





DEPARTMENT OF TRANSPORTATION POLICY/PROCEDURE

Policy No. 204

Supersedes: 204
Effective 7-1-00

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| SUBJECT: Conscientious Employee Protection | Effective Date: 11-12-2015 | Commissioner Approval:  Sponsor Approval: Johanna Barba Jones, Inspector General  Contact Telephone #: 609-530-3091 |
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I. PURPOSE

- A. To establish a policy for extending protection to those NJDOT employees who intend to disclose or reveal unlawful, fraudulent, or criminal acts, or any other activity that is in violation of the policies and procedures of the NJDOT, and the accompanying obligation.
- B. Protection is offered to all employees, through law, by the Conscientious Employee Protection Act of 1986 (also known as the Whistle Blower Act). The NJDOT incorporates the text and the intent of this law as its policy. Specifically, it is unlawful and in conflict with NJDOT policy for the employer or supervisor to take retaliatory action when an employee:
 1. discloses, or threatens to disclose to a supervisor or public body, a policy, activity, or practice of the employer that the employee reasonably believes is unlawful;
 2. provides information to, or testifies before, a public body conducting an investigation or inquiry into an alleged violation of the law, rule, or regulation by the employer; or
 3. objects to or refuses to participate in any activity, policy, or practice which the employee reasonably believes is unlawful, fraudulent, criminal, or incompatible with a clear mandate of public policy concerning public health, safety, or welfare.

II. DEFINITIONS

The following words or terms as used throughout this document will have the following meanings unless the context indicates otherwise.

- A. Employee means any individual who performs services for and under the control and direction of an employer for wages or other remuneration. [N.J.S.A. 34:19-2\(b\)](#)
- B. Supervisor means any individual who has the authority to direct and control the work performance of the affected employee; and who has authority to take corrective action regarding the violation of the law, rule, or regulation of which the employee complains; or any individual who has been designated by the Commissioner to act or perform in a supervisory capacity.
- C. Employer means a person or group of persons acting directly or indirectly on behalf of, or in the interest of an employer with the employer's consent and shall include all branches of the State Government, or counties and municipalities thereof; or any other political subdivision of the State, or any authority, or board, or any other agency, or instrumentality thereof.
- D. Retaliatory action means the discharge, suspension, or demotion of an employee, or any other adverse action taken against an employee in the terms and conditions of employment. Retaliatory action could also include withholding of discretionary privileges held before disclosure of the conscientious employee's complaint.

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- E. Designated Representative for all cases shall be the Inspector General as delegated by the Commissioner.
- F. Public Body means:
1. the United States Congress, State Legislature, or any popularly elected local government body, or any member or employee thereof;
 2. any Federal, State, or local judiciary, or any member 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, prosecutor's office, police agency or peace officer;
 5. Federal, State, or local department of an executive branch of government; or
 6. any division, board, bureau, office, committee, or commission of any of the public bodies described in the above paragraphs of this subsection.

III. RESPONSIBILITY

- A. The Employee is responsible for:
1. acting within the laws, rules, and regulations of the State and guided by the policies and procedures as set forth by the NJDOT;
 2. disclosing an alleged unlawful activity, policy, or practice, in writing, to the supervisor or the Designated Representative (Inspector General); and is responsible for affording the employer a reasonable opportunity to correct the activity, policy, or practice alleged to be in violation before disclosing to a public body an activity, policy, or practice of the employer that the employee believes is in violation.
 - a. Written notification is waived in emergency situations when the employee is certain that the unlawful conduct is known to one or more supervisors, or when the employee fears physical harm as a result of the disclosure.
 - b. An employee must allow a reasonable opportunity for corrective action to be taken before taking the matter to a higher authority.
- B. The Supervisor is responsible for:
1. acting within the laws, rules, and regulations of the State and guided by the policies and procedures as set forth by the NJDOT;
 2. receiving and investigating complaints on behalf of the conscientious employee;
 3. initiating reasonable efforts to rectify the activity, policy, or practice determined to be in violation of the laws, rules, and regulations of the State and the policies and procedures as set forth by the NJDOT; and

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4. acting in a prudent manner when in the performance of duties as prescribed by the NJDOT.

C. Division Directors are responsible for:

1. acting within the laws, rules, and regulations of the State and guided by the policies and procedures as set forth by the NJDOT;
2. posting the name and telephone number of the Designated Representative who may receive complaints on behalf of the conscientious employee;
3. using the appropriate means to keep employees informed of all information concerning the Conscientious Employee Protection Act.

D. The Director, Division of Human Resources is responsible for:

1. informing employees of the protections and obligations afforded under the Conscientious Employee Protection Act,
2. posting [notices](#) and related information regarding the Conscientious Employee Protection Act, and
3. using the appropriate means to keep employees so informed.

E. The Office of the Inspector General is responsible for:

1. receiving the written complaints of the conscientious employee. All complaints should be directed to:

New Jersey Department of Transportation
Office of the Inspector General
PO Box 600
Trenton, NJ 08625-0600
Inspector.general@dot.nj.gov
609-530-3091

2. performing an investigation as to whether the alleged retaliatory action was taken in response to an act of whistleblowing.
3. referring cases that solely concern violations of the New Jersey Policy Prohibiting Discrimination in the Workplace (Equal Employment Opportunity retaliation) to the Division of Civil Rights/Affirmative Action for investigation.
4. complying with any instructions from counsel.

F. NJDOT Division of Civil Rights/Affirmative Action is responsible for:

1. performing an investigation of cases that solely concern violations of the New Jersey Policy Prohibiting Discrimination in the Workplace (Equal Employment Opportunity retaliation) to determine whether the alleged retaliatory action was taken in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace;
2. referring retaliation allegations relating to protected actions outside of the New Jersey State Policy Prohibiting Discrimination in the Workplace to the Office of Inspector General for investigation;

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3. complying with any instructions from counsel;
4. notifying the Office of the Inspector General as to the disposition of the retaliation aspect of the investigation for completeness of CEPA records.

G. The Employer is responsible for:

1. acting within the laws, rules, and regulations of the State and the policies and procedures as set forth by the NJDOT.
2. initiating reasonable efforts to rectify the activity, policy, or practice determined to be in violation of the laws, rules, and regulations of the State and the policies and procedures as set forth by the NJDOT.

IV. AUTHORITY

[N.J.S.A. Title 27](#)

[Conscientious Employee Protection Act of 1986 \(Senate No. 1105, Chapter 105\) N.J.S.A. 34:19-1, et. seq.](#)

[New Jersey Policy Prohibiting Discrimination in the Workplace \(August 20, 2007\)](#)