

Kansas Municipal Whistleblower Act; HB 2160

HB 2160 establishes the Kansas Municipal Employee Whistleblower Act (Act) to provide legal protections for municipal employees who report conduct that is dangerous or unlawful.

Kansas Municipal Employee Whistleblower Act

The Act prohibits any supervisor or appointing authority of a municipality from prohibiting any of the following or taking disciplinary action against an employee for:

- Discussing municipality operations or other matters of public concern, including public health, safety, or welfare, with any member of the governing body of such municipality or an auditing agency;
- Reporting a violation of state or federal law, municipal resolution, or adopted rules and regulations, resolution, or ordinance;
- Failing to give notice of a report filed to the supervisor or appointing authority prior to the report being filed; or
- Disclosing malfeasance or other misappropriation of moneys held by a municipality.

The Act shall not be construed to:

- Prohibit a supervisor or appointing authority from requiring an employee to inform authorities about a governing body or auditing requests for information submitted to the municipality or made, or to be made, by an employee to the members of the governing body or an auditing agency on behalf of the agency;
- Allow an employee to leave assigned work areas during normal work hours without following applicable rules and regulations and policies pertaining to employee leave unless requested by a member of the governing body of the municipality or an auditing agency;
- Authorize an employee to represent an employee's personal opinions as those of the municipality; or
- Prohibit disciplinary action of an employee who discloses information that:
 - The employee knows to be false or is disclosed with reckless regard for the truth or falsity of such information;
 - The employee knows to be exempt from required disclosure under the Kansas Open Records Act;
 - Is confidential or privileged under state law, federal law, or court rule; or

- Is disclosed due to a corrupt motive rather than a good faith concern for a wrongful activity.

The Act states that any disciplinary action that is alleged to have taken place may be brought to a court of competent jurisdiction within 90 days after the occurrence of the alleged violation, except by officers or employees eligible to administratively appeal disciplinary actions pursuant to the Act. The bill states an officer or employee may bring action seeking damages and any other relief the court deems necessary. The court may award the prevailing party all or a portion of the costs of the action, including reasonable attorney fees and witness fees.

In any municipality that creates an administrative process to adjudicate disciplinary actions against employees of the municipality, the Act authorizes any officer or employee of the municipality who is eligible to appeal disciplinary actions to do so, within 90 days after the alleged disciplinary action, whenever the officer or employee alleges that disciplinary action was taken in violation of the Act. If the adjudicatory body finds the disciplinary action taken to be unreasonable, the bill directs that adjudicative body to modify or reverse the municipality's action and order appropriate relief. The Act authorizes any party to appeal a decision of the adjudicative body under the Kansas Judicial Review Act.

Each municipality is required to post a copy of the Act in locations where it may come to the attention of all employees.

Definitions

The bill defines the following terms:

- “Auditing agency” to mean:
 - The Legislative Post Auditor;
 - Any employee of the Legislative Division of Post Audit;
 - Any firm performing audit services pursuant to a contract with the Legislative Post Auditor;
 - Any state or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities; or
 - The Inspector General per KSA 75-7427;
- “Disciplinary action” to mean any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, or withholding of work;
- “Malfeasance” to mean unlawful conduct committed by any member of the governing body of a municipality or any officer or other employee thereof;
- “Misappropriation” to mean unauthorized or unlawful expenditure or transfer of moneys held by a municipality; and

- “Municipality” to mean any county, city, or unified school district, or any office, department, division, board, commission, bureau, agency, or unit thereof.