

Chapter 3.42
WHISTLEBLOWER PROTECTION

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3.42.010 Policy - Purpose. Unless prohibited by State law, County employees are encouraged to report on improper governmental action to the appropriate county or other government official. To assist such reporting and to implement Sections 42.41.030 and 42.41.040 of the Revised Code of Washington ("RCW"), this ordinance provides county employees a process for reporting improper governmental action and protection from retaliatory action for reporting and cooperating in the investigation and/or prosecution of improper governmental action in good faith in accordance with this subchapter. (Ord. 11687 § 3, 1995).

3.42.020 Definitions. As used in this ordinance, the following terms shall have these meanings:

A. "Investigating official" means, each in connection with a report of improper governmental action within his, her, or its respective jurisdiction; the ombudsman; a person to whom sexual harassment was properly reported according to county policy; the agency designated by the executive to receive unfair employment complaints filed under K.C.C. 12.18; the Washington State Commission on Judicial Conduct; the department of public safety's internal investigations unit; the county prosecuting attorneys of the State of Washington; the presiding judge of the district and superior courts; the executive; the department director of any executive agency; the assessor; the director of the department of judicial administration/clerk of the superior court; the chair of the council; and any authorized assistant or representative of any of them in cases within their respective appropriate jurisdictions.

B. "Employee" or "county employee" means any individual who is appointed as an employee by the appointing authority of a county agency, office, department, council, board, commission or other separate unit or division of county government, however designated. The term "employee" or "county employee" also includes county elected officials and members of county boards, commissions, committees, or other multi-member bodies.

C. "Improper governmental action" means any action by a county officer or employee that is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment, and:

1. Violates any state or federal law or rule or county ordinance or rule, or
2. Constitutes an abuse of authority, or
3. Creates a substantial or specific danger to the public health or safety, or
4. Results in a gross waste of public funds.

"Improper governmental action" excludes personnel actions, including but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, violations of collective bargaining or civil service laws, or alleged violations of agreements with labor organizations under collective bargaining. A properly authorized county program or activity does not become an "improper governmental action" because an employee or investigating official dissents from the county policy or considers the expenditures unwise.

D. "Retaliate," and its kindred nouns, "retaliation" and "retaliatory action," means to make, because of a report of improper governmental action, any unwarranted adverse change in an employee's employment status or the terms and conditions of employment including, but not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal

to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other unwarranted disciplinary action; or, hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

E. "Emergency" means a circumstance that if not immediately changed may cause harm or injury to person or property. (Ord. 11687 § 2, 1995).

3.42.030 Right to report.

A. Every county employee shall have the right to report, in good faith in accordance with this ordinance, information concerning an improper governmental action.

B. Limitations. This section does not authorize a county employee to report information that is subject to an applicable privilege against disclosure at law (e.g., RCW 5.60.060 privileged communications) unless waived, or to make disclosure where prohibited at law. The only purpose of this chapter is to protect and encourage employees who know or in good faith believe improper governmental action has occurred to report those actions in good faith in accordance with this ordinance. Except in cases of emergency where the employee believes in good faith that substantial damage to persons or property will result unless a report is made immediately to a person or entity who is not the appropriate investigating official listed in Section 3.42.020A, the employee shall, before making a report to a person who is not the appropriate investigating official, first make a written report of the improper governmental action to the appropriate investigating official. No emergency under this subsection exists where prompt attention and reporting under this chapter by the employee could have avoided the perceived need to report immediately to a person not the appropriate investigating official. An employee making a written report as required by this subsection is encouraged to wait at least thirty (30) days from receipt of the written report by the appropriate investigating official before reporting the improper governmental action to a person who is not an appropriate investigating official. However, reporting to a person who is not an appropriate investigating official prior to this thirty (30) day period will not result in the loss of the protections contained in this ordinance. An employee's reporting of his or her own improper action does not grant an employee immunity from discipline or termination insofar as his or her improper action would be cause for discipline.

