

The Public Interest Disclosure (Whistleblower Protection) Act

What Employees of the Public Service Need to Know About Making a Disclosure

1. Preamble

The Manitoba government is committed to maintaining high standards of professional values and ethics in responding to the public service needs of Manitobans. Elected officials, senior management and employees share a common interest in ensuring the public sector operates within an environment of integrity, accountability and trust.

To build on protections already in place under other Manitoba laws, as well as existing provincial practices and processes, *The Public Interest Disclosure (Whistleblower Protection) Act* has been passed into law. This new law gives employees and others a clear process for disclosing concerns about significant and serious wrongdoing in the Manitoba public service, and provides protection from reprisal.

This fact sheet provides information for any employee in the Manitoba public service who wishes to disclose a wrongdoing in a way that will meet the requirements of the new law and provide the employee with protection from reprisal.

The new law is not intended to deal with routine operational or human resource matters. Employees who have concerns about such matters should follow existing procedures to deal with these issues. (See **4. What is “wrongdoing” under the new law?** and **6. What if it’s not a significant and serious matter?** for additional information.)

2. Who does the new law apply to?

The new law applies to employees and officers at all levels of provincial departments, Offices of the Legislative Assembly, and government bodies. These bodies include government agencies, such as Manitoba Hydro, the Manitoba Liquor Control Commission, the Workers Compensation Board and others. Also included are regional health authorities, child and family services authorities and agencies, and any other government body that has been included by a regulation under the new law.

The new law also provides protection for private sector employees and contractors who disclose wrongdoings in the Manitoba public service to the Manitoba Ombudsman.

3. What is a disclosure under the new law?

The new law is intended to apply to significant and serious wrongdoing in the Manitoba public service.

A disclosure under the new law must:

- be made in good faith;
- demonstrate that the employee has a reasonable belief that a wrongdoing has been committed or is about to be committed; and
- follow the requirements of the new law.

See **10. What is the process to make a disclosure?** for information on the process that must be followed for a disclosure to be protected under the new law.

4. What is “wrongdoing” under the new law?

The following are wrongdoings under the new law:

- an act or omission that is an offence under an Act or regulation (breaking the law);
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment (not including dangers that are normally part of an employee’s job);
- gross mismanagement, including mismanaging public funds or a public asset (government property); and
- knowingly directing or advising someone to commit any wrongdoing described above.

An employee who commits a wrongdoing may be disciplined appropriately up to and including dismissal, in addition to and separate from any penalty provided for by law.

5. How do I know if it’s wrongdoing under the new law?

An employee who is considering making a disclosure may request advice from the “designated officer” or the Manitoba Ombudsman.

The designated officer or Ombudsman may require the request for advice to be in writing.

6. What if it’s not a significant and serious matter?

The new law is intended to apply to significant and serious wrongdoing in the Manitoba public service. It is not intended to deal with routine operational or human resource matters.

The new law is also not intended to provide another avenue for employees whose relationship with their employer may be in dispute under a collective agreement or employment agreement as a result of human resource issues.

Employees who have concerns about such matters should follow existing procedures to deal with these issues.

7. How does the new law protect me from employment reprisals?

The new law protects employees from “reprisal”, that is, from measures being taken against an employee because the employee, in good faith, asked for advice about making a disclosure, made a disclosure or co-operated in an investigation. Examples of a reprisal include a disciplinary measure, a demotion, termination of employment (being fired), any measure that adversely affects the employee’s employment or working conditions, or a threat to take any of these measures.

An employee or officer in the Manitoba public service may file a written complaint with the Manitoba Labour Board if he or she believes a reprisal has been taken.

The new law builds on the protections already provided by other Manitoba laws (e.g.: *The Child and Family Services Act*, *The Protection for Persons in Care Act* and *The Workplace Safety and Health Act*) as well as existing provincial practices and processes.

For additional information, see the fact sheet titled ***What Employees of the Public Service Need to Know About Protection from Reprisal***.

8. What are my obligations and responsibilities?

Disclosing employees have a number of responsibilities, including acting in good faith, maintaining confidentiality and co-operating with investigations.

Disclosing employees have certain responsibilities respecting confidential or personal information. (See ***9. Can my disclosure contain confidential information?*** for additional information.)

For additional information about when an employee can make a public disclosure, see ***13. If a situation is urgent, can I make a “public” disclosure?***

All employees and officers of a provincial department must also co-operate fully with the Manitoba Ombudsman in the handling of a disclosure or information under the new law.

