

## NOTICE TO EMPLOYEES REGARDING WHISTLEBLOWER PROTECTION FOR COUNTY OFFICERS AND EMPLOYEES

### Overview

In December of 2001, the Board of County Commissioners adopted Ordinance No.1141 providing "whistleblower protection" for county officers and employees who report improper governmental action. The ordinance was made retroactive to October 1, 2001. The ordinance was based upon S.B. 556 passed by the 2001 Legislature and signed into law by the Governor. The following constitutes a summary of the ordinance.

### Ordinance Summary

"Improper governmental action" is defined as action taken by an officer or employee in the performance of official duties which is:

- in violation of state law or regulation;
- in violation of county code, ordinance or regulation adopted by the appointing authority;
- an abuse of authority;
- of substantial and specific danger to the public health or safety; or
- a gross waste of public money.

The ordinance provides that a county officer or employee who claims that a reprisal or retaliatory action was taken against the officer or employee for disclosing information concerning improper governmental action, may file a written appeal with the Director of Human Resources.

"Reprisal or retaliatory action" includes:

- the denial of adequate personnel to perform duties;
- frequent replacement of members of the staff;
- frequent and undesirable changes in office location;
- refusal to assign meaningful work;
- issuance of letters of reprimand or evaluations of poor performance;
- demotion;
- reduction in pay;
- denial of a promotion;
- suspension;
- dismissal;
- transfer;
- frequent changes in working hours or workdays; or
- if the employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the employee, if such action is taken in whole or in part, because the county officer or employee disclosed information concerning improper governmental action.

A written appeal must be filed within 60 workdays after the date the alleged reprisal or retaliatory action took place. The reprisal or retaliatory action must have occurred within 2 years after the date the officer or employee disclosed information concerning the improper governmental action. The appeal must be filed with the Director of Human Resources on a form provided by the Director. The appeal must contain a statement that sets forth with particularity:

- the facts and circumstances under which the disclosure of improper governmental action was made; and
- the reprisal or retaliatory action that is alleged to have been taken against the county officer or employee.

The ordinance also provides for appointment of hearing officers by the Board of County Commissioners upon recommendation of the County Manager. The qualifications for hearing officers are set forth in the ordinance and require generally a combination of education and experience in resolving disputes, adjudicating issues through interpretation of statutes, rules or regulations, or serving as a hearing officer with the state.

A hearing officer may reject an appeal form that is incomplete or otherwise insufficient to commence an appeal. The ordinance also provides procedures for conducting the hearing. An officer or employee alleging reprisal or retaliatory action may represent himself at the hearing or be represented by an attorney or other person of the employee's or officer's choosing. Testimony at the hearing is under oath. The officer or employee alleging reprisal or retaliatory action presents his case first and must establish:

- that the officer or employee was an officer or employee on the date of the alleged reprisal or retaliatory action;
- that the officer or employee disclosed information concerning improper governmental action; and
- the alleged reprisal or retaliatory action was taken against him within 2 years after the date he disclosed the information concerning improper governmental action.

Following presentation by the officer or employee, the employer presents his case and must show that the employer did not engage in the alleged reprisal or retaliatory action, or that the action was taken for a legitimate business purpose and was not the result of the disclosure of information regarding improper governmental action by the officer or employee. The employee or officer then must show that the stated business purpose for the action was a pretext for the reprisal or retaliatory action.

If the hearing officer finds that the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing the person to desist and refrain from engaging in such action.

Finally the ordinance provides that an officer or employee shall not directly or indirectly use or attempt to use the officer's or employee's official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence another officer or employee in an effort to interfere with or prevent the disclosure of information concerning improper governmental action. The ordinance further provides that the provisions of the ordinance shall not be used to harass another officer or employee.

For copies of the ordinance, officers and employees may contact the Human Resources Department or visit the Human Resources website at <http://www.washoecounty.us/humanresources>.

