

Readopt with amendment Lab 900, effective 2-15-14 (Document# 10522), to read as follows:

CHAPTER Lab 900 WHISTLEBLOWERS' PROTECTION ACT

Statutory Authority: RSA 275-E: 7, RSA 275-E: 8 and RSA 541-A: 16, I (b)(2)

PART Lab 901 PURPOSE

Lab 901.01 Purpose. The purposes of these rules are to define terms contained in RSA 275-E, to describe the form content and notices required to be posted by RSA 275-E:-7, and to notify workers how to file a complaint for relief under the statute.

PART Lab 902 DEFINITIONS

Lab 902.01 "Violation" means an infringement of a rule or law adopted by the state of New Hampshire, a political subdivision of the state, or, provided no preemption exists, the United States.

PART Lab 903 REQUIRED POSTING OF NOTICE

Lab 903.01 Poster. Under the provisions of RSA 275-E:-7, every employer of employees shall display a poster ~~post a poster~~, in conspicuous places at all workplaces within New Hampshire, in order to inform employees of protections and obligations under the statute. The content of the poster shall be as set forth in (a) - (f) below.

(a) The poster shall include a statement that under the Whistleblowers' Protection Act, RSA 275-E, protection is available to employees who, in good faith, report what they reasonably believe is a violation of a law or a rule, ~~or~~ participate in an investigation or hearing, or who refuse to execute an illegal directive;

(b) The poster shall include a notification to the employees stating that an employer shall be prohibited from discharging, threatening, or discriminating against any employee if:

(1) The employee, in good faith, reports or causes to be reported an alleged violation of any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States;

(2) The employee objects to or refuses to participate in any activity that the employee, in good faith, believes is a violation of a law or rule;

(3) The employee refuses to execute a directive which the employeeer in good faith, believes violates any law or rule adopted under the laws of this state, a political subdivision of this state or the United States; or

(4) The employee participates in an investigation, hearing, or inquiry conducted by any governmental entity or any court action which concerns allegations that the employer has violated any law or rule adopted under the laws of this state, a political subdivision of this state, or the United States.

(c) The poster shall notify employees that they can request a hearing with the department of labor which can result in a judgment to order reinstatement, payment of fringe benefits, restoration of seniority rights, and any appropriate injunctive relief, but only after the employee has made a reasonable effort to maintain or restore his or her rights through any grievance procedure available;

(d) The poster shall notify public employees that they may file a complaint with the department of labor concerning the possible fraud, waste, or abuse in the expenditure of public funds, and no governmental entity shall take any retaliatory action against a public employee who, in good faith, files such a complaint;

(e) The poster shall include the address and telephone numbers of the inspection division of the department of labor; and

(f) The poster shall include a statement that the notice shall be posted in a conspicuous place.

PART Lab 904 REQUIRED COMPLAINT FORM

Lab 904.01 Complaint Form. Any person defined as an employee under RSA 275-E:-1, I or a public employee defined under RSA 275-E:-1, III filing a whistleblowers' complaint under the provisions of RSA 275-E: 4 shall supply the following on the "Whistleblowers' Complaint Form" provided by the department of labor:

(a) The complainant's name;

(b) The complainant's mailing address and telephone number;

(c) The name and mailing address of the employer/company that the complaint is filed against;

(d) The name and telephone number of the employer representative to whom the complaint should be directed;

(e) A description of the complaint, describing the alleged violation of rights under RSA 275-E:-2 or RSA 275-E:-3;

(f) If applicable, the date of the discharge;

(g) A description of the alleged discrimination, retaliation or threat made;

(h) An indication whether the employer has a grievance procedure available;

(i) If there was a grievance procedure available, an indication of whether the complainant followed the employer's procedure before filing the complaint;

(j) The specