

# What You Need to Know About Whistleblowing

## Michigan's Whistleblowing Statute

- 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.
- An "employer" is defined under the WPA as "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." MCL § 15.361(b).
- An "employee" is defined as "a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied..." MCL § 15.361(a).

## “Engaged in Protected Activity”

A “protected activity” under the WPA refers to actions where any employee (1) **reports** to a public body a violation of the law, a regulation, or rule, (2) **is about to report** such a violation to a public body, or (3) is being asked by a public body to participate in an investigation.

## “About to Report”

- Employee must be “on the verge of” reporting an alleged violation.
- A threat to report is generally not enough; there must be actual actions taken in furtherance of the threat.

## “Violation of Law, Regulation, or Rule”

- Internal company policy not enough.
- New for 2016: Employee motivations not relevant – no longer must “advance the public interest” by blowing the whistle.

## “Public Body”

The Act defines “public body” as employees and officers of any local or state governmental unit, agency, board, commission, legislative body, judicial body, law enforcement agency, etc.

## Causation

The employee must show that he “suffered an adverse employment action *as a result of* [his] engaging in the protected activity, *i.e.*, that there was some nexus or causal connection between the adverse employment action and the protected activity.”

## Statute of Limitations

Employees must file suit within 90 days of the alleged violation.



## Remedies

The Act allows recovery of back wages, full reinstatement of fringe benefits and seniority rights, and actual damages, as well as civil fines of up to \$500. **The court in its discretion, may include reasonable attorney fees in any award.**

## Top Tips – Before the Whistle Blows

1. Have a whistleblowing policy.
2. Set an appropriate corporate culture of openness.
3. Train employees appropriately – especially those who will respond to claims.
4. Make sure your records are complete and detailed!

## Top Tips – After the Whistle Blows

1. Respond swiftly and appropriately.
2. Continue to document the file and involve whistleblower as necessary in the investigation.
3. Make sure HR is always involved – to reduce possibility of retaliatory motive.
4. Don't terminate someone who reported something!
5. Involve counsel.