

1 **UTAH PROTECTION OF PUBLIC EMPLOYEES ACT**

2 **AMENDMENTS**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jani Iwamoto**

6 House Sponsor: Lee B. Perry

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Utah Protection of Public Employees Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ exempts an action filed under the Utah Protection of Public Employees Act from
- 14 certain requirements of the Governmental Immunity Act of Utah;
- 15 ▶ expands the list of entities to whom an employee may communicate wrongful
- 16 government conduct under the protections provided by the Utah Protection of
- 17 Public Employees Act;
- 18 ▶ defines "independent personnel board" for a state institution of higher education;
- 19 ▶ sets a deadline for an independent personnel board to hear a complaint;
- 20 ▶ requires a state institution of higher education to adopt a policy to establish an
- 21 independent personnel board to hear and take action on a complaint alleging adverse
- 22 action against an employee;
- 23 ▶ provides an exception to the 180-day time limit for bringing an action under the
- 24 Utah Protection of Public Employees Act;
- 25 ▶ expands the circumstances under which an employer is required to provide a copy
- 26 of the Utah Protection of Public Employees Act to an employee; and
- 27 ▶ makes technical and conforming amendments.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63G-7-203**, as renumbered and amended by Laws of Utah 2008, Chapter 382

35 **67-21-3**, as last amended by Laws of Utah 2013, Chapter 427

36 **67-21-3.7**, as enacted by Laws of Utah 2013, Chapter 427

37 **67-21-4**, as last amended by Laws of Utah 2013, Chapter 427

38 **67-21-9**, as last amended by Laws of Utah 2013, Chapter 427



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **63G-7-203** is amended to read:

42 **63G-7-203. Exemptions for certain actions.**

43 [~~An action that involves takings law, as defined in Section **63L-3-102**, is not subject to~~
44 ~~the] The requirements of Sections **63G-7-401**, **63G-7-402**, **63G-7-403**, and **63G-7-601**[:] do not
45 apply to:~~

46 (1) an action that involves takings law, as defined in Section **63L-3-102**; or

47 (2) an action filed under Title 67, Chapter 21, Utah Protection of Public Employees

48 Act.

49 Section 2. Section **67-21-3** is amended to read:

50 **67-21-3. Reporting of governmental waste or violations of law -- Employer action**
51 **-- Exceptions.**

52 (1) (a) An employer may not take adverse action against an employee because the
53 employee, or a person authorized to act on behalf of the employee, communicates in good
54 faith:

55 (i) the waste or misuse of public funds, property, or manpower;

56 (ii) a violation or suspected violation of a law, rule, or regulation adopted under the law
57 of this state, a political subdivision of this state, or any recognized entity of the United States;

58 or

59 (iii) as it relates to a state government employer:

60 (A) gross mismanagement;

61 (B) abuse of authority; or

62 (C) unethical conduct.

63 (b) For purposes of Subsection (1)(a), an employee is presumed to have communicated

64 in good faith if the employee gives written notice or otherwise formally communicates the

65 conduct described in Subsection (1)(a) to:

66 (i) a person in authority over the person alleged to have engaged in the conduct

67 described in Subsection (1)(a);

68 (ii) the attorney general's office;

69 (iii) law enforcement, if the conduct is criminal in nature;

70 (iv) if the employee is a public entity employee, public body employee, legislative

71 employee, or a judicial employee:

72 (A) the state auditor's office;

73 (B) the president of the Senate;

74 (C) the speaker of the House of Representatives;

75 (D) the Office of Legislative Auditor General;

76 [~~(D)~~] (E) the governor's office;

77 [~~(E)~~] (F) the state court administrator; or

78 [~~(F)~~] (G) the Division of Finance;

79 (v) if the employee is a public entity employee, but not an employee of a state

80 institution of higher education, the director of the Division of Purchasing and General Services;

81 (vi) if the employee is a political subdivision employee:

82 (A) the legislative body, or a member of the legislative body, of the political

83 subdivision;

84 (B) the governing body, or a member of the governing body, of the political

85 subdivision;

86 (C) the top executive of the political subdivision; or

87 (D) any government official with authority to audit the political subdivision or the
88 applicable part of the political subdivision; or

89 (vii) if the employee is an employee of a state institution of higher education:

90 (A) the State Board of Regents or a member of the State Board of Regents;

91 (B) the commissioner of higher education;

92 (C) the president of the state institution of higher education where the employee is
93 employed; or

94 (D) the entity that conducts audits of the state institution of higher education where the
95 employee is employed.

