

**NOTICE TO PUBLIC EMPLOYEES
WHISTLEBLOWER PROTECTION ACT
NEW MEXICO LAWS 2010, CHAPTER 12 (HOUSE BILL 165)**

Under New Mexico's Whistleblower's Protection Act, a public employer may not take any retaliatory action against a public employee because the public employee:

- communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

Under the Act,

- "retaliatory action" means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment; and
- "unlawful or improper act" means a practice, procedure, action or failure to act on the part of a public employer that:
 - o violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state;
 - o constitutes malfeasance in public office; or
 - o constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

A public employer that violates the provisions of the Whistleblower Protection Act is liable to the public employee for actual damages, reinstatement, two times the amount of back pay with interest on the back pay, special damages, and litigation costs and reasonable attorney fees of the employee. The remedies provided for in the Whistleblower Protection Act are not exclusive.

It is an affirmative defense to a civil action brought under this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.

A civil action pursuant to the Whistleblower Protection Act must be filed within two years from the date the retaliatory action occurred. Such action may be filed in any court of competent jurisdiction.

The provisions of this Act only apply to civil actions for damages resulting from retaliatory action that occurred on or after July 1, 2008.