

1095 Whistle-Blower Protection

I. Notification

All Arkansas Department of Human Services offices must post a printed sign (supplied by the Arkansas Legislative Audit on its website) that:

- (a) Informs DHS employees of their rights under the Arkansas Whistle-Blower Act;
- (b) Describes an appropriate authority to whom a DHS employee may make a good faith communication regarding fraud, waste or abuse in government; and,
- (c) The number for the hotline for the reporting of fraud, waste, or abuse in government (Ark. Code Ann. § 21-1-608(b)(1-2).

II. Definitions

- (a) “Adverse Action” means to discharge, threaten, or otherwise discriminate or retaliate against a state employee in any manner that affects the employee’s employment, including compensation, job location, rights, immunities, promotions, or privileges.
- (b) “Appropriate Authority” means a state, county, municipal government department, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste, or a member, officer, agent, investigator, auditor, representative, or supervisory employee of the body, agency, or organization. The term includes, but is not limited to, the Office of the Attorney General, the office of the Auditor of the State, the Arkansas Ethics Commission, the Legislative Joint Audit Committee and the Division of Legislative Audit, and the offices of the various prosecuting attorneys with the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.
- (c) “Communicate” means an oral or written report to an appropriate authority.
- (d) “Damages” means damages for a job-related injury or loss caused by each violation of the Whistle-Blower Act, including fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys’ fees.
- (e) “Employee” for the purpose of this policy is any person who performs a full or part-time service for wages, salary, or other remuneration for the Department of Human Services.
- (f) “Violation” means an infraction or a breach which is not that of a merely technical or minimal nature, of a state statute or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer.
- (g) “Waste” means the agency’s conduct or omissions that result in substantial abuse, misuse, destruction or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision’s resources.
- (h) “Whistle-blower” means a person who witnesses or has evidence of a waste or violation while employed with the Department of Human Services, and who communicates in good faith, or testifies to, the waste or violation, orally or in writing, to one of the employee’s

supervisors, to an agent of the Department of Human Services or to an appropriate authority, provided that the communication is made prior to any adverse action by the Department of Human Services.

III. Policy

- (a) All DHS employees are required to immediately notify their Division Directors or Office Chiefs and they, in turn, will notify the DHS Chief Financial Officer if they reasonably suspect a loss of public funds, including, without limitation, an apparent unauthorized disbursements of public funds, or the apparent theft or misappropriation of public funds or property.
- (b) DHS will not take adverse action against an employee because he or she, or a person authorized to act on behalf of an employee, communicates in good faith the existence of waste of public funds, property, or manpower, including federal funds, property, or manpower, administered by DHS or a violation or suspected violation of a law, rule or regulation adopted under Arkansas law to an appropriate authority. The communication must be made at a time and in a manner that gives DHS reasonable notice of need to correct the waste or violation (Ark. Code Ann. § 21-1-603 (a)(1-2)).
- (c) An employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. Good faith is lacking when the employee does not have personal knowledge of a factual basis for the communication or when the employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous (Ark. Code Ann. § 21-1-603(b)(1-2)).
- (d) DHS will not take adverse action against an employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review (Ark. Code Ann. § 21-1-603 (c)).
- (e) DHS will not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of Arkansas law (Ark. Code Ann. § 21-1-603 (d)).
- (f) DHS will not take adverse action against an employee because of a report of a loss of public funds under Ark. Code Ann. §25-1-124 (Ark. Code Ann. §21-1-603 (e)).

IV. DHS Chief Fiscal Officer

- (a) The DHS Chief Fiscal Officer (CFO) must report a loss of public funds that amounts to one thousand dollars (\$1,000) or more in one (1) calendar year to the Arkansas Legislative Audit within five (5) business days of the date the DHS CFO learns of the loss of public funds.
- (b) Loss of funds includes, without limitation:
 - (1) Apparent unauthorized disbursements of public funds; or,
 - (2) Apparent theft or misappropriation of public funds or property.

- (c) The DHS CFO who purposely fails to comply with this section is guilty of a Class A misdemeanor (Ark. Code Ann. § 25-1-124(c)).
- (d) In the absence of the DHS CFO, then the DHS Director or a Deputy Director may report the loss to the Arkansas Legislative Audit to meet the five (5) business day mandate.

