

ADMINISTRATIVE POLICY #27

TOWN OF SEEKONK EMPLOYEE PROTECTION (WHISTLEBLOWER) ACT
(Refer to MGL, Chapter 149, Section 185)

1. As used in this section, the following words shall have the following meanings:
 - a. Employee: Any individual who performs services for and under the control and direction of an employer for wages or other remuneration.
 - b. Employer: For purposes of this Act, the Town of Seekonk, Massachusetts; its boards, commissions, committees, etc. under the general supervision of the Board of Selectmen.
 - c. Public Body: Shall be known as the following: 1) the United States Congress, any state legislature, including the general court, or any popularly elected local government body, or any member or employee thereof; 2) any federal, state or local judiciary, or any member or employee thereof, or any grand or petit jury; 3) any federal, state or local regulatory, administrative or public agency or authority or instrumentality thereof; 4) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer; or 4) any division, board, bureau, office, committee or commission of any of the public bodies described in this paragraph.
 - d. 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 law, rule or regulation of which the employee complains, or who has been designated by the employer on the notice required under Subsection 7.
 - e. 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.
2. An employer shall not take any retaliatory action against an employee because the employee does any of the following:
 - a. 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;

Whistleblower Act

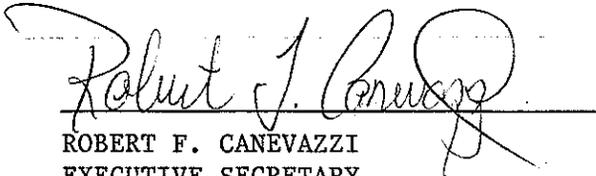
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- b. Provides information to, or testifies before any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice which the employee reasonably 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
 - c. 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.
3. Except as provided in Paragraph 4 below, the protection against retaliatory action provided by Paragraph 2, Section (a) 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 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 the department head of the employee or the Executive Secretary by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy or practice.
4. An employee is not required to comply with Paragraph 3 above if he/she:
- a. is reasonably certain that the activity, policy or practice is known to one or more department heads of the employer and the situation is emergency in nature;
 - b. reasonably fears physical harm as a result of the disclosure provided;
 - c. makes the disclosure to a public body as defined in Clauses 2 and 4 of Paragraph 1, Section (c) for the purpose of providing evidence of what the employee reasonably believes to be a crime.
5. Any employee or former employee aggrieved of a violation of this Act may, within two (2) years, institute a civil action in 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:
- a. issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violation of this Act;

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- b. reinstate the employee to the same position held before the retaliatory action, or to an equivalent position;
 - c. reinstate full fringe benefits and seniority rights to the employee;
 - d. compensate the employee for three (3) times the lost wages, benefits and other remuneration, and interest thereon; and
 - e. order payment by the employer of reasonable costs and attorney fees.
6. Except as provided in Paragraph 4, in any action brought by an employee under Paragraph 5, if the court finds said action was without basis in law or in fact, the court may award reasonable attorney fees and court costs to the employer.
 7. An employee shall not be assessed attorney fees under Paragraph 5 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.
 8. Nothing in this Act 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 Paragraph 5 shall be deemed a waiver by the plaintiff of the rights and remedies available to him/her, for the actions of the employer, under any other contract, collective bargaining agreement, state law, rule or regulation or under common law.
 9. The Town of Seekonk hereby agrees to conspicuously display this Act to inform its employees of their protection and obligations under this Act, and to use other appropriate means to keep its employees so informed. The Board of Selectmen hereby authorizes Robert Canevazzi, Executive Secretary, to administer this Act and to receive written notice of employee complaints pursuant to this Act.


ROBERT F. CANEVAZZI
EXECUTIVE SECRETARY

This policy was adopted by the Board of Selectmen on June 1, 1994.