

**When Employees Referee the Employer:  
Compliance and Avoidance of Whistleblower  
Retaliation Claims**

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**LAUBER MUNICIPAL LAW**

*Serving those who serve the public*

**2026 MIRMA SEMINAR**

# Introduction/Background

A photograph of wooden blocks spelling out the word "WHISTLEBLOWER" in all caps. The blocks are arranged in a single row on a dark surface.

- ④ Whistleblower protection
- ④ Conducting effective internal investigations of whistleblower complaints
- ④ Best practices to ensure compliance and avoid whistleblower retaliation claims

# Whistleblower Protection for Public Employees



- Ⓜ Sec. 105.055, RSMo
  - Ⓜ City can't prohibit any employee from discussing City operations with any member of the legislature, state auditor, attorney general, prosecuting attorney, law enforcement, news media, the public or any state official.
  - Ⓜ City can't take any disciplinary action whatsoever against a public employee for disclosure of any alleged prohibited activity under investigation or for disclosure of information which the employee reasonably believes evidences a violation of law or mismanagement or abuse of public resources.
  - Ⓜ City can't require employee to give notice before disclosing prohibited activity.
  - Ⓜ City can't prevent an employee from testifying about the alleged prohibited activity.

# Whistleblower Protection for Public Employees – cont.

- Ⓜ Exceptions:
  - Ⓜ Employee can be required to inform the supervisor of the information to be disclosed or testimony to be made;
  - Ⓜ Employee can be required to follow rules and policies pertaining to leave time;
  - Ⓜ Employee can be required to refrain from representing personal opinion as the opinion of the City; or
  - Ⓜ Employee still subject to disciplinary action if information is false, a closed record, etc.



# Story Problem

- ④ Employee has worked for the City for 12 years. Employee works overtime periodically for the City and the City approves the overtime work. Supervisor asks Employee to subtract the time he took for his lunch break when he worked overtime. Employee tells Supervisor that it is common practice to include the lunch break as time worked. According to the collective bargaining agreement, the City is required to inform the union in writing regarding changes to any established work rules. Employee was terminated from his position because he was accused of threatening his supervisor. Employee believed he was being terminated because he pointed out to his supervisor that the supervisor was violating City policy. Employee appeals his termination through the internal City procedures. HR Board upheld his termination.
- ④ Based on this fact pattern, any problems with the way the City handled Employee's termination?

# *Richest v. City of Kansas City*

- ④ Statute provides non-exclusive avenues for certain public employees to remedy an employer's violation of the statute.
- ④ Employee brought a civil action against the City for damages on November 2, 2020 (must be done within 1 year after the occurrence of the alleged violation.)
- ④ Employee fired on April 5, 2019, he appealed and the hearing was held on July 16, 2019. The HR Board made its findings from the hearing and upheld the termination on November 5, 2019. The Court found that the City did not prove its case for dismissal of the petition on the basis that the Employee did not file his petition within the one-year statute of limitations period and the case was remanded back to the trial court.



# Story Problem



- ④ Employee works for the City. Employee's partner also works for the City. At a governing body meeting, several City employees attend in order to support a proposed amended bill. The amended bill was not discussed. Employee questions Supervisor about why the amendment was not presented to the governing body. Supervisor felt employees were being insubordinate and therefore denied several requests from employees, including Employee's request to have her partner attend a conference. Supervisor stated that city policy prohibited romantic partners from traveling together on city business. Employee asks the HR Manager for a copy of the stated policy but was told that there was no such policy. Employee confronts the Supervisor and the Supervisor gives her the option to voluntarily resign from her position or be terminated. Employee chooses to resign.
- ④ What issues do you see in this fact pattern?

# *Spurlock v. City of Columbia*

Ⓜ Sec. 105.055, RSMo - City can't take any disciplinary action whatsoever against a public employee for disclosure of any alleged prohibited activity or for disclosure of information which the employee reasonably believes evidences a violation of law or mismanagement or abuse of public resources.

Ⓜ Employee only needed to establish what she reasonably believes is evidence that the Supervisor abused his authority.



# Internal Investigations of Whistleblower Complaints

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- ④ **How to Conduct an effective internal investigation of a whistleblower complaint.**
  - ④ Identify the nature of the complaint:
    - Is this a formal allegation?
    - Is this an informal allegation?
  - ④ Meet with the Employee making the complaint and explain that their complaint and all information gathered during the investigation will be confidential to the extent possible (Missouri Sunshine Law may require that records be open).
  - ④ Seek advice from City Attorney
  - ④ Follow City policy
  - ④ May need to provide interim protection to the employee making the complaint



# Internal Investigations of Whistleblower Complaints – cont.

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- ④ Create an investigation “plan” or seek a 3<sup>rd</sup> party to perform the investigation
  - Who should the City question
  - List of policies or rules being violated
  - Supporting documents, if any
  - Develop interview questions
- ④ Conduct interviews
- ④ Make a report of findings
  - ④ Brief explanation of why the investigation was initiated, including dates.
  - ④ Parties involved: names, titles, and their role in the investigation (complainant, witness, etc.).
  - ④ Key factual and credibility findings, including sources referenced (witness statements, documents, photographs, communication, etc.).
  - ④ Employer policies or guidelines and their applicability to the investigation.
  - ④ Specific conclusions (substantiated, inconclusive, etc.).
  - ④ Party (or parties) responsible for making the final determination.
  - ④ Issues that could not be resolved and reasons for lack of resolution.
  - ④ Recommendation



# Internal Investigations of Whistleblower Complaints – cont.

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- ④ Corrective Actions
  - ④ Discipline
  - ④ Additional training
  - ④ Policy revisions
  - ④ Monitoring
- ④ Complete investigative report
- ④ Do periodic check-ins with the parties to make sure all concerns have been addressed



# Best Practices

- ④ Best practices to ensure compliance and avoid whistleblower and retaliation claims
  - ④ Create clear policies. Encourage and protect whistleblowers. Clear policy that retaliation isn't tolerated under any circumstances.
  - ④ Train managers well. Teach them to handle complaints calmly and keep emotions out of decisions.
  - ④ Document everything. Keep notes on performance, complaints, and any actions you take. Records can save you later.
  - ④ Use neutral investigators. Bring in someone who isn't connected to the situation. It shows fairness.
  - ④ Keep things private (to the extent allowed by law). Limit who knows about the complaint.
  - ④ Take action sooner rather than later.





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of Whistleblower Retaliation Claims**

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## LAUBER MUNICIPAL LAW, LLC

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### **About the Firm**

Lauber Municipal Law, LLC, was established for the purpose of serving local governmental entities of all types and sizes. We can serve your community as its general counsel (City Attorney) or as special counsel for technical issues like economic development incentive approvals, annexation, elections, impeachments, and appellate work.

Our goal through Lauber Municipal Law, LLC, is to meld our previous experience together to provide a high-quality, “big firm” work product, while providing the flexibility, personal responsiveness, and cost effectiveness of a small firm. We completely understand public entities’ needs to obtain the most effective representation possible while considering the fact that these services are compensated from a budget made up of public funds. As the motto for Lauber Municipal Law, LLC, states: We are proud to serve those who serve others. Our sincere desire is to make that job easier and less stressful for the elected officials and administrative staffs of these entities.