C. Employee protection. The following conduct by employees is protected if carried out in good faith under this chapter:

1. Reporting sexual harassment to the employee's supervisor, department head, or other government official as set out in the county's adopted procedure for reporting sexual harassment complaints; reporting violations of the fair employment practices ordinance (K.C.C. 12.18) to the executive or his or her designee; reporting police misconduct to the department of public safety's internal investigation unit; reporting violations of the Code of Judicial Conduct to the Washington State Commission on Judicial Conduct; reporting improper governmental action occurring within the district court to the presiding judge of the district court; reporting improper governmental action occurring within the legislative branch to the chair of the council; reporting improper governmental action occurring within the executive branch to the executive or to the department director of the executive agency in which the alleged improper governmental action occurred or to the ombudsman; reporting improper governmental action occurring within the department of judicial administration to the director/clerk of the superior court or to the ombudsman; reporting improper governmental action occurring within the department of assessments to the assessor or to the ombudsman; reporting improper governmental action occurring within the superior court to the presiding judge of the superior court; reporting violations of criminal laws to the county prosecuting attorney; and reporting violations of the Ethics Code, and any actions for which no other appropriate recipient of a report is listed in this subsection, to the ombudsman.

2. Cooperating in an investigation by an "investigating official" related to "improper governmental action"; and/or

3. Testifying in a proceeding or prosecution arising out of an "improper governmental action."

D. Retaliation prohibited. No county officer or employee shall retaliate against any employee because that employee has in good faith utilized the provisions of this chapter.

E. Penalty. Any county officer or employee who engages in prohibited retaliatory action is subject to disciplinary action up to and including termination.

F. Distribution of policy and procedures. Upon entering county service, every county officer and employee shall receive a written summary of this chapter, the procedures for reporting improper governmental actions to investigating officials, the procedures for obtaining the protections extended, and the prohibition against retaliation in this section. Copies of these summaries shall be conspicuously posted where all employees will have reasonable access to them. (Ord. 11687 § 4, 1995).

3.42.040 Confidentiality. To the extent allowed by law, the identity of an employee reporting information about an improper governmental action shall be kept confidential unless the employee in writing waives confidentiality. (Ord. 11687 § 5, 1995).

3.42.050 Investigation.

A. Referral or retention. The ombudsman is the appropriate investigating official for all improper governmental actions not specifically referred to in Section 3.42.030C.1. The ombudsman is also an appropriate investigating official for alleged improper governmental action occurring within an executive branch agency, including the department of assessments and the department of judicial administration. If, in accordance with the guidelines of Section 3.42.030C.1, the ombudsman is not the appropriate investigating official, the ombudsman shall, immediately upon receipt, refer reports alleging improper governmental action to the appropriate investigating official listed in Section 3.42.020. If the report of improper governmental action meets the definition of a complaint under K.C.C. 3.04.055 (the Employee Code of Ethics), the ombudsman shall investigate that allegation according to the ordinances and rules applicable to the ethics code. If the ombudsman is an appropriate investigating official and the report does not meet the definition of a complaint under the ethics code, the ombudsman may refer the report to the department director of the agency in which the alleged improper governmental action occurred or to the chief elected official of the branch of government implicated in the allegation, who shall ensure that the appropriate officer or agency responds to the complainant in writing within thirty (30) days of the receipt of the report, with a copy of the response to the ombudsman. If the ombudsman does not refer to another official, or if the other official's response is not timely or satisfactory to the ombudsman, the ombudsman may conduct an investigation. If a report of improper governmental action is filed with the executive or a department director, including the clerk of the superior court or the assessor, and a report is concurrently filed with the ombudsman, the ombudsman should defer action until the investigation is completed by the affected department. When the ombudsman chooses to conduct a concurrent investigation the ombudsman shall notify the executive and the chair of the council. The procedures in Sections 3.42.050B through E shall apply only to the ombudsman when he or she is investigating a report of an improper governmental action that is not investigated according to the rules applicable to the ethics code in accordance with Section 3.42.050A. The procedures in Section 3.42.050B through E do not apply to any other government official.

