

Summary: This change includes two proposed revisions to the Whistleblower Protection Ordinance: to extend the protections of the ordinance to anonymous complaints, and to provide that "official misconduct" may include an act or omission that is planned or intended even if not fully carried out.

ARTICLE VII. - WHISTLEBLOWER PROTECTION

Sec. 2-106. - Legislative declaration.

The city council hereby determines and declares that employees of the City and County of Denver should never suffer retaliation from their supervisors or appointing authorities for communicating information about illegal activities, unethical practices or other forms of official misconduct experienced or witnessed by employees in the scope of their employment. The interests of the City and County of Denver and the larger interests of the citizens of Denver are served by encouraging all employees to speak out fully and frankly on any official misconduct which comes to their attention without fear of retaliation. Therefore, the purpose of this Article VII is to eliminate the possibility or the threat of any adverse employment action that may be taken against any city and county employee for reporting such information to appropriate reporting authorities.

Sec. 2-107. - Definitions.

As used in this article VII:

- (a) *"Appropriate reporting authority"* means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the city and county, including, by way of example:
 - (1) The mayor and members of the mayor's cabinet;
 - (2) The city council, any committee of the city council, and individual members of the city council;
 - (3) The auditor and the audit committee;
 - (4) The board of ethics;
 - (5) The district attorney and other law enforcement agencies; or
 - (6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.
- (b) *"Adverse employment action"* means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, layoff, or threat of any such discipline or penalty.
- (c) *"Employee"* means any employee of the City and County of Denver within the meaning of section 1.2.11 of the Charter.
- (d) *"Official misconduct"* means any act or omission that is committed, intended, or planned by any officer or employee of the city and county that constitutes:
 - (1) A violation of law;
 - (2) A violation of any applicable rule, regulation or executive order;
 - (3) A violation of the code of ethics as codified in article IV of this chapter 2, or any other applicable ethical rules and standards;
 - (4) The misuse, misallocation, mismanagement or waste of any city funds or other city assets; or
 - (5) An abuse of official authority.
- (e) *"Supervisor"* means any person who is authorized to recommend or to impose any adverse employment action upon an employee.

Sec. 2-108. - Retaliation prohibited.

- (a) Except as provided in subsection (b) of this section, no supervisor shall impose or threaten to impose any adverse employment action upon an employee on account of the employee's disclosure of information about any official misconduct to any person.
- (b) The protections afforded by this article VII shall not apply to any employee:
 - (1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;

- (2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or
- (3) Who otherwise discloses information in bad faith.
- (c) It shall be the obligation of an employee who wishes to disclose information under the protection of this article VII to make a good faith effort to provide to an appropriate reporting authority the information to be disclosed prior to the time of its disclosure.

Sec. 2-109. - Remedies.

- (a) *Employees in the career service.* Any employee in the career service may file a complaint with the career service board or its designated hearing officer alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with the rules of the board governing employee appeals; provided, however, that the employee shall not be required to pursue a complaint or grievance within the employee's department or agency prior to appealing the alleged retaliatory adverse employment action to the board or its designated hearing officer. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action before the board or its designated hearing officer in accordance with the rules of the board may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the board or the designated hearing officer finds that a violation of section 2-108 has occurred, the board or the hearing officer shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.
- (b) *Employees in the classified service.*
 - (1) Any employee in the classified service may file a complaint with the employee's appointing authority alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with any departmental rules of the appointing authority governing employee appeals of disciplinary actions.
 - (2) Any employee in the classified service who contests a disciplinary action before the civil service commission in accordance with Charter sections 9.4.14 and 9.4.15 may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. If the hearing officer appointed by the commission finds that a violation of section 2-108 has occurred, the board shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.
- (c) *Other employees.* Any employee who is neither in the career service nor the classified service may file a complaint with the employee's appointing authority alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with any rules of the appointing authority governing employee appeals of disciplinary actions. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action by the appointing authority may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the appointing authority finds that a violation of section 2-108 has occurred, the appointing authority shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.
- (d) *Sanction against supervisors.* Upon a determination by the career service board or its designated hearing officer, the civil service commission or its designated hearing officer, or an appointing authority that a violation of section 2-108 has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

Sec. 2-110. - Posting required.

All departments, agencies and other appointing authorities of the City and County of Denver shall post and maintain, in one or more prominent locations accessible to employees of the department or agency, a notice of the rights and protections afforded to employees by this article VII. The notice shall be in a form approved by the city attorney.

