

61.101 Definitions.

As used in KRS 61.102 and 61.103, unless the context requires otherwise:

- (1) "Employee" means a person in the service of the Commonwealth of Kentucky, or any of its political subdivisions, who is under contract of hire, express or implied, oral or written, where the Commonwealth, or any of its political subdivisions, has the power or right to control and direct the material details of work performance;
- (2) "Employer" means the Commonwealth of Kentucky or any of its political subdivisions. Employer also includes any person authorized to act on behalf of the Commonwealth, or any of its political subdivisions, with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees; and
- (3) "Official request" means a request from members of the Kentucky General Assembly and its employees; members of the Legislative Research Commission and its committees and employees; the Auditor of Public Accounts and his employees; the Attorney General and his employees; the Governor and employees of the Governor's office; and members of the press.

Effective: July 15, 1986

History: Created 1986 Ky. Acts ch. 301, sec. 1, effective July 15, 1986.

61.102 Reprisal against public employee for disclosure of violations of law prohibited -- Construction of statute.

- (1) No employer shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the Legislative Research Commission or any of its committees, members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, or any other appropriate body or authority, any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States, the Commonwealth of Kentucky, or any of its political subdivisions, or any facts or information relative to actual or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.
- (2) No employer shall subject to reprisal or discriminate against, or use any official authority or influence to cause reprisal or discrimination by others against, any person who supports, aids, or substantiates any employee who makes public any wrongdoing set forth in subsection (1) of this section.
- (3) This section shall not be construed as:
 - (a) Prohibiting an employer from requiring that an employee inform him of an official request made to an agency for information, or the substance of testimony made, or to be made, by the employee to legislators on behalf of an agency;
 - (b) Permitting the employee to leave his assigned work area during normal work hours without following applicable law, administrative regulations, rules, or policies pertaining to leave, unless the employee is requested by the Kentucky Legislative Ethics Commission to appear before the commission, or by a legislator or a legislative committee to appear before a legislative committee;
 - (c) Authorizing an employee to represent his personal opinions as the opinions of his employer; or
 - (d) Prohibiting disciplinary or punitive action if an employee discloses information which he knows:
 1. To be false or which he discloses with reckless disregard for its truth or falsity;
 2. To be exempt from required disclosure under the provisions of KRS 61.870 to 61.884; or
 3. Is confidential under any other provision of law.

Effective: September 16, 1993

History: Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 64, effective September 16, 1993. -- Created 1986 Ky. Acts ch. 301, sec. 2, effective July 15, 1986.

61.103 Definitions of "disclosure" and "contributing factor" -- Civil action by employee authorized -- Evidence.

As used in this section, unless the context otherwise requires:

- (1) (a) "Disclosure" means a person acting on his own behalf, or on behalf of another, who reported or is about to report, either verbally or in writing, any matter set forth in KRS 61.102.
- (b) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision. It shall be presumed there existed a "contributing factor" if the official taking the action knew or had constructive knowledge of the disclosure and acted within a limited period of time so that a reasonable person would conclude the disclosure was a factor in the personnel action.
- (2) Notwithstanding the administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, 156, and other chapters of the Kentucky Revised Statutes, employees alleging a violation of KRS 61.102(1) or (2) may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation. The action may be filed in the Circuit Court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.
- (3) Employees filing court actions under the provisions of subsection (2) of this section shall show by a preponderance of evidence that the disclosure was a contributing factor in the personnel action. Once a prima facie case of reprisal has been established and disclosure determined to be a contributing factor to the personnel action, the burden of proof shall be on the agency to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action.
- (4) Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure as set forth in KRS 61.102.

Effective: September 16, 1993

History: Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 65, effective September 16, 1993. -- Created 1986 Ky. Acts ch. 301, sec. 3, effective July 15, 1986.