

The Public Interest Disclosure (Whistleblower Protection) Act

What Employees of the Public Service Need to Know About the Disclosure Process

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 on the process for making a disclosure, and what happens once a disclosure is made.

For more information regarding who is covered under the new law and related employee protections, obligations and responsibilities, see the fact sheets titled ***What Employees of the Public Service Need to Know About Protection from Reprisal*** and ***What Employees of the Public Service Need to Know About Making a Disclosure***.

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 the fact sheet titled ***What Employees of the Public Service Need to Know About Making a Disclosure*** for information on the types of wrongdoing the new law is intended to deal with.)

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

The information that follows reflects the procedures that have been established for provincial departments. For information on the procedures for a government body or Office of the Legislative Assembly, please contact the designated officer or chief executive.

If a disclosure is made to a supervisor or a designated officer in a provincial department, the following apply:

- The supervisor or designated officer is to determine how the disclosing employee wishes to receive future communication about the disclosure (i.e. written or verbal).
- Supervisors will not make a decision regarding whether disclosures fall within the new law, and will not conduct any investigations into disclosures. Supervisors will forward disclosures to the designated officer for review.

- The designated officer will review the disclosure to determine if it falls within his or her jurisdiction.
 - If it would be inappropriate for the designated officer to deal with the disclosure, the designated officer may refer it to the Manitoba Ombudsman, with notice to the disclosing employee.
 - Similarly, if the disclosure relates to another part of the Manitoba public service, the designated officer may refer it to another designated officer, with notice to the disclosing employee.
- If the designated officer determines the disclosure falls within the area of responsibility of his or her department, the designated officer will review the disclosure and determine whether an investigation is required.
- The disclosing employee will be advised of the outcome of the review or investigation of the disclosure.

7. What happens if I make a disclosure to the Ombudsman?

An employee may also make a disclosure directly to the Manitoba Ombudsman. In such cases, as well as in cases where the provincial department, Office of the Legislative Assembly or body has referred the disclosure to the Ombudsman, the Ombudsman will review the disclosure and is responsible for any investigation that takes place.

The purpose of an investigation by the Manitoba Ombudsman is to bring the wrongdoing to the attention of the appropriate provincial department, government body or Office of the Legislative Assembly, and to recommend corrective measures.

8. 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.

9. What information is made available 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 that 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.