



# Wisconsin's State Employee Whistleblower Law

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Wisconsin's state employee whistleblower law generally provides protections to state employees who publicly disclose certain information, provided appropriate steps are taken.<sup>1</sup>

## WHO AND WHAT IS COVERED?

The law protects most state employees. This includes any person employed by any association, authority, board, commission, department, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, with some exceptions.<sup>2</sup>

The law covers disclosure of information gained by the employee that the employee reasonably believes demonstrates either: (1) a violation of state or federal law, rule, or regulation; or (2) mismanagement<sup>3</sup> or abuse of authority<sup>4</sup> in state or local government, a substantial waste of public funds, or a danger to public health and safety.

## WHAT STEPS MUST BE TAKEN?

Generally, before a state employee makes any disclosure, the employee must first disclose that same information in writing either to: (1) the employee's supervisor; or (2) a governmental unit that is designated by the Department of Workforce Development (DWD), Equal Rights Division. A governmental unit that is designated by DWD is required to designate an employee to receive the disclosure.

Even if an employee does not first make the required disclosure notice to a supervisor or the DWD designee, an employee may make a protected disclosure to: (1) the employee's attorney; (2) the employee's collective bargaining representative; or (3) the employee's legislator. Additionally, any disclosure to a legislative committee or legislative service agency is a "lawful disclosure" that is protected from retaliatory action, as described below.<sup>5</sup>

A state employee may disclose information at any time, without the required steps, to an appropriate law enforcement agency, a state or federal district attorney, a state or federal grand jury or judge in a John Doe proceeding, or pursuant to a subpoena. A disclosure under these circumstances is protected.

## IS A LEGISLATOR'S RECORD CONFIDENTIAL?

A disclosure made to a person's legislator is generally confidential under the state's Open Records Law. The Open Records Law exempts any record that is specifically exempt from disclosure by any other law.<sup>6</sup> The state whistleblower law requires the identity of an employee to be kept confidential during an initial determination, and to be kept confidential if possible during a full investigation.

A legislator could additionally deny an open records request for a whistleblower's identity based on the public policy balancing test. The statement in the whistleblower law that explicitly identifies a disclosure to a legislator as lawful, and protected from retaliation, could be identified as an expression in the law of public policy favoring protected disclosure to a legislator.

## HOW ARE DISCLOSURES INVESTIGATED?

When an employee makes a protected disclosure to the DWD designee, the designee is required to determine whether the information disclosed merits further investigation and, if it does, perform a full investigation into the truth of the information.<sup>7</sup> Processing of information and ensuing investigations are generally confidential: the DWD designee must keep the identity of an employee confidential during an

initial determination and, if reasonably possible, during the full investigation. If necessary, an investigation may be referred to a law enforcement agency or a district or federal attorney.

## WHAT KIND OF RETALIATION IS PROHIBITED?

The law provides that, “[n]o appointing authority, agent of an appointing authority, or supervisor may initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.”

**Retaliatory action** means a disciplinary action taken because of any of the following:

- The employee disclosed information pursuant to the whistleblower law.
- The employee filed a complaint alleging retaliatory action.
- The employee testified or assisted or will testify or assist in any action or proceeding relating to the lawful disclosure by another employee pursuant to the whistleblower law.
- The appointing authority, agent of the appointing authority, or supervisor believes the employee did any of the above.

**Disciplinary action** means any action taken with respect to an employee that has the effect, in whole or in part, of a penalty, including any of the following:

- Dismissal, demotion, transfer, removal of any duty assigned to the employee’s position, refusal to restore, suspension, reprimand, verbal or physical harassment, or reduction in base pay.
- Denial of education or training, if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.
- Reassignment.
- Failure to increase base pay.

## WHAT PROTECTIONS ARE AFFORDED AFTER RETALIATION?

If an appointing authority has been found to have retaliated or to have threatened retaliation, the finding must be added to the employee’s personnel file. In addition, any other appropriate remedies may be taken, which may include any of the following:

- Reinstatement to the previous position with or without back pay.
- Transfer to another position for which the person is qualified within the same governmental unit.
- Expungement of adverse material relating to the retaliatory action from the employee’s personnel file.
- Payment of reasonable attorney fees.
- Recommendation of disciplinary action against the person who made or threatened the retaliatory action.

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<sup>1</sup> The state employee whistleblower protections are provided in ss. [230.80](#) to [230.89](#), Stats., and ch. [DWD 224](#), Wis. Adm. Code.

<sup>2</sup> The whistleblower law does not protect individuals employed by the Office of the Governor, the courts, the Legislature, or any of the legislative service agencies. It also does not protect anyone who is, or whose immediate supervisor is, assigned to an executive salary group, is a chancellor or vice chancellor at a University of Wisconsin (UW) System institution, or is a president, senior vice president, or vice president within the UW System.

<sup>3</sup> Mismanagement means a pattern of incompetent management actions which are wrongful, negligent, or arbitrary and capricious, and which adversely affect the efficient accomplishment of an agency function. It does not mean the mere failure to act in accordance with a particular opinion regarding management techniques.

<sup>4</sup> Abuse of authority means an arbitrary or capricious exercise of power.

<sup>5</sup> In particular, the Legislative Audit Bureau is required by statute to receive and investigate reports of fraud, waste, and mismanagement in state government. A state employee may file a report online at the [Fraud, Waste, and Mismanagement Hotline](#), or by phone at [1-877-FRAUD-17 \(1-877-372-8317\)](#). The hotline is confidential, unless the informant specifically agrees to release of the person’s identifying information. [s. [13.94\(1\)\(br\)](#), Stats.]

<sup>6</sup> s. [19.36\(1\)](#), Stats.

<sup>7</sup> Specifically, the DWD designee must determine whether the information merits further investigation within 30 days of receiving the information. Then, the DWD designee must commence a full investigation within 30 days of determining that the information merits further investigation.