There are general offences under the new law, punishable by a fine of up to \$10,000, that include:

- It is an offence for any person to knowingly make a false or misleading statement, orally or in writing, to a supervisor, designated officer, chief executive (e.g. a deputy minister) or the Manitoba Ombudsman, or to a person acting on their behalf or under their direction, in seeking advice about making a disclosure, in making a disclosure, or during an investigation.
- It is an offence for any person to willfully obstruct a supervisor, designated officer, chief executive (e.g. a deputy minister) or the Manitoba Ombudsman, or a person acting on their behalf or under their direction, in the performance of a duty under the new law.
- It is also an offence for any person to destroy, mutilate, alter, falsify or conceal a document or thing, or to direct, counsel or cause such destruction, falsification or concealment, knowing that the document or thing is likely to be relevant to an investigation under the new law.

Employees may also have reporting responsibilities under other Manitoba laws, practices or processes. (e.g. The new law does not replace the responsibilities and obligations under laws such as *The Child and Family Services Act*, *The Drinking Water Safety Act*, *The Protection for Persons in Care Act* and *The Workplace Safety and Health Act*.)

9. Can my disclosure contain confidential information?

With some exceptions, an employee can make a disclosure under *The Public Interest Disclosure (Whistleblower Protection) Act* even if another law or regulation prohibits disclosure of the information.

The new law does not authorize an employee to disclose:

- information described in Subsection 19(1) of *The Freedom of Information and Protection of Privacy Act* (Cabinet confidences); or
- information that is protected by solicitor-client privilege. (In very general terms, this information includes all communications, verbal or written, of a confidential character between a lawyer and a client related to seeking, formulating or giving legal advice or assistance.)

If the disclosure involves personal or confidential information, the employee must take all reasonable precautions to ensure no more information is disclosed than is necessary to make the disclosure.

If the employee is making a disclosure to the public, the employee cannot disclose information that is protected or restricted by any provincial or federal law.

10. What is the process to make a disclosure?

Every provincial department, Office of the Legislative Assembly or government body under the new law must designate a senior official ("designated officer") to deal with disclosures.

An employee may make a disclosure to the employee's supervisor or designated officer, or to the Manitoba Ombudsman, if the employee reasonably believes that he or she has information that could show a wrongdoing has been committed or is about to be committed. An employee of the Ombudsman's office may make a disclosure to the Auditor General.

A disclosure must:

- be in writing;
- include the following information, if known:
 - a description of the wrongdoing;
 - the name of the alleged wrongdoer;
 - the date of the wrongdoing; and
 - whether the wrongdoing has already been disclosed and a response received.

Anonymous disclosures and any other disclosures that do not meet the requirements of the new law are not protected.

For additional information on the disclosure process, see the fact sheet titled **What Employees of the Public Service Need to Know About the Disclosure Process**.

11. What happens after I make the disclosure?

Every provincial department, Office of the Legislative Assembly or government body must have procedures in place to receive and manage disclosures. These procedures outline what takes place once a disclosure is received by a supervisor or a designated officer. In addition, the new law outlines what takes place if the Manitoba Ombudsman receives a disclosure.

For additional information, see the fact sheet titled ***What Employees of the Public Service Need to Know About the Disclosure Process***.

12. Will my identity be protected?

The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, will be protected to the fullest extent possible. Any investigation of a disclosure of wrongdoing under the new law must also ensure that the principles of procedural fairness and natural justice are observed.

All supervisors, designated officers and employees, including disclosing employees, are responsible for maintaining confidentiality.

13. If a situation is urgent, can I make a “public” disclosure?

If an employee reasonably believes that:

- a matter poses an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment; and
- the situation is so urgent that there is insufficient time to make a disclosure to the supervisor, designated officer or the Manitoba Ombudsman,

then the employee may make a disclosure to the public. However, the employee must:

- **first** make the disclosure to an appropriate law enforcement agency or, if it is a health-related matter, to the chief medical officer of health;
- follow any direction that the law enforcement agency or chief medical officer of health considers necessary in the public interest; and
- **immediately after** the public disclosure is made, make a disclosure about the matter to the employee's supervisor or designated officer.

14. What if I need legal advice?

The designated officer or the Manitoba Ombudsman may arrange legal advice for employees and others involved in a disclosure or investigation under the new law, if the designated officer or the Manitoba Ombudsman considers it to be necessary to further the purposes of the new law.

Any employee who feels he or she needs legal advice should contact the designated officer or the Manitoba Ombudsman.

15. How are disclosures about wrongdoing reported to the general public?

Provincial departments, Offices of the Legislative Assembly, government bodies and the Manitoba Ombudsman must report annually on the number and nature of disclosures of wrongdoing made to them.

The Ombudsman may also prepare a special report regarding any matter where the Ombudsman believes it is in the public interest to do so.

For more information about *The Public Interest Disclosure (Whistleblower Protection) Act*, visit the Civil Service Commission's website at www.gov.mb.ca/csc.