

HR EXPRESS

A PROGRAM OF THE GEORGIA MUNICIPAL ASSOCIATION



ELARBEE THOMPSON

Labor, Employment and Complex Litigation Specialists



GEORGIA

WHISTLEBLOWER ACT



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Georgia Whistleblower Act O.C.G.A. § 45-1-4

- Original legislative purpose to prevent fraud, waste, and abuse in State programs.
- Expanded definition of covered employers to include cities, counties, and other local governmental entities.
 - Increased number of claims filed against local governments in the last 10 years





GWA: Retaliation Defined

- Retaliation is defined as
 - discharge, suspension, or demotion, or
 - any other adverse employment action affecting terms or conditions of employment.
- For disclosing a violation of (or non-compliance with) a law, rule, or regulation to either a supervisor or a government agency.





GWA: Scope of Protected Conduct

- Disclosure of a violation of (or non-compliance) with a law, rule, or regulation.
- Can be federal, state, or local statute or ordinance or any rule or regulation adopted thereunder.
 - But not protected if known to be false or made with reckless disregard for its truth or falsity





GWA: Scope of Protected Conduct

- The statute does not define “disclose.”
 - Usually an employee must identify a specific law that he or she believes has been violated or not complied with to engage in protected “whistle-blowing” activity.
 - Disclosure of “possible safety concerns” would not be protected.
 - Reports of more general or speculative concerns probably will not suffice.





GWA: Non-Disclosure Provision

- Regarding complaints concerning the possible existence of any activity constituting “fraud, waste, and abuse”:
 - Employers are prohibited from disclosing identify of whistleblower unless employer determines such disclosure is “necessary and unavoidable” during course of investigation
 - What does “necessary and unavoidable” mean?





GWA: Complaint Procedure

- Must complaint be made to relevant government agency?
- Definition of “supervisor” includes employees not traditionally viewed as supervisors.
- Supervisors must be trained to recognize protected conduct under GWA.





GWA: Lawsuit Considerations

- Statute of Limitations.
 - One year from discovery.
 - Three years from retaliation.
- Superior Court exclusive jurisdiction.
- Legal & equitable remedies authorized.
 - For unlawful retaliation.
 - Not for violations of non-retaliation provisions of Act.





GWA: Lawsuit Considerations

- No individual liability under the GWA.
 - The Act applies only to “public employers,” O.C.G.A. § 45-1-4(a)(4).
 - Both Georgia and federal courts dismiss claims against individuals on this basis.
- No ante litem notice requirement.
 - West v. City of Albany et al. (Ga. S. Ct. Mar. 6, 2017)



Establish a Separate Anti-Retaliation Policy

- Establish complaint procedure with multiple internal reporting mechanisms.
- Place expectation on complainant to report retaliation.
- Place expectation on complainant's coworkers to report retaliation.





Conduct Training on the Anti-Retaliation Policy

- Employees must know how to report retaliation they experience or witness.
- Managers & supervisors must know what to do when:
 - Protected activity occurs;
 - They receive a complaint of retaliation.





Define Retaliation Broadly in Policy

- Prohibit retaliatory conduct that doesn't necessarily constitute actionable retaliation.
- Define generally as any act of a negative or adverse nature taken against, directed to, or otherwise affecting an employee because of his/her protected activity.





Investigate Complaints Promptly and Effectively

- Train investigators
- Communicate with complainant.
 - Keep him/her apprised of status of investigation.
 - Make him/her aware of interim remedial measures so that they're not misconstrued as retaliatory (e.g., prohibiting respondent from communicating directly with complainant).





Build a Record of Non-Retaliation

- Assure complainant that anti-retaliation policy is taken seriously.
- Communicate with him/her regularly to ensure no retaliation.
- Promptly and thoroughly investigate all complaints.
- Document all of this.





Remedial Measures

- Take appropriate interim remedial measures (and document same).
 - Non-disciplinary.
 - In best interests of complainant, respondent, and employer.
 - E.g., physically separate employees, add 3rd party to workplace, administrative leave, etc.
 - Explain to all affected parties.





Don't Succumb to Litigation Anxiety

- Protected activity does not insulate employees from legitimate disciplinary action.
- Additional caution is warranted.
 - Ensure decision supported by evidence.
 - Ensure record of non-retaliation in place.
 - Ensure compliance with policies & procedures.



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Questions?



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