

## Texas Whistleblower Act

The Texas Whistleblower Act<sup>1</sup> (Act) prohibits a city from taking an adverse employment action against an employee who “in good faith reports a violation of law by the employing [city] or another public employee to an appropriate law enforcement authority.”<sup>2</sup> The Act waives sovereign immunity for cities in causes of action arising out of claims by public employees whose employment was allegedly terminated for reporting illegal conduct.<sup>3</sup> This memo will focus on each element of the statute as to what is covered by the Act.

- **“Employee Reports a Violation of Law in Good Faith”**

The Act requires an employee to have made the report of a violation of law in good faith.<sup>4</sup> There must be a subjective and objective basis for believing there has been a violation of law.<sup>5</sup> Meaning, the employee must in good faith believe that a law was violated and the belief must be objectively reasonable. The report must be about another public employee or governmental entity. It cannot be about another member of the community that may have violated the law.

A “law,” for purposes of the Act, includes: (1) a state or federal statute; (2) an ordinance of a local governmental entity; or (3) a rule adopted under a statute or ordinance.<sup>6</sup> A city charter may also be considered a “law.”<sup>7</sup> Generally, internal policies are not considered laws.<sup>8</sup> However, some courts look to city council adoption.<sup>9</sup>

- **“To an Appropriate Law Enforcement Official”**

Under the Act, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in *good faith* believes is authorized to: (1) regulate under or enforce the law alleged to be violated in the report; or (2) investigate or prosecute a violation of criminal law.<sup>10</sup> Courts have opined that internal reports are not usually a “report to appropriate law enforcement authority.” For example, in one case, a court ruled that an employee’s report to the city of a police officer’s sexual harassment and employment retaliation was not reported to the appropriate agency and, therefore, could not form the basis of a whistleblower retaliation claim. The court wrote that the proper agency was one that had the authority to regulate under, enforce, investigate, or prosecute a violation of the state’s sexual harassment and employment retaliation laws, and a city’s general authority to regulate under, enforce, and investigate claims of sexual harassment was not enough to make it an appropriate law enforcement authority under the Act.<sup>11</sup>

---

<sup>1</sup> TEX. GOV’T CODE §§ 554.001 *et seq.*; <http://www.capitol.state.tx.us/statutes/gv.toc.htm>.

<sup>2</sup> TEX. GOV’T CODE § 554.002(a).

<sup>3</sup> TEX. GOV’T CODE § 554.0035; *City of Alamo v. Holton*, 934 S.W.2d 833, rehearing overruled (Tex.App.—Corpus Christi, 1996).

<sup>4</sup> TEX. GOV’T CODE §§ 554.001-.010.

<sup>5</sup> *Rogers v. City of Fort Worth*, 89 S.W.3d 265 (Tex.App.—Fort Worth, 2002).

<sup>6</sup> TEX. GOV’T CODE § 554.001; *Rodriguez v. Board of Trustees of Laredo Independent School Dist.*, 143 F.Supp.2d 727 (S.D. Tex., 2001).

<sup>7</sup> *See City of Beaumont v. Bouillion*, 873 S.W.2d 425 (Tex.App.—Beaumont, 1993), writ granted, reversed 896 S.W.2d 143 (Tex., 1995), rehearing overruled.

<sup>8</sup> *Ruiz v. City of San Antonio*, 966 S.W.2d 128 (Tex.App.—Austin, 1998).

<sup>9</sup> *City of Waco v. Lopez*, 183 S.W.3d 825 (Tex.App.—Waco, 2005)(City’s EEO policy was a “law” under the Act where the policy was formally adopted by city council in a resolution).

<sup>10</sup> TEX. GOV’T CODE § 554.002(b).

<sup>11</sup> *City of Fort Worth v. DeOreo*, 114 S.W.3d 664 (Tex.App.—Fort Worth, 2003).

- **Employee is “suspended, terminated, or other adverse personnel action because of making the report”**

To claim protection under the Act, an employee must have been subjected to suspension, termination<sup>12</sup>, or other adverse personnel action because of the report of an alleged violation of law by another city employee or official. A “personnel action” is defined as “an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.”<sup>13</sup> In some cases, reprimands or severe harassment may be enough for an “adverse personnel action.” The employee must file a grievance no later than the 90<sup>th</sup> day after the date on which the adverse personnel action occurred or when the employee discovered through reasonable diligence that the action taken was because of the report.<sup>14</sup>

### **Ability to File Suit**

The Act gives a public employee who claims that his suspension, termination, or other adverse personnel action was in retaliation for his good faith reporting of violations of the law the right to sue for damages and other relief.<sup>15</sup> Courts have opined that the Act does not distinguish between probationary and non-probationary employees.<sup>16</sup> An employee who is allegedly “retaliated” against for reporting a violation of law is entitled to sue for: (1) injunctive relief; (2) actual damages; (3) court costs; and (4) reasonable attorney fees.<sup>17</sup> In addition, the employee may also be entitled to reinstatement to the employee’s former position, compensation for wages lost during the period of suspension or termination; and reinstatement of fringe benefits and seniority rights lost because of the suspension or termination.<sup>18</sup>

Further, a supervisor who knowingly takes an adverse personnel action covered by the Act against an employee in retaliation for the report may be liable for a civil penalty not to exceed \$15,000.<sup>19</sup> The Act requires the supervisor and not the city to pay for the civil penalty and deposit it in the state treasury.<sup>20</sup>

### **Posting Requirement**

A city is required to post a sign in a prominent location informing its employees of their rights under the Act.<sup>21</sup>

For more information on the Texas Whistleblower Act, you may refer to the Texas Attorney General’s “Public Officers: Traps for the Unwary” handbook at: [http://www.oag.state.tx.us/AG\\_Publications/pdfs/2006trapshb.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/2006trapshb.pdf), or contact the TML Legal Department at (512) 231-7400 or [Legal@tml.org](mailto:Legal@tml.org)

---

<sup>12</sup> Constructive discharge is a termination, for purposes of the Act. *University of Texas Medical Branch at Galveston v. Hohman*, 6 S.W.3d 767, review dismissed w.o.j. (Tex.App.—Hous. (1 Dist.), 1999).

<sup>13</sup> TEX. GOV'T CODE § 554.001(3).

<sup>14</sup> TEX. GOV'T CODE § 554.005.

<sup>15</sup> TEX. GOV'T CODE § 554.0035.

<sup>16</sup> *City of Alamo v. Holton*, 934 S.W.2d 833, rehearing overruled (Tex.App.—Corpus Christi, 1996).

<sup>17</sup> TEX. GOV'T CODE § 554.003(a).

<sup>18</sup> *Id.* at (b).

<sup>19</sup> TEX. GOV'T CODE § 554.008(a).

<sup>20</sup> *Id.* at (c) and (d).

<sup>21</sup> The sign is prescribed by the Attorney General’s office. *See* TEX. GOV'T CODE § 554.009.