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Municipal Newsletter

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The Pennsylvania Whistleblower Law

The "Whistleblower Law" in Pennsylvania, 43 P.S. §1421 *et seq.*, is a law that impacts all employers, including municipalities and authorities, even though most do not even know it exists. Still, just because something is not prevalent does not mean it does not have the potential to have a great impact.

§1422 of the statute identifies a whistleblower as any "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". It is important to note that the person making the report must believe it to be true, must not have any malice towards the subject of the report and must not receive or expect any personal benefit.

As a result of the holding in Rankin v. City of Philadelphia, 963 F. Supp. 463, 1995-1997 the Whistleblower Law is applicable to municipalities and authorities. The Court in Rankin declared a public body may be held liable for violation of the statute. Per the statute, a public body may be:

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.

The employee, or someone acting on his/her behalf, is afforded certain protections, precluding the employer from discharging, threatening, discriminating or retaliating against the employee relative to the employee's compensation, terms, conditions, location or privileges. These restrictions upon the employer are not only for protection of the employee already making a report but also the employee preparing to make such a report. In addition, the employer cannot discriminate against an employee who is requested by a regulatory or law enforcement authority to participate in an investigation, hearing or inquiry.

Should an employee who makes a report find himself/herself the victim of retaliatory action, the employee has one hundred eighty (180) days to pursue a civil action for relief under this statute. In presenting his/her case, the employee must show, by a preponderance of the evidence, that before the alleged reprisal, such as reduction in pay, demotion or termination, the employee, or someone acting on the employee's behalf, was in the process of making the good faith report to any of the aforementioned individuals or entities. That is, the evidence must show the alleged reprisal was directly connected to the employee's actual or intended reporting. Conversely, the employer must show by a preponderance of the evidence the termination or other alleged reprisal was done separately from the actual or intended reporting.

As with other concerns of employment, the statute requires the employer to post notices and use other means to keep employees informed of the protections and obligations under the Whistleblower Law.

Email Warning

In this fast-paced era of technology, email is used by the majority of society, including municipalities and authorities, because it enables people to communicate quickly and to transfer information more efficiently than regular postal mail. For municipalities and authorities, however, email creates a long-lasting record that may be viewed by others in a number of situations and thus should be used with caution.

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The most pertinent situation which email could be viewed by others is if the municipality or authority finds itself a party to litigation. During litigation, emails containing information relative to the litigation may be requested by the opposing party through discovery requests. Even with an effective written policy, no strategy can encapsulate every potential scenario. Therefore, in order to avoid any embarrassing circumstances or additional problems for the municipality and authority (as well as for the individuals comprising either), the person sending the email should consider the following:

1. Regarding the sensitivity of the matter, should the issue be put into print where it will remain?

2. Does the email contain any possible defamation, such as comments on the conduct, character, performance or other disparaging attributes about another. Comments and opinions about someone not copied on the email should be avoided. One idea: would the person sending the email want the subject to read the remarks?

3. Does the email contain any admission of liability relative to the respective municipality or authority?

4. Does the email contain any confidential information that should not be shared?

5. How accurate is the information?

6. A good practice is to email only necessary information and exclude anything irrelevant.

7. Also, if the content would not be written on letterhead, then it should not be written in an email.

With these understandings put into practice, any negativity that could have been contained in emails can be minimized or even possibly eliminated.

Also, to guard against emails that may accidentally or mistakenly be sent to the wrong recipient, municipalities and authorities should include a confidentiality and privilege notice at the end of all email communications. Such a notice would identify the information contained in the email as being privileged, confidential and protected from disclosure. The notice would warn the receiver of the email, should he/she not be the intended recipient, any dissemination, distribution or copying of the email is strictly prohibited. In addition, the unintended recipient would be directed to contact the person who sent the email to notify him/her they are not meant to receive such email and then to delete the email from his/her computer.