V. Communication and Report

- (a) Upon the resolution of a matter communicated to an appropriate authority, the appropriate authority must provide a written report detailing the content of the communication and the outcome of the communication to the employee who made the communication and the employer that was the subject of the communication.
- (b) After receiving this written report, DHS will document the savings in state funds attributable to changes made based on the communication filed under this policy for one full fiscal year. Within thirty (30) days of the end of the first full fiscal year in which the changes made based on the communication filed under this policy were implemented, DHS will issue a report of:
 - (1) The total savings in state funds resulting from the communication under this policy for the first full fiscal year in which the changes were implemented;
 - (2) The name of the employee who made the communication; and,
 - (3) The amount of the reward for which the employee is eligible.
- (c) This report will be submitted to:
 - (1) The Performance Evaluation and Expenditure Review Subcommittee of the Legislative Council or, if the General Assembly is in session, the Review/PEER Subcommittee of the Joint Budget Committee;
 - (2) The employee who made the communication under this policy, unless he or she has elected to maintain confidentiality (as referenced in this policy). Any report submitted to the employee must include a notice to the employee of the right to an appeal under this policy; and,
 - (3) The Clerk of the Arkansas State Claims Commission.

VI. Mediation

Any employee may voluntarily participate in mediation under DHS Policy 1086, Mediation/Grievance Policy, if the employee or DHS wishes to resolve a dispute between them that involves an adverse action taken against the employee. Such voluntary mediation, in accordance with Policy 1086, must occur before a civil action has been initiated in court. DHS will utilize the appropriate DFA forms (or recommended forms) for such a mediation.

VII. Expedited Hearings

- (a) A court in rendering judgment under the Whistle-Blower Act may order any or all of the following remedies:
 - (1) An injunction to restrain continued violations of the provisions of the Whistle-Blower Act;
 - (2) The reinstatement of the employee to the same position held before the adverse action or to an equivalent position;
 - (3) The reinstatement of full fringe benefits and retirement service credit;
 - (4) The compensation for lost wages, benefits, and any other remuneration; or
 - (5) The payment by the employee of reasonable court costs and attorney's fees.
- (b) An employee who alleges in a civil action that he or she was terminated from his or her position as a result of adverse action prohibited under state law (*Refer to Ark. Code Ann. §21-1-603*) may request an expedited hearing on the issue of being reinstated into his or her position until the resolution of the civil action. If the employee demonstrates at the expedited hearing that a reasonable person would conclude that the termination was the result of an adverse action prohibited under state law, the court will order that the employee be:
 - (1) Reinstated to his or her position until the conclusion of the civil action; or,
 - (2) Reinstated to his or her position and placed on paid administrative leave until the conclusion of the civil action (*Refer to Ark. Code Ann. §21-1-605*).
- (c) A court may also order that reasonable attorney's fees and court costs to be awarded to DHS if the court determines that an action brought by an employee under the Act is without basis in law or fact. An employee will not be assessed attorney's fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the employee files a voluntary nonsuit concerning DHS within sixty (60) calendar days after determining that DHS would not be liable for damages.

VIII. Protection of Confidentiality

- (a) The Whistle-Blower Act will not be construed to permit a disclosure that would diminish or impair the rights of any person or DHS official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.
- (b) An employee wishing to maintain this confidentiality or who otherwise chooses to forego a reward, must request to the appropriate authority to which the report is made that the report not include the employee's name or identifying information.

- (c) The name and identifying information of a state employee who requests confidentiality and does not receive a reward will be exempt from disclosure under the Freedom of Information Act of 1967 (FOIA).
- (d) All materials and documentation, including, without limitation, notes, memos, recordings, preliminary drafts of investigative reports, or other data gathered in connection with a communication regarding the waste of public funds or a violation, are exempt from FOIA requests except:
 - (1) Final reports issued by DHS or an appropriate authority concerning the matter; or,
 - (2) The name and identifying information of an employee who receives an award.
- (e) State employees who request confidentiality (wish to not be identified) will not receive a reward (Ark. Code Ann. § 21-1-610 (g)(1-2)).

IX. Reference

DHS employees may refer to Ark. Code Ann. § 21-1-601 et seq for more information about the whistle blower law.