96 (c) The presumption described in Subsection (1)(b) may be rebutted by showing that
97 the employee knew or reasonably ought to have known that the report is malicious, false, or
98 frivolous.

99 (2) An employer may not take adverse action against an employee because an
100 employee participates or gives information in an investigation, hearing, court proceeding,
101 legislative or other inquiry, or other form of administrative review held by the public body.

102 (3) An employer may not take adverse action against an employee because the
103 employee has objected to or refused to carry out a directive that the employee reasonably
104 believes violates a law of this state, a political subdivision of this state, or the United States, or
105 a rule or regulation adopted under the authority of the laws of this state, a political subdivision
106 of this state, or the United States.

107 (4) An employer may not implement rules or policies that unreasonably restrict an
108 employee's ability to document:

109 (a) the waste or misuse of public funds, property, or manpower;

110 (b) a violation or suspected violation of any law, rule, or regulation; or

111 (c) as it relates to a state government employer:

112 (i) gross mismanagement;

113 (ii) abuse of authority; or

114 (iii) unethical conduct.

115 Section 3. Section 67-21-3.7 is amended to read:

116 **67-21-3.7. Administrative review for state institution of higher education**
117 **employees.**

118 (1) (a) As used in this section, "independent personnel board" means a board where no
119 member of the board:

120 (i) is in the same department as the complainant;

121 (ii) is a supervisor of the complainant; or

122 (iii) has a conflict of interest in relation to the complainant or an allegation made in the
123 complaint.

124 ~~[(1)(a)]~~ (b) A state institution of higher education [may] shall adopt a policy to
125 establish an independent personnel board to hear and take action on a complaint alleging
126 adverse action.

127 ~~[(b)]~~ (c) The policy described in Subsection (1)~~[(a)]~~(b) shall include:

128 (i) procedures for filing a complaint and conducting a hearing; and

129 (ii) a burden of proof on the employer to establish by substantial evidence that the
130 employer's action was justified by reasons unrelated to the employee's good faith actions under
131 Section 67-21-3.

132 ~~[(2) If a state institution of higher education adopts a policy described in Subsection~~
133 ~~(1), an]~~

134 (2) (a) An employee of [the] a state institution of higher education may file a complaint
135 with the independent personnel board described in Subsection (1)(b) alleging adverse action.

136 (b) An independent personnel board that receives a complaint under Subsection (2)(a)
137 shall hear the matter, resolve the complaint, and take action under Subsection (3) within the
138 later of:

139 (i) 30 days after the day on which the employee files the complaint; or

140 (ii) a longer period of time, not to exceed 30 additional days, if the employee and the
141 independent personnel board mutually agree on the longer time period.

142 (3) If an independent personnel board finds that adverse action is taken in violation of
143 the policy described in Subsection (1)~~(a)~~(b), the independent personnel board may order, or
144 recommend to a final decision maker:

- 145 (a) reinstatement of the employee at the same level as before the adverse action;
- 146 (b) the payment of back wages;
- 147 (c) full reinstatement of fringe benefits;
- 148 (d) full reinstatement of seniority rights; or
- 149 (e) if the adverse action includes failure to promote, as described in Subsection

150 67-19a-101(8)(d), a pay raise that results in the employee receiving the pay that the employee
151 would have received if the person had been promoted.

152 (4) A final decision maker who receives a recommendation under Subsection (3) shall
153 render a decision and enter an order within seven days after the day on which the final decision
154 maker receives the recommendation.

