



DEPARTMENT OF PERSONNEL
209 East Musser Street, Room 101
Carson City, Nevada 89701-4204
(775) 684-0150
<http://dop.nv.gov>

MEMO PERD #9-11

March 11, 2011

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

FROM: Teresa Thienhaus, Director
Department of Personnel

A handwritten signature in cursive script that reads "Teresa Thienhaus".

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, *Appeal of "Whistleblower" Retaliation 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. Please note that the appeal form has been changed to provide clearer instructions and additional space for the employee to explain the basis of his or her appeal and the remedy sought. 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

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, *Appeal of "Whistleblower" Retaliation Under the Provisions of NRS 281.641*, which is available on the Department of Personnel's website at <http://dop.nv.gov/forms.html>. 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.

APPEAL OF “WHISTLEBLOWER” RETALIATION UNDER THE PROVISIONS OF NRS 281.641

PLEASE PRINT ALL INFORMATION

****PLEASE NOTE: THIS FORM IS TO BE USED IF YOU BELIEVE YOU HAVE RECEIVED RETALIATION FOR REPORTING AN IMPROPER GOVERNMENTAL ACTION.****

Appellant Information

Name of appellant:

Mailing
Address:

Work Phone:

Contact Phone:

Email:

Employee ID#:

Agency of Employment:

Division/Section:

City:

Job Title:

At the time of the alleged retaliatory action I was employed
with the Agency listed above: ☐ Yes ☐ No

If “No”, list Agency employed with at the time:

Whistleblowing Activity

Have you disclosed information that evidences improper governmental action through a violation of state law or regulation; an abuse of authority; a gross waste of public money; or a substantial and specific danger to the public health or safety?

☐ Yes**

☐ No

**If “Yes”, attach a summary that sets forth the facts and circumstances regarding the disclosure of improper governmental action.

If “Yes”, to whom was the disclosure made?

Date the disclosure was made.

Appealed Action

Date of alleged retaliation:

If you believe action was taken against you in retaliation for your disclosure of improper governmental action:

- a) State specifically the alleged retaliatory action you are appealing, including a chronology of facts; and
- b) explain why you believe the action was based on your disclosure of improper governmental action. Attach a copy of documentary evidence which supports your statement(s).

What remedy are you seeking?

Designation of Representative

You may represent yourself in this appeal, or you may be represented by an attorney or other person of your choosing. If you are representing yourself, do NOT complete this section. You may also designate a representative at a later date.

"I hereby designate _____ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf."

Representative's mailing address:

Representative's phone number:

Fax:

Email address:

SIGN HERE TO MAKE YOUR DESIGNATION OF REPRESENTATIVE EFFECTIVE

Appellant Signature:

Date:

Appellant Signature

Signature of Appellant or Designated Representative:

Date:

By signing this form you are requesting a hearing to determine if the action described above was reprisal or retaliatory action for disclosing information about improper governmental action and authorize the Department of Personnel to provide a copy of your personnel record to the Hearing Officer.

Please mail or fax this form to:

Department of Personnel
Clerk to the Hearing Officers
209 East Musser Street, Room 101
Carson City, Nevada 89701-4204
Fax (775) 684-0118

Appeal Instructions

GENERAL: Please print all information requested on this form. This form is used to appeal an action that you believe has occurred in retaliation after reporting an improper governmental action. This form is not used to report improper action, only alleged retaliation for reporting improper governmental action. You will have an opportunity to submit additional material in support of your appeal prior to your hearing.

To report concerns about improper governmental action please contact the Nevada Attorney General's office, the Nevada Commission on Ethics, or your Agency management.

The "whistleblower" appeal procedure and statements made on this form do not include all the rights available to an appellant. You should review NRS 281 and NAC 281 prior to filing an appeal. Appeal hearings are open to the public and hearing officer decisions are public information.

HOW TO FILE AN APPEAL: You may file your appeal by mail, by facsimile, or by personal delivery. **The appeal form must be completely filled out and must contain your signature or your designated representative's signature.**

WHEN TO FILE AN APPEAL: Nevada law states "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 whether the action taken was a reprisal or retaliatory action." (NRS 281.641)

Your appeal must be filed within 10 working days after the date the alleged reprisal or retaliatory action took place. If your appeal is filed late the hearing officer may dismiss it as untimely. The date of the filing is the date the appeal is postmarked, the date of the facsimile transmission, or the date of receipt if you personally deliver it to the Department of Personnel.

WHERE TO FILE AN APPEAL: You must file your appeal with the Clerk to the Hearing Officers at the Nevada Department of Personnel, 209 East Musser St., Room 101, Carson City, Nevada 89701-4204, Fax (775) 684-0118, Phone (775) 684-0109.

To deliver your appeal in person, please bring it to the Department of Personnel, Director's Office, 209 East Musser St., Room 300, Carson City, Nevada.

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 Written appeal by officer or employee who claims retaliatory action was taken against him.

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)