

## LAW GOVERNING

# “WHISTLEBLOWERS”

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**Important: This is dated material, subject to revision. Revised October, 2013.**

### **Louisiana Revised Statute 42:1169. Freedom from reprisal for disclosure of improper acts.**

A. Any public employee who reports to a person or entity of competent authority or jurisdiction information which he reasonably believes indicates a violation of any law or of any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope or duties of public employment or public office within any branch of state government or any political subdivision shall be free from discipline, reprisal, or threats of discipline or reprisal by the public employer for reporting such acts of alleged impropriety. No employee with authority to hire, fire, or discipline employees, supervisor, agency head, nor any elected official shall subject to reprisal or threaten to subject to reprisal any such public employee because of the employee's efforts to disclose such acts of alleged impropriety.

B. (1) If any public employee is suspended, demoted, dismissed, or threatened with such suspension, demotion, or dismissal as an act of reprisal for reporting an alleged act of impropriety in violation of this Section, such employee shall report such action to the board.

(2) An employee who is wrongfully suspended, demoted, or dismissed shall be entitled to reinstatement of his employment and entitled to receive any lost income and benefits for the period of any suspension, demotion, or dismissal.

C. The board shall provide written notice of the commencement of an investigation of a report of a violation of this Section to the agency head of the employee, or if the agency head is the defendant, then to an agency head of the governmental entity that supervises the agency, or if none, then to the governing authority of the governmental entity not less than ten days prior to the date set for the investigation. If the board determines, following an investigation, that it shall offer a consent opinion or conduct a public or private hearing to receive evidence and determine whether any violation of this Section has occurred, the board shall provide written notice of the hearing or consent opinion to the agency head of the employee, or if the agency head is the defendant, then to an agency head of the governmental entity that supervises the agency, or if none, then to the governing authority of the governmental entity not less than sixty days prior to the date set for the action by the board. The employee's agency shall cooperate in every possible manner in connection with any investigation conducted by the board. The agency shall be considered to be an indispensable party to any investigation, hearing, or consent opinion and may have legal counsel, cross-examine witnesses, call witnesses, and present evidence on its behalf.

D. Any employee with the authority to hire, fire, or discipline employees, supervisor, agency head, or elected official who violates this Section shall be subject to the same fines and penalties provided for other violations of this Chapter. In addition, if the board, following a public hearing, finds there is probable cause to believe that a person has violated a criminal law of this state, pursuant to R.S. 42:1156, the board shall forward a copy of its findings to the district attorney of the parish in which the violation occurred for appropriate action. Thereafter, notwithstanding any other provision of this Chapter, such district attorney shall have access to all records of the board relative to such findings.

E. Upon notification by the employee, the employee's agency, the defendant, or the defendant's agency that the employee has commenced a civil action in a district or federal court or with a federal agency with adjudicatory authority over employment complaints against his agency pursuant to R.S. 23:967(B) or other relevant state or federal statutes at any time prior to the board's final determination as to whether a violation of this Section has occurred, the board shall stay any action pending before the board until a final order in the civil or adjudicatory action is issued, and the prescriptive period provided for in R.S. 42:1163 for action shall be suspended while such civil or adjudicatory action is pending and shall resume when such final order is issued. The final order of the court in the civil action or agency in an adjudicatory action, except if the action is dismissed by the plaintiff, shall resolve all matters the employee has pending before the board regarding this Section.

F. Each agency head shall ensure that a notice containing an explanation in plain language of the rights of employees under this Section is posted and maintained at some convenient and conspicuous point in each building where more than ten public employees are employed. The specific content of this notice shall be determined by the board. *Acts 1979, No. 443, § 1, eff. April 1, 1980. Amended by Acts 1995, No. 1115, § 1; Acts 1996, 1st Ex.Sess., No. 64, § 6, eff. Jan. 1, 1997; Acts 1999, No. 327, § 1; Acts 2006, No. 373, § 1, eff. June 15, 2006; Acts 2007, No. 148, § 1; Acts 2008, 1st Ex.Sess., No. 5, § 1.*

**Louisiana Revised Statute 23:967. Employee protection from reprisal; prohibited practices; remedies**

A. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

- (1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.
- (2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.
- (3) Objects to or refuses to participate in an employment act or practice that is in violation of law.

B. An employee may commence a civil action in a district court where the violation occurred against any employer who engages in a practice prohibited by Subsection A of this Section. If the court finds the provisions of Subsection A of this Section have been violated, the plaintiff may recover from the employer damages, reasonable attorney fees, and court costs.

C. For the purposes of this Section, the following terms shall have the definitions ascribed below:

(1) "Reprisal" includes firing, layoff, loss of benefits, or any discriminatory action the court finds was taken as a result of an action by the employee that is protected under Subsection A of this Section; however, nothing in this Section shall prohibit an employer from enforcing an established employment policy, procedure, or practice or exempt an employee from compliance with such.

(2) "Damages" include compensatory damages, back pay, benefits, reinstatement, reasonable attorney fees, and court costs resulting from the reprisal.

D. If suit or complaint is brought in bad faith or if it should be determined by a court that the employer's act or practice was not in violation of the law, the employer may be entitled to reasonable attorney fees and court costs from the employee. *Added by Acts 1997, No. 1104, § 1.*