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Handling whistle-blower complaints

Legislative report about agency's recommendations for implementing an administrative review procedure to address whistle-blower protection complaints under section 181.932.

2007 Minnesota Laws, Chapter 135, Article 3, Section 39



January 15, 2008

Introduction, background

The Minnesota Department of Labor and Industry (DLI) was mandated during the 2007 legislative session to report to the Legislature recommendations for an administrative review procedure to address whistle-blower-protection complaints. This language was contained in the omnibus jobs, economic development and housing finance bill and originated from Rep. Karen Clark under the original House File 1609. The companion bill was Senate File 1861 from Sen. Katie Sieben, who did not request a hearing.

Rep. Clark sought DLI assistance after opposition to her original language was communicated to her. The department and the representative agreed to language contained in Minnesota Laws, Chapter 135, Article 2, Sections 16 and 17. The language was contained so it only expands current whistle-blower law to protect public employees from retaliation if they, in good faith, release public findings or a scientific or technical study to a governmental body or law enforcement official. Section 17 further clarifies that an employee can be reinstated, paid back-wages and have personnel records expunged if wrongfully accused of misconduct in district court.

However, besides the private right of action in court, the representative also asked for the department to develop a recommended administrative review procedure process for employees who are either unsure or reluctant to contemplate legal action at the outset.

Department analysis of existing resources to develop an administrative review procedure to handle whistle-blower complaints

Officials within the Department of Labor and Industry met several times to determine the best approach to an administrative review procedure for whistle-blower complaints. Discussion of the procedure was limited to process only. Because there is no way of knowing what the volume of whistle-blower activity could be, the level of resources needed to accomplish an administrative review procedure was not discussed.

Although the original legislation directed actions be taken pursuant to Chapters 181 (employment law) and Chapter 177 (labor standards and wages), it was deemed more sensible to follow the OSHA complaint process as found under Chapter 182. The idea behind this was to avoid creating a new investigative procedure when one already exists within the department.

This process will not preclude any grievance opportunities contained in an employee's collective bargaining agreement.

The process will include detailed procedures for screening and intake of complaints; investigation, including taking depositions when appropriate; findings; and recommendations to the supervisor. The complainant would be advised throughout the investigation process and would have the opportunity to review the completed investigation file.

Therefore, the department recommends the following procedure.

1. Intake

Initial calls would be screened by trained department personnel to determine if the complaint meets timeliness and the four elements recognized as discrimination cases.

If it is determined the caller meets the criteria for a potential discrimination – or whistle-blower case – the process of investigation would be explained and a complainant statement form would be sent to the caller to be completed and returned to the department.

The respondent would also be notified of the charge at this time.

If the employee is still working for the respondent employer, he or she would be advised that if any further action is taken against them, to contact the investigator immediately.

After the information about the complaint is received by both parties, it would be entered into a database, have a case number assigned and have a file prepared. The file would be monitored until both parties acknowledge receipt. The file could be assigned to a case worker at any time after the initial intake.

2. Investigation

After the case is assigned, preparation for the investigation would begin. This would be communicated to both parties as well.

The investigator would use documents from both parties and from interviews. Interviews may be conducted either by phone or in person. During each interview of nonmanagement personnel, the Tennessee warning would be given. If the interview is in person, the warning would be in writing and signed by the person being interviewed. A respondent would have the right to have their attorney present; nonmanagement personnel could request to have an attorney or other person present as well. The interviews would be conducted in a timely manner.

The original legislation mandated the investigations commence within 10 working days of the submission of the complaint. A maximum of 30 working days is more reasonable and realistic, and assures better quality control. The original legislation also required a completed investigation within 60 days after intake. Because investigations will vary case by case, a deadline should be negotiated.

3. Disposition

The investigator will write a final investigative report stating the positions of the parties, a chronology of events and a witness list. An analysis of the findings, including any credibility assessments, would also be included in the report. In addition, the investigator would make a recommendation to his or her supervisor about the disposition of the case.

4. Closing the case

When the disposition is decided upon, the complainant would be contacted by phone to discuss the decision. After that contact with the complainant, letters would be sent to both sides explaining the disposition.