March 11, 2002

**REQUEST FOR HEARING UNDER THE PROVISIONS OF  
WASHOE COUNTY ORDINANCE NO. 1141  
("WHISTLEBLOWER" ORDINANCE)**

In accordance with Ordinance No. 1141, this form is provided by the Department of Human Resources in filing your appeal with the Department of Human Resources. Ordinance No. 1141 provides that "The hearing officer may reject a form that is incomplete or otherwise deficient as insufficient to commence the appeal."

Name of Appellant (please print) \_\_\_\_\_

Mailing Address \_\_\_\_\_

AT THE TIME OF THE REPRISAL OR RETALIATORY ACTION DESCRIBED BELOW IN PARAGRAPH 4, I AM/WAS EMPLOYED WITH WASHOE COUNTY AS FOLLOWS:

Job Title \_\_\_\_\_ Work Phone \_\_\_\_\_

Department \_\_\_\_\_ Division \_\_\_\_\_

1. Describe the specific factual allegations of improper governmental conduct including the date of any such alleged occurrence, the county officer or county employee alleged to have engaged in such improper governmental action- either by act of commission or omission-and the basis or legal theory upon which it is alleged that said conduct constitutes an improper governmental action.

---

---

---

2. Describe the specific factual allegations as to when, to whom and how the alleged improper governmental conduct was disclosed.

---

---

---

3. Describe the specific factual allegations as to when, by whom and how the institution and/or individual alleged to have committed a reprisal or retaliation due to the disclosure learned of the disclosure activity of the Petitioner-Employee including any inferences drawn in connection therewith.

---

---

---

4. Describe the specific factual allegations as to when, by whom and what reprisal or retaliation resulted from their alleged disclosure of the alleged improper governmental action.

---

---

---

APPELLANT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Upon completion return to Department of Human Resources  
(Retain a copy for your records.)

March 11, 2002

### 5.3331 Definitions.

As used in sections 5.3331 to 5.3336, inclusive, the following words and phrases shall have the following meanings:

1. "Improper governmental action" means any action taken by an officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:
  - a) In violation of any state law or regulation;
  - b) In violation of Washoe County Code, an ordinance adopted by the board of county commissioners, or an ordinance or regulation adopted by the appointing authority which employs the officer or employee;
  - c) An abuse of authority;
  - d) Of substantial and specific danger to the public health or safety;  
or
  - e) A gross waste of public money.
2. "County" means Washoe County.
3. "County employee" means any person who performs public duties under the direction and control of a county officer, or in the case of the district health department, for the district health officer, and in either case, for compensation paid by or through the county.
4. "County officer" means a person elected or appointed to a position with the county, or the district health department, that involves the exercise of a county or district health department power, trust or duty, as applicable, including:
  - a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of county or district health department policy;
  - b) The expenditure of money of the county;
  - c) The enforcement of laws and regulations of the state, county, or district health department.
5. "Reprisal or retaliatory action" includes:
  - a) The denial of adequate personnel to perform duties;
  - b) Frequent replacement of members of the staff;
  - c) Frequent and undesirable changes in the location of an office;
  - d) The refusal to assign meaningful work;
  - e) The issuance of letters of reprimand or evaluations of poor performance;
  - f) A demotion;
  - g) A reduction in pay;
  - h) The denial of a promotion;
  - i) A suspension;

- j) A dismissal;
- k) A transfer;
- l) Frequent changes in working hours or workdays; or
- m) If the employee is licensed or certified by an occupational licensing board, the filing with that board, by or on behalf of the employer, of a complaint concerning the employee,

if such action is taken, in whole or in part because the county officer or employee disclosed information concerning improper governmental action.

