



## Whistleblower Policy

### I. PURPOSE

- A. The purpose of the New Mexico Department of Finance and Administration's ("DFA") Whistleblower Policy ("Policy") is to provide procedures for reporting of conduct made unlawful by the New Mexico Whistleblower Protection Act ("WPA") and ensure that unlawful Retaliation against Employees is remedied, pursuant to the Whistleblower Protection Act at N.M.S.A. (1978) § 10-16C-1 *et seq.*

### II. POLICY

- A. The DFA is committed to operating within the highest ethical standards and encourages Employees to report conduct that the Employee believes, in Good Faith, constitutes an Unlawful or Improper Act. To this end, the DFA policies are as follows:
1. Encourage Employees to report conduct that the Employee believes in Good Faith constitutes an unlawful or improper act under the WPA;
  2. Process Whistleblower reports in accordance with this Policy;
  3. Use Disciplinary Action to respond to conduct made unlawful by the WPA; and
  4. Use Disciplinary Action to respond to Retaliation of any kind.

### III. REPORTING PROCEDURE:

- A. **STEP ONE: File a Complaint.** If an Employee becomes aware of possible unlawful or improper act(s) within the DFA, then the Employee must disclose the information by filing a Complaint. If an Employee does not want to put the allegation in writing, then the supervisor must document the information in a detailed writing. using any one of the following:
1. The DFA *Complaint* Form under the Complaint Resolution Policy;



## Policy and Procedures

### Human Resources

2. Meeting with Employee's supervisor and the DFA Human Resources Bureau ("HR") Representative; or
  3. Meeting with the next supervisor in the Supervisory Chain if the Employee's supervisor is the source of the problem.
- B. **STEP TWO: Investigation.** If an Employee makes a report or provides information on unlawful or improper acts, then the Employee should be prepared to be interviewed by the assigned investigator. If an Employee files a Complaint, then the Employee must **NOT** attempt to obtain evidence. Attempting to gather evidence may result in Disciplinary Action.
- C. **STEP THREE: Cooperate.** If an Employee reports conduct the Employee believes in Good Faith constitutes an unlawful or improper act under the WPA, then the Employee must: (i) be honest and open with the DFA HR, investigators, or others to whom they make a report of alleged improper governmental activities; and (ii) provide all known information regarding any reported allegations.
- D. **STEP FOUR: Report Findings.** The DFA HR will conduct the investigation of the Complaint and report their findings within thirty (30) days from receiving the Complaint. If the investigation will take longer than thirty (30) days, then the DFA HR will notify the Employee. The DFA HR may recommend appropriate action and refer the recommendation to the Agency Head or SPO Director as appropriate.
1. **Baseless Allegation.** If an Employee makes baseless allegations, false reports, or does not act in Good Faith when reporting unlawful or improper acts under the WPA, then the Employee may be subject to Disciplinary Action.
  2. **Confidentiality.** The DFA will attempt to treat reports as Confidential Information and protect the identity of Employees who report conduct that the Employee believes in Good Faith constitutes an unlawful or improper act under the WPA to the extent possible.
- E. **STEP FIVE: Prevent Retaliation.** If an Employee reports to the supervisor or Supervisory Chain that the Employee or another Employee is being retaliated



Policy and Procedures  
Human Resources

against for blowing the whistle, then the supervisor or Supervisory Chain shall immediately inform the DFA HR. Retaliation against another Employee for reporting conduct in accordance with this Policy will result in immediate Disciplinary Action.

#### IV. DEFINITIONS

- A. **"Agency"** any state department, bureau, division, branch, or political subdivisions of the state and any of their branches, agencies, departments, boards, instrumentalities or institutions bound by the New Mexico State Personnel Board Rules and Regulations.
- B. **"Agency Head"** means the DFA Cabinet Secretary.
- C. **"Complaint"** means an informal or a formal request for relief in an employment matter made by an individual Employee, or a group of Employees, which affects them and is subject to control of DFA. Such complaints may include, but are not limited to: (i) harassment; (ii) intimidation; (iii) hostility; (iv) bullying; (v) discrimination; (vi) working conditions; and (vii) unfair treatment.
- D. **"Confidential Information"** means all information regarding complaints, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. "Confidential Information" means information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the agency. Confidential Information does not include information communicated between only those individuals directly involved in a Complaint. "Confidential Information" includes non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements,



## Policy and Procedures

### Human Resources

software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. “Confidential Information” includes communication made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

- E. **“Disciplinary Action”** means any action taken by an Agency to influence change in an Employee’s performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and Dismissal. Disciplinary Action includes punitive action taken to change an Employee’s performance or behavior to follow the classification description.
- F. **“Dismissal”** means the involuntary separation from employment with the DFA.
- G. **“Employee”** means (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from the DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. “Employee” does not include independent contractors who perform work for New Mexico.
- H. **“Good Faith”** means that a reasonable basis exists in fact as evidenced by the facts available to the Employee.
- I. **“Retaliation”** means any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of Harassment of any kind, pursuing any Harassment claim or cooperating in related investigations. If an Employee would like more information about the DFA’s policy prohibiting retaliation, then contact the DFA HR or supervisor within the Supervisory Chain.
- J. **“Supervisory Chain”** means the hierarchical structure within the DFA. Employee’s immediate or first line supervisor is the first step in the supervisory



Policy and Procedures  
Human Resources

chain.

- K. **“Unlawful or Improper Act”** means a practice, procedure, action or failure to act on the part of a public employer that: (i) Violates a federal law, a federal regulation, a state law, a state administrative rule or a law of any political subdivision of the state; (ii) Constitutes malfeasance in public office; or (iii) Constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.
- L. **“Whistleblowers”** means an Employee who reports conduct that the employee believes in good faith constitutes an unlawful or improper act under the WPA, is not responsible for investigating the alleged unlawful or improper acts or for determining fault or corrective measures.

V. **REVIEW APPROVAL.** This Policy is effective upon the signature of the DFA Cabinet Secretary, below.

  
Wayne Propst, **Cabinet Secretary**

12/29/23  
Date