



Richmond Fire Department Whistleblower Protection Policy

I. Purpose

The **Richmond Township Fire Protection District (District)** provides whistleblower protections in two important areas: confidentiality and against retaliation. The confidentiality of a whistleblower will be maintained to the extent allowable by law, however, an identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. A whistleblower may also waive confidentiality in writing. The **District** will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblowers who believe they are being retaliated against must submit a written report to the Auditing Official within 60 days of gaining knowledge of the retaliatory action. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

II. Definitions

- a) **Whistleblower** means an employee, as defined in Section II of this policy, of the **District** who:
1. Reports an improper governmental action as defined under 50 ILCS 105/4.1 (hereinafter Section 4.1);
 2. Cooperates with an investigation by an Auditing Official related to a report of improper governmental action; or,
 3. Testifies in a proceeding or prosecution arising out of an improper governmental action.
- b) **Auditing Official** means any elected, appointed or employed individual, by whatever name, in the **District** whose duties may include: receiving, registering and investigating complaints and information concerning misconduct, inefficiency and waste within the **District**; investigating the performance of officers, employees, functions and programs; and, promoting economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the **District**.
- ~~1. The Auditing Official shall be _____ [Name, Title] until replaced by the **District**.~~
 2. If the **District** does not designate an Auditing Official, the Auditing Official defaults to the State's Attorney of **McHenry County**.
- c) **Employee** means anyone employed by the **District**, whether in a permanent or temporary position, including full-time, part-time and intermittent workers. Employee also includes members of appointed boards or commissions, whether paid or unpaid. Employee also includes persons who have been terminated because of any report or complaint submitted under Section 4.1.

- d) **Improper governmental action** means any action by an employee of the **District**; an appointed member of a board, commission or committee; or, an elected official of the **District** that is undertaken in violation of a federal or state law or local ordinance; is an abuse of authority; violates the public's trust or expectation of their conduct; is of substantial and specific danger to the public's health or safety; or, is a gross waste of public funds. The action need not be within the scope of the employee's, elected official's, board member's, commission member's or committee member's official duties to be subject to a claim of "improper governmental action."
1. Improper governmental action does not include the **District's** 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, reprimands or violations of collective bargaining agreements, except to the extent that the action amounts to retaliation.
- e) **Retaliate, retaliation or retaliatory action** means any adverse change in an employee's employment status or the terms and conditions of employment that results from an employee's protected activity under Section 4.1. Retaliatory action includes, but is 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 disciplinary action made because of an employee's protected activity under Section 4.1.

III. Duties of an Auditing Official

Each Auditing Official shall establish written processes and procedures consistent with the terms of this policy and best practices for investigations for managing complaints filed under Section 4.1. Each Auditing Official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures, and all other provisions of Section 4.1.

The Auditing Official must provide each employee a written summary or a complete copy of Section 4.1 upon commencement of employment and at least once each year of employment. At the same time, the employee shall also receive a copy of the written processes and procedures for reporting improper governmental actions from the applicable Auditing Official.

Auditing Officials may reinstate, reimburse for lost wages or expenses incurred, promote or provide some other form of restitution.

In instances where an Auditing Official determines that restitution will not suffice, the Auditing Official may make their investigation findings available for the purposes of aiding in that employee's, or the employee's attorney's, effort to make the employee whole.

Auditing Officials are responsible for reading the full context of Section 4.1 and complying with all requirements.

If no Auditing Official is designated, the State's Attorney of **McHenry County** will be the default Auditing Official.

IV. Duties of an Employee

All reports of illegal and dishonest activities will be promptly submitted to the Auditing Official who is responsible for investigating and coordinating corrective action.

If an employee has knowledge of, or a concern of, improper governmental action, the employee shall make a written report of the activity to the Auditing Official. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; a designated Auditing Official is charged with these responsibilities.

V. Defend Trade Secrets Act Compliance:

"Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and, (ii) solely for the purpose of reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and, (B) does not disclose the trade secret, except pursuant to court order." (18 U.S.C. § 1833).