[§2, Ord. No.1141]

5.3332 Appointment, qualifications and authority of hearing officer, county manager's duties.

1. The board will periodically appoint a hearing officer or a panel of hearing officers from the recommendations made by the county manager.
2. A person who wishes to serve as a hearing officer pursuant to sections 5.3331 to 5.3336 must:
  - a) Possess a bachelor's degree from an accredited college or university and have at least 4 years of professional experience in resolving disputes between opposing parties, 2 years of which included making determinations or adjudicating issues by interpreting statutes or administrative rules or regulations;
  - b) Possess an associate's degree from an accredited junior college or community college and have at least 5 years of professional experience in resolving disputes between opposing parties, 2 years of which included making determinations or adjudicating issues by interpreting statutes or administrative rules or regulations;
  - c) Have at least 2 years of experience as a hearing officer with an administrative agency of the state; or
  - d) Possess any other combination of education and experience which the county manager deems to be equivalent to the education and experience required by paragraph a, b, or c, and demonstrates to the satisfaction of the county manager that he possesses the knowledge, skills, and abilities required by this subsection.
3. In addition to those qualifications listed in subsection 2, a hearing officer must:
  - a) Be able to:
    - 1) Interact effectively with all participants at a hearing in a manner which ensures an impartial, orderly proceeding;
    - 2) Work independently;
    - 3) Listen and analyze the evidence presented at a hearing and communicate effectively his decisions on motions and objections related to that evidence;

- 4) Communicate effectively, orally and in writing with persons from a variety of social, economic and educational backgrounds;
  - 5) Render an impartial decision based on:
    - i. The evidence presented at a hearing; and
    - ii. An objective analysis of applicable statutes, regulations and case law;
  - 6) Write decisions and opinions in a clear, concise and accurate manner; and
- b) Be knowledgeable of the provisions of state law and regulations, and county code relating to local governments, including county government.
4. If the hearing officer determines that the action taken was reprisal or retaliatory action, the hearing officer may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file his decision with the county manager, or other elected or appointed board responsible for the actions of that person and prepare a separate copy redacting identifying or sensitive information. The redacted copy of the decision of the hearing officer shall be made public.
  5. The county manager, or the county manager's designee, shall provide each officer and employee with a summary of the provisions of sections 5.3331 to 5.3336, inclusive.

[§3, Ord. No.1141]

5.3333 Written appeal by officer or employee who claims reprisal or retaliatory action was taken.

1. A county officer or employee who claims a reprisal or retaliatory action was taken against him for disclosing information concerning improper governmental action may file a written appeal with the director of human resources. The appeal must be:
  - a) Filed within 60 workdays after the date the alleged reprisal or retaliatory action took place.
  - b) Submitted on a form provided by the director of human resources.
  - c) Contain a statement that sets forth with particularity:
    - 1) The facts and circumstances under which the discloser of improper governmental action was made; and
    - 2) The reprisal or retaliatory action that is alleged to have been taken against the county officer or employee.
2. Upon receipt of the written appeal, the director of human resources shall contact a hearing officer from among those who have qualified and been appointed by the board. The director of human resources shall ascertain whether the hearing officer has any conflicts which would prevent him from hearing the appeal. The hearing officer shall be entitled to reasonable compensation from the county for time spent hearing and determining the appeal, and for reasonable travel costs or

other expenses incurred in hearing the appeal. The director of human resources shall forward the written appeal to the hearing officer.

3. The hearing officer may reject an appeal form that is incomplete or otherwise deficient as insufficient to commence appeal.

[§4, Ord. No.1141]

5.3334 Time for hearing; continuances.

1. The hearing officer shall convene the hearing at the time and place specified for the purpose of hearing the appeal.
2. Written notice of the time and place of the hearing must be given to the parties at least 10 days in advance. The notice must contain the information required for a party to request reasonable accommodation.
3. The hearing officer shall provide reasonable accommodation to a party with a disability who requests such accommodation with the time sufficient to make the accommodation.
4. Hearings may be continued beyond the period originally scheduled or recessed until a future date which is agreeable to the hearing officer and the parties if good cause is shown.

