

## **Massachusetts "Whistleblower" Law**

### **Chapter 149: Section 185. Retaliation against employees for reporting of violations of law or risks to public health, safety or the environment; remedies.**

Section 185. (a) As used in this section, the following words shall have the following meanings:-

- (1) ""Employee", any individual who performs services for and under the control and direction of an employer for wages or other remuneration.
  - (2) ""Employer", the commonwealth, and its agencies or political subdivisions, including, but not limited to, cities, towns, counties and regional school districts, or any authority, commission, board or instrumentality thereof.
  - (3) ""Public body", (A) the United States Congress, any state legislature, including the general court, or any popularly elected local government body, or any member or employee thereof; (B) any federal, state or local judiciary, or any member or employee thereof, or any grand or petit jury; (C) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof; (D) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer; or (E) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.
  - (4) ""Supervisor", any individual to whom an employer has given the authority to direct and control the work performance of the affected employee, who has authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains, or who has been designated by the employer on the notice required under subsection (g).
  - (5) ""Retaliatory action", the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.
- (b) An employer shall not take any retaliatory action against an employee because the employee does any of the following:
- (1) Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or of another employer with whom the employee's employer has a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment;
  - (2) Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice which the employee reasonably believes poses a risk to public health, safety or the environment by the employer, or by another employer with whom the employee's employer has a business relationship; or
  - (3) Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment.

(c) (1) Except as provided in paragraph (2), the protection against retaliatory action provided by subsection (b) (1) shall not apply to an employee who makes a disclosure to a public body unless the employee has brought the activity, policy or practice in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment, to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice.

(2) An employee is not required to comply with paragraph (1) if he: (A) is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature; (B) reasonably fears physical harm as a result of the disclosure provided; or (C) makes the disclosure to a public body as defined in clause (B) or (D) of the definition for "public body" in subsection (a) for the purpose of providing evidence of what the employee reasonably believes to be a crime.

(d) Any employee or former employee aggrieved of a violation of this section may, within two years, institute a civil action in the superior court. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein. The court may: (1) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this section; (2) reinstate the employee to the same position held before the retaliatory action, or to an equivalent position; (3) reinstate full fringe benefits and seniority rights to the employee; (4) compensate the employee for three times the lost wages, benefits and other remuneration, and interest thereon; and (5) order payment by the employer of reasonable costs, and attorneys' fees.

(e) (1) Except as provided in paragraph (2), in any action brought by an employee under subsection (d), if the court finds said action was without basis in law or in fact, the court may award reasonable attorneys' fees and court costs to the employer.

(2) An employee shall not be assessed attorneys' fees under paragraph (1) if, after exercising reasonable and diligent efforts after filing a suit, the employee moves to dismiss the action against the employer, or files a notice agreeing to a voluntary dismissal, within a reasonable time after determining that the employer would not be found liable for damages.

(f) Nothing in this section shall be deemed to diminish the rights, privileges or remedies of any employee under any other federal or state law or regulation, or under any collective bargaining agreement or employment contract; except that the institution of a private action in accordance with subsection (d) shall be deemed a waiver by the plaintiff of the rights and remedies available to him, for the actions of the employer, under any other contract, collective bargaining agreement, state law, rule or regulation, or under the common law.

(g) An employer shall conspicuously display notices reasonably designed to inform its employees of their protection and obligations under this section, and use other appropriate means to keep its employees so informed. Each notice posted pursuant to this subsection shall include the name of the person or persons the employer has designated to receive written notifications pursuant to subsection (c).

CHAPTER 268A. CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES.

**Chapter 268A: Section 17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney.**

Section 17. (a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

## CHAPTER 268A. CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES.

### Chapter 268A: Section 20. Municipal employees; financial interest in contracts; holding one or more elected positions.

Section 20. (a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the municipal employee, (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or (c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section, or (e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or (f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this section or (g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs or (h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which

## CHAPTER 268A. CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES.

### Chapter 268A: Section 23. Supplemental provisions; standards of conduct.

Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

- (1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;
- (2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;
- (3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

- (1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;
- (2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgement that he has been provided with such copy.