the following conditions before reporting to the unsafe practice or condition that is not a violation of hospital licensing laws:

- (a) The person must give the hospital 60 days' written notice of the unsafe practice or condition. (Within 60 days after receiving a written notice, the hospital must provide a written response to the person who provided the notice); and
- (b) The person had no reasonable expectation that the hospital had taken or would take timely action to address the issue related to the hospital that is an unsafe practice or condition.

To Get More Information

A complete copy of Section 20180, the Whistleblower Protection Act and information about lodging a complaint may be obtained from the Department Web site at <http://www.michigan.gov/bhs> or by calling 517-241-4160.