VI. Penalty

A Person who engages in prohibited retaliatory action under 50 ILCS 105/4.1 (a) is subject to the following penalties: a fine of no less than \$500 and no more than \$5,000, suspension without pay, demotion, discharge, civil or criminal prosecution, or any combination of these penalties, as appropriate.

VII. Employee Acknowledgment

Employees are required to sign a written acknowledgement that they have received, read and understand this Policy, and to submit that acknowledgement to the Auditing Official or other designated official of the **District**.

(740 ILCS 174/1)

Sec. 1. Short title. This Act may be cited as the Whistleblower Act.

(Source: P.A. 93-544, eff. 1-1-04.)

(740 ILCS 174/5)

Sec. 5. Definitions. As used in this Act:

"Employer" means: an individual, sole proprietorship, partnership, firm, corporation, association, and any other entity that has one or more employees in this State, including a political subdivision of the State; a unit of local government; a school district, combination of school districts, or governing body of a joint agreement of any type formed by two or more school districts; a community college district, State college or university, or any State agency whose major function is providing educational services; any authority including a department, division, bureau, board, commission, or other agency of these entities; and any person acting within the scope of his or her authority express or implied on behalf of those entities in dealing with its employees.

"Employee" means any individual who is employed on a full-time, part-time, or contractual basis by an employer.

"Employee" also includes, but is not limited to, a licensed physician who practices his or her profession, in whole or in part, at a hospital, nursing home, clinic, or any medical facility that is a health care facility funded, in whole or in part, by the State.

(Source: P.A. 95-128, eff. 1-1-08; 96-1253, eff. 1-1-11.)

(740 ILCS 174/10)

Sec. 10. Certain policies prohibited. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

(Source: P.A. 93-544, eff. 1-1-04.)

(740 ILCS 174/15)

Sec. 15. Retaliation for certain disclosures prohibited.

(a) An employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

(Source: P.A. 95-128, eff. 1-1-08.)

(740 ILCS 174/20)

Sec. 20. Retaliation for certain refusals prohibited. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation, including, but not limited to, violations of the Freedom of Information Act. (Source: P.A. 96-555, eff. 8-18-09.)

(740 ILCS 174/20.1)

Sec. 20.1. Other retaliation. Any other act or omission not otherwise specifically set forth in this Act, whether within or without the workplace, also constitutes retaliation by an employer under this Act if the act or omission would be materially adverse to a reasonable employee and is because of the employee disclosing or attempting to disclose public corruption or wrongdoing. (Source: P.A. 96-555, eff. 8-18-09.)

(740 ILCS 174/20.2)

Sec. 20.2. Threatening retaliation. An employer may not threaten any employee with any act or omission if that act or omission would constitute retaliation against the employee under this Act. (Source: P.A. 96-555, eff. 8-18-09.)

(740 ILCS 174/25)

Sec. 25. Civil penalty. Violation of this Act is a Class A misdemeanor. (Source: P.A. 93-544, eff. 1-1-04.)

(740 ILCS 174/30)

Sec. 30. Damages. If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate:

- (1) reinstatement with the same seniority status that the employee would have had, but for the violation;
- (2) back pay, with interest; and
- (3) compensation for any damages sustained as a result of the violation, including litigation costs, expert witness fees, and reasonable attorney's fees.

(Source: P.A. 93-544, eff. 1-1-04.)

(740 ILCS 174/35)

Sec. 35. Exception. This Act does not apply to disclosures that would constitute a violation of the attorney-client

privilege.

(Source: P.A. 93-544, eff. 1-1-04.)

(740 ILCS 174/40)

Sec. 40. Home Rule Limitation. It is the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution that the provisions of this Act are the exclusive exercise by the State of powers and functions which might otherwise be exercised by other home rule units. Such powers and functions may not be exercised concurrently, either directly or indirectly by any unit of local government, including any home rule unit except as otherwise authorized by this Act.

(Source: P.A. 95-128, eff. 1-1-08.)