155 Section 4. Section 67-21-4 is amended to read:

156 **67-21-4. Choice of forum -- Remedies for employee bringing action -- Proof**
157 **required.**

158 (1) (a) Except as provided in Subsection (1)(b) or (d), and subject to Subsections
159 (1)~~(c)~~(d) through (e), an employee who alleges a violation of this chapter may bring a civil
160 action for appropriate injunctive relief, damages, or both, within 180 days after the occurrence
161 of the alleged violation of this chapter.

162 (b) Except as provided in Subsection (1)(d):

163 (i) ~~An~~ an employee of a political subdivision that has adopted an ordinance described
164 in Section 67-21-3.6:

165 (A) may bring a civil action described in Subsection (1)(a) within 180 days after the
166 day on which the employee has exhausted administrative remedies; and

167 (B) may not bring a civil action described in Subsection (1)(a) until the employee has
168 exhausted administrative remedies~~[-];~~ and

169 (ii) ~~An~~ an employee of a state institution of higher education ~~[that has adopted a~~

170 ~~policy described in Section 67-21-3.7]:~~

171 (A) may bring a civil action described in Subsection (1)(a) within 180 days after the
172 day on which the employee has exhausted administrative remedies; and

173 (B) may not bring a civil action described in Subsection (1)(a) until the employee has
174 exhausted administrative remedies.

175 (c) ~~[A]~~ Except as provided in Subsection (1)(d), a public entity employee who is not a
176 legislative employee or a judicial employee may bring a claim of retaliatory action by selecting
177 one of the following methods:

178 (i) filing a grievance with the Career Service Review Office in accordance with Section
179 67-19a-402.5; or

180 (ii) bringing a civil action for appropriate injunctive relief, damages, or both, within
181 180 days after the occurrence of the alleged violation of this chapter.

182 (d) (i) A claimant may bring an action after the 180-day limit described in this
183 Subsection (1) if:

184 (A) the claimant originally brought the action within the 180-day time limit;

185 (B) the action described in Subsection (1)(d)(i)(A) failed or was dismissed for a reason
186 other than on the merits; and

187 (C) the claimant brings the new action within 180 days after the day on which the
188 claimant originally brought the action under Subsection (1)(d)(i)(A).

189 (ii) A claimant may commence a new action under this Subsection (1)(d) only once.

190 ~~[(d)]~~ (e) A public entity employee who files a grievance under Subsection
191 (1)~~(e)]~~(d)(i):

192 (i) may not, at any time, bring a civil action in relation to the subject matter of the
193 grievance;

194 (ii) may seek a remedy described in Subsection 67-21-3.5(2); and

195 (iii) waives the right to seek a remedy or a type of damages not included in Subsection
196 67-21-3.5(2).

197 ~~[(e)]~~ (f) A public entity employee who files a civil action under Subsection

198 (1)~~(e)~~(d)(ii) may not, at any time, file a grievance with the Career Service Review Office in
199 relation to the subject matter of the civil action.

200 (2) An employee who brings a civil action under this section shall bring the action in
201 the district court for the county where the alleged violation occurred, the county where the
202 complainant resides, or the county where the person against whom the civil complaint is filed
203 resides or has the person's principal place of business.

204 (3) To prevail in an action brought under this section, the employer shall prove by
205 substantial evidence that the employer's action was justified.

206 Section 5. Section **67-21-9** is amended to read:

207 **67-21-9. Notice of contents of this chapter -- Posting.**

208 (1) An employer shall post notices and use other appropriate means to keep employees
209 informed of their protections and obligations under this chapter.

210 (2) ~~[Upon request by an employee, or when an employee alleges an adverse action, the]~~

211 An employer shall provide ~~[the]~~ an employee with a copy of this chapter~~[-]~~:

212 (a) when the employee is hired;

213 (b) upon a request by the employee; and

214 (c) when the employee files a grievance under this chapter.