

# STATEMENT of POLICY/PROCEDURE

## **Section 13.0 – Whistleblower Retaliation Prevention Program**

### **13.1 Purpose**

The purpose of the whistleblower retaliation prevention program is to protect employees of local government from retaliation because the employee provided information that an improper governmental action occurred.

### **13.2 Scope**

This procedure shall apply to situations when a local government takes any retaliatory action against an employee who has reported an improper governmental action.

### **13.3 Definitions**

For the purpose of this policy the following terms shall mean:

**13.3.1** "Improper governmental action" means any action in performance of an official duty by a local government officer or employee, either within or outside the scope of employment, that is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

"Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations and reprimands.

**13.3.2** "Retaliatory action" means any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal or any other disciplinary action.

### **13.4 Initial Notice Requirements**

**13.4.1** Any local government employee seeking relief under this procedure must provide the Chairperson of the governing body (e.g. Board of Directors) written notice of a charge that the employee was subject to a retaliatory action because the employee provided information that an improper governmental action occurred. Such written notice shall specify:

**13.4.1.1** The alleged retaliatory action taken; and

**13.4.1.2** The relief requested.

**13.4.2** The written notice of the alleged retaliatory action and requested relief shall be delivered to the governing body within thirty days after the occurrence of the alleged retaliatory action. The written notice may be delivered to members of the governing body in a sealed envelope and need not be disclosed to other employees of the local government.

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**13.4.3** In addition to notifying the government body of the local government, the employee shall also notify the Prosecuting Attorney of the county in which the local government is located.

**13.4.4** Unless there is an emergency that requires immediate attention to prevent damage to persons or property, the employee will submit written notice to the governing body of the local government and the parties listed above before providing information of improper governmental activity to any other person.

## **13.5 *Review of Governing Body***

Upon receipt of written notice from an employee alleging retaliatory action, the governing body has thirty (30) days to respond to the charge of retaliatory action and request for relief. Such response shall be delivered to the employee in writing.

## **13.6 *Request for Hearing***

Upon receipt of either the response of the local government or after the last day upon which the local government could respond, the local government employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief. The request for a hearing shall be delivered to the local government within fifteen (15) days of delivery of the response from the local government or within fifteen (15) days of the last day on which the local government could respond. If the local government grants the relief sought prior to the date of hearing, all future action relating to that particular situation shall be terminated.

## **13.7 *Hearing Procedure***

Within five (5) working days of receipt of the request for hearing, the local government shall apply to the state office of administrative hearings for an adjudicative proceeding. The hearing shall comply with applicable provisions of the Administrative Procedure Act relating to adjudicative proceedings. The employee, as the initiating party, must prove his or her claim by a preponderance of the evidence.

## **13.8 *Decision from Hearing***

The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five (45) days after the date the request for hearing was delivered to the local government. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

## **13.9 *Remedies***

**13.9.1** Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorney's fees to the prevailing party.

**13.9.2** If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed. All penalties

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recovered shall be paid to the Local Government Administrative Hearings Account which has been created by law under the custody of the State Treasurer.

### **13.10 Judicial Review**

The final decision of the Administrative Law Judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the Administrative Law Judge may be enforced by petition to superior court.

### **13.11 Enforcement Agencies:**

#### ***Snohomish County***

Snohomish County  
Prosecuting Attorney  
3000 Rockefeller  
Everett, WA 98201  
(425) 388-3333

Snohomish County Sheriff's Department  
South County  
16000 Mill Creek, Suite 103  
Mill Creek, WA 98012  
(425) 743-0807

#### ***State of Washington***

Attorney General's Office  
Fair Practices Division  
2000 Bank of California Center  
900 Fourth Avenue  
Seattle, WA  
(206) 464-6684

State Auditor's Office  
Legislative Building  
PO Box 40021  
Olympia, WA 98504-0021

Human Rights Commission  
402 Evergreen Plaza Bldg., FJ-41  
711 South Capitol Way  
Olympia, WA 98504-2490  
(800) 233-3247

Department of Labor and Industries  
300 West Harrison, Room 201  
Seattle, WA

(206) 281-5400

#### ***State of Washington***

Equal Employment Opportunity  
Commission  
2815 Second, Suite 500  
Seattle, WA  
(206) 553-0968

Department of Labor  
Occupational Safety & Health  
1111 Third Ave., Suite 715  
Seattle, WA 98101-3212  
(206) 553-5930

Department of Transportation  
Office of Inspector General  
915 Second Avenue  
Seattle, WA 98178  
(206) 464-5878

Federal Transit Administration  
Region X  
915 Second Avenue  
Federal Bldg, Suite 3142  
Seattle, WA 98174  
(206) 442-4210