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MEMO PERD #04/09
January 21, 2009

TO: Department Directors
Division Administrators
Agency Personnel Liaisons
Agency Personnel Representatives

FROM: Teresa Thienhaus, Director
Department of Personnel

SUBJECT: DISCLOSURE OF IMPROPER GOVERNMENTAL ACTION

Attached is a summary of the statutes pertaining to the disclosure of improper governmental action along with the appeal form, *Request for Hearing under the provisions of NRS 281.641*. These are being provided to you in accordance with NRS 281.661 which requires the Director of the Department of Personnel to make a written summary of NRS 281.611 through 281.671 available to each State officer and employee on an annual basis. NAC 281.305 requires a State officer or employee to file their written appeal on a form provided by the Department of Personnel. The appeal form is also available via our website at http://dop.nv.gov/forms.html.

Please ensure each employee within your organization is provided with the attached summary explaining this process. Thank you for your assistance in distributing this information.

TT:vk

Attachments

DISCLOSURE OF IMPROPER GOVERNMENTAL ACTION

NRS 281.661 requires the Director of the Department of Personnel to provide each State officer and employee, on an annual basis, a summary of the statutes pertaining to disclosure of improper governmental action (NRS 281.611 through 281.671).

These statutes prohibit any State officer or employee from using his or her official authority or influence to prevent disclosure of improper governmental action by another State officer or employee.

"Improper governmental action" is defined in NRS 281.611 as…

> "…any action taken by a state officer or employee or local governmental officer or employee in the performance of his official duties, whether or not the action is within the scope of his employment, which is:
>
> (a) In violation of any state law or regulation;
> (b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;
> (c) An abuse of authority;
> (d) Of substantial and specific danger to the public health or safety; or
> (e) A gross waste of public money."

Per NRS 281.631(2), "use of 'official authority or influence' includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, evaluation or other disciplinary action."

NRS 281.641 affords a State officer or employee who discloses information concerning improper governmental action a hearing before a State Personnel Hearing Officer if any reprisal or retaliatory action is taken against him within two years following the disclosure. **The appeal must be submitted in writing on the NPD-53 form, *Request for Hearing*, under the provisions of NRS 281.641, which is available from the Department of Personnel or an agency's personnel representative. This properly completed form must be filed with the Hearing Officer within 10 working days (NAC 281.305) after the alleged reprisal or retaliatory action takes place.**

Per NRS 281.651(2), the provisions of NRS 281.611 to 281.671, inclusive, do not prohibit a State officer or employee from initiating proper disciplinary procedures against another State officer or employee who discloses untruthful information concerning improper governmental action.

Finally, these statutes specifically encourage any State officer or employee to disclose improper governmental action to the extent not expressly prohibited by law. Further, it is the intent of the Legislature to protect the rights of a State officer or employee who makes such a disclosure.

A copy of these statutes may be obtained by contacting your department director, division administrator, the Department of Personnel, or accessed via the Nevada State Legislature's website at www.leg.state.nv.us under Law Library.

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REQUEST FOR HEARING UNDER THE PROVISIONS OF NRS 281.641 ("WHISTLE BLOWER LAW")

STATUTE AND REGULATION PRINTED ON REVERSE

In accordance with NAC 281.305, this form is provided by the Department of Personnel in filing your appeal with the Hearings Officer. NAC 281.305(2) provides that "The hearing officer may reject a form that is incomplete or otherwise deficient as insufficient to commence the appeal."

Name of Appellant *(please print)*_____

Mailing Address_____
City *State* *Zip*

AT THE TIME OF THE RETALIATORY ACTION DESCRIBED BELOW IN PARAGRAPH 4, I AM/WAS EMPLOYED WITH THE STATE OF NEVADA AS FOLLOWS:

Job Title_____ Work Phone_____

Department_____ Division_____
Section_____

1. Describe the specific factual allegations of improper governmental conduct including the date of any such alleged occurrence; the state officer or state employee alleged to have engaged in such improper governmental action -- either by act of commission or omission -- and the basis or legal theory upon which it is alleged that said conduct constitutes an improper governmental action.

_____

_____

_____

2. Describe the specific factual allegations as to when, to whom and how the alleged improper governmental conduct was disclosed.

_____

_____

_____

3. Describe the specific factual allegations as to when, by whom and how the institution and/or individual alleged to have committed a reprisal or retaliation due to the disclosure learned of the disclosure activity of the Petitioner-Employee including any inferences drawn in connection therewith.

_____

_____

_____

4. Describe the specific factual allegations as to when, by whom and what reprisal or retaliation resulted from their alleged disclosure of the alleged improper governmental action.

_____

_____

_____

APPELLANT'S SIGNATURE_____
DATE_____

Upon completion return to Department of Personnel. (Retain a copy for your records.)

NRS 281.641 Reprisal or retaliatory action against state officer or employee who discloses improper governmental action: Written appeal; hearing; order; negative ruling may not be based on identity of persons to whom disclosure was made; rules of procedure.

1. If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file a written appeal with a hearing officer of the Department of Personnel for a determination of whether the action taken was a reprisal or retaliatory action. The written appeal must be accompanied by a statement that sets forth with particularity:

(a) The facts and circumstances under which the disclosure of improper governmental action was made; and

(b) The reprisal or retaliatory action that is alleged to have been taken against the state officer or employee.

The hearing must be conducted in accordance with the procedures set forth in NRS 284.390 to 284.405, inclusive, and the procedures adopted by the Personnel Commission pursuant to subsection 4.

2. If the hearing officer determines that the action taken was a reprisal or retaliatory action, he may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file a copy of his decision with the Governor or any other elected state officer who is responsible for the actions of that person.

3. The hearing officer may not rule against the state officer or employee based on the person or persons to whom the improper governmental action was disclosed.

4. The Personnel Commission may adopt rules of procedure for conducting a hearing pursuant to this section that are not inconsistent with the procedures set forth in NRS 284.390 to 284.405, inclusive.

(Added to NRS by 1991, 1993, A 1995, 347; 2001, 3050)

NAC 281.305 <u>Written appeal by officer or employee who claims retaliatory action was taken against him</u>.

1. A state officer or employee who claims a reprisal or retaliatory action was taken against him for disclosing information concerning improper governmental action may file a written appeal pursuant to NRS 281.641 with a hearing officer of the Department of Personnel. The appeal must be:

(a) Filed within 10 workdays after the date the alleged reprisal or retaliatory action took place.

(b) Submitted on a form provided by the Department of Personnel.

2. The hearing officer may reject a form that is incomplete or otherwise deficient as insufficient to commence the appeal.

(Added to NAC by Department of Personnel, eff. 3-1-96)