B. Ombudsman's investigation. If at any stage in an investigation of an alleged "improper governmental action," the ombudsman may issue subpoenas, administer oaths, examine witnesses, compel the production of documents or other evidence, refer the matter to the State Auditor, law enforcement authorities or other governmental agency, and/or issue reports, each as deemed appropriate. Within thirty (30) days after receiving information about an "improper governmental action" from a county employee, the ombudsman shall conduct a preliminary investigation, and provide the complainant with a written report of the general status of the investigation which may include matters for further research or inquiry.

C. Completion and reports. Upon completion of the investigation, the ombudsman shall notify the complainant in writing of any determinations made. If the ombudsman determines that an improper governmental action has occurred, the ombudsman shall report the nature and details of the activity to the complainant; to the head of the department with responsibility for the action and if a department head is implicated, to the executive and county council; and to such other governmental officials or agencies as the ombudsman deems appropriate. If satisfactory action to follow up the report is not being taken within a reasonable time, the ombudsman shall report his or her determination to the executive and advise the county council.

D. Closure. The ombudsman may close an investigation at any time he or she determines that no further action is warranted and shall so notify the complainant.

E. Decisions of the ombudsman under this section may not be appealed to the Board of Ethics. (Ord. 11687 § 6, 1995).

3.42.060 Reporting and adjudicating retaliation.

A. Complaint. In order to seek relief, an employee who believes he or she has been retaliated against in violation of K.C.C. 3.42.030D must file a signed written complaint within 30 days of the occurrence alleged to constitute retaliation. The complaint shall be filed with the ombudsman and must specify the alleged retaliatory action and the relief requested.

B. Investigation and Response. The ombudsman shall immediately forward the complaint to the head of the executive office or department in which the retaliation is alleged to have occurred; or to the prosecuting attorney, if his office is implicated in the complaint; or to the chair of the county council or to the presiding judge of the superior or district courts if their respective branches are implicated in the complaint. The head of the department, office, or branch to which the complaint was referred shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint with the ombudsman. If the head of an executive office or department is alleged to have retaliated in violation of K.C.C. 3.42.030D, the executive shall ensure that the complainant is sent a response within thirty (30) days after the filing of the complaint with the ombudsman.

C. Hearing. If an employee who has filed a complaint of retaliation under this section is dissatisfied with the response and desires a hearing pursuant to RCW 42.41.040, or the employee has not received a response within forty-five (45) days of having filed the complaint with the ombudsman, the employee shall deliver a request for hearing to the head of the branch within which retaliation is alleged to have occurred within fifteen (15) days of receipt of the response from the county or, if no response is received within the forty-five (45) day response period, within fifteen (15) days of the expiration of the response time period. Within five (5) working days of receipt of the request for hearing, the county shall apply to the state office of administrative hearings for a hearing to be conducted as provided in RCW 42.41.040.

D. Extension. If the chief elected official in the branch of government where the retaliation is alleged to have occurred finds that additional time is needed to make a proper response to the complaint of retaliation, he or she shall notify the complainant in writing prior to the expiration of the forty-five (45) day response period. The effect of such notice is to extend for an additional forty-five (45) days the time period in which a response must be made. Only one forty-five (45) day extension may be obtained, provided, however, an employee shall not have the right to seek a hearing under this section pursuant to RCW 42.41.040 if the complaint of retaliation is pursued under and falls within the subject matter jurisdiction of a collective bargaining agreement grievance procedure ending in binding arbitration or the career service grievance procedure ending in a hearing before the personnel board. (Ord. 11687 § 7, 1995).

3.42.200 Severability. The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this chapter, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Ord. 11687 § 8, 1995).