[§5, Ord. No.1141]

5.3335 Procedures for conduct of hearing on written appeal; hearing officer's decision.

1. The provisions of this section govern the procedure for conducting a hearing for a written appeal filed pursuant to sections 5.3331 to 5.3336 inclusive.
2. The employee or officer filing the appeal may represent himself at the hearing or be represented by an attorney or other person of the employee's or officer's own choosing.
3. All testimony must be under oath administered by the hearing officer.
4. The appeal must be heard in the following manner:
  - a) Opening statement for the officer or employee.
  - b) Opening statement for the employer, unless reserved.
  - c) Presentation of the officer's or employee's case followed by cross-examination. During the presentation of the officer's or employee's case, the county officer or employee must establish
    - 1) The officer or employee was an officer or employee on the date of the alleged reprisal or retaliatory action;
    - 2) The officer or employee disclosed information concerning improper governmental action; and
    - 3) The alleged reprisal or retaliatory action was taken against him within 2 years after the date he disclosed the information concerning improper governmental action.

- d) If the officer or employee establishes the facts set set forth in paragraph (c) presentation of the employer's case, followed by cross-examination, to establish that the employer did not engage in the alleged reprisal or retaliatory action or that the action was taken for a legitimate business purpose and was not the result of the disclosure of information concerning improper governmental action by the officer of employee.
  - e) If the employer establishes a legitimate business purpose for the alleged reprisal or retaliatory action, the officer or employee may introduce evidence, followed by cross examination, to demonstrate that the stated business purpose is a pretext for the reprisal or retaliatory action.
  - f) The parties may respectively offer rebutting testimony only, unless the hearing officer permits additional evidence upon the original cause.
  - g) Argument for the officer or employee.
  - h) Argument for the employer.
  - i) Closing argument for the officer or employee.
  - j) Submission of the appeal for a decision.
5. Except as otherwise provided in subsection 6, all hearings on appeals must be open to the public.
  6. On the motion of either party, the hearing officer shall exclude from the hearing room witnesses in the matter not at the time under examination except the parties to the proceeding. No hearing may be closed except on motion of either party for good cause shown.
  7. A document or piece of physical evidence sought to be introduced during the hearing must first be identified for the record and the hearing officer may request the production of such records and the appearance of such persons as he requires.
  8. The hearing officer shall determine the evidence upon the charges and specifications as set forth by the appeal document, and shall not consider any additional evidence beyond the scope of the charges.
  9. An officer's or employee's past performance by way of an act or a failure to act may be shown by competent evidence.
  10. All testimony and exhibits offered at the hearing must be relevant and bear upon the matter in contention. Any testimony or exhibits which are considered by the hearing officer as not meeting this criterion may properly be excluded.
  11. The hearing officer shall also consider the objection of either side to the introduction of evidence. Competence and relevance must be the primary test in ruling on objections.
  12. A decision must be based on evidence presented. The hearing officer shall be guided in his decision by the weight of the evidence as it appears to him at the hearing.

13. Any letter, paper or object offered in evidence must be properly authenticated. The representative for the opposing party is entitled to examine the exhibit when it is offered.
14. The hearing officer shall render his decision within 30 days of the conclusion of the hearing.

[§6, Ord. No.1141]

#### 5.3336 Prohibitions and application.

1. An officer or employee shall not directly or indirectly use or attempt to use the officer's or employee's official authority or influence to intimidate, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence, another officer or employee, as applicable, in an effort interfere or prevent the disclosure of information concerning improper governmental action.
2. For the purposes of this section, use of "official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action, such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action.
3. An officer or employee shall not use the provisions contained in sections 5.3331 to 5.3336, inclusive, to harass another officer or employee.
4. Nothing contained in section 5.3331 to 5.3336, inclusive, prohibits an officer or employee from initiating proper disciplinary procedures against another officer or employee, as applicable, who discloses untruthful information concerning improper governmental action.
5. Sections 5.3331 to 5.3336, inclusive, are intended to be directory and preventive rather than punitive, and do not abrogate or decrease the effect of any of the provisions of state statutes or county code provisions which define crimes or prescribe punishments with respect to the conduct of officers or employees.

[§7, Ord. No.1141]

Current as of December, 2001