

# ***The Public Interest Disclosure (Whistleblower Protection) Act***

## **What Designated Officers Need to Know About the Act**

### **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.

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 **5. What if it’s not a significant and serious matter?** for additional information.)

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.

This fact sheet provides information to assist designated officers:

- in handling and investigating disclosures of wrongdoing made directly to them or through supervisors; and
- in responding to employees or supervisors who ask for information about disclosures.

A designated officer or chief executive also has the same protections as any employee of a provincial department, Office of the Legislative Assembly, or government body included under the new law. For information on the process for making a disclosure, or on your rights, responsibilities and protections as an employee under the new law, see the fact sheets titled:

- ***What Employees of the Public Service Need to Know About Making a Disclosure;***
- ***What Employees of the Public Service Need to Know About Protection from Reprisal;*** and
- ***What Employees of the Public Service Need to Know about the Disclosure Process.***

### **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.

### 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. 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.

### 6. What are my protections under the new law?

The new law provides protections for designated officers who receive and handle staff disclosures.

No action or proceeding may be brought against a designated officer, or a person acting on behalf of or under the direction of a designated officer, for anything done or not done in performing their duties or exercising a power under the new law, unless the person has acted in bad faith.

For information on protections for all Manitoba public service employees, see the fact sheets titled ***What Employees of the Public Service Need to Know About Making a Disclosure*** and ***What Employees of the Public Service Need to Know About Protection from Reprisal***.

### 7. What are my obligations and responsibilities as a designated officer?

Designated officers have a number of responsibilities under the new law, including:

- managing the timely handling and investigation of disclosures,
- protecting identities and maintaining confidentiality of information, and
- tracking disclosures for reporting purposes.

As a result of the receipt, review or investigation of a disclosure, a designated officer, supervisor or chief executive may become aware of a situation that requires action, regardless of the resolution of the disclosure. For example, a designated officer may become aware of alleged wrongdoing in connection with a disclosure that has been withdrawn or may receive a disclosure that does not represent a wrongdoing under the new law. While the disclosure would not require further action under the new law, the subject matter of the disclosure may need to be addressed. An example is a workplace safety and health matter that does not constitute a wrongdoing under the new law.

In such a situation, designated officers must recognize that they may have a responsibility to take appropriate action to address matters that come to their attention. This responsibility may arise under another law, regulation or policy, or may be the result of general management or public service responsibility.

### ***Managing the Handling and Investigation of Disclosures***

Handling disclosures and conducting related investigations must be managed by the designated officer, with appropriate assistance depending on the nature of the disclosure. This responsibility cannot be delegated. If an investigation of a disclosure is required, it must be conducted in accordance with the principles of procedural fairness and natural justice.

### ***Protecting Identities and Maintaining Confidentiality of Information***

The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, must 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.

### ***Tracking disclosures***

Designated officers are responsible for ensuring that there is a mechanism in place to track disclosures of alleged wrongdoing that have been made to a supervisor or the designated officer, including those initially made to the public, for annual reporting purposes. (See **13. How are disclosures about wrongdoing reported to the general public** and **11. When can an employee make a public disclosure?**)

## **8. Can a 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 that 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.

## **9. How do I handle a disclosure from an employee?**

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.

## **10. Where can an employee go for advice?**

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.

## 11. When can an employee 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.

The procedures for each provincial department, Office of the Legislative Assembly or government body should outline what takes place once a public disclosure is received, whether it is received by a supervisor or a designated officer.

## 12. What should I do if a disclosing employee requests legal advice?

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

## 13. 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](http://www.gov.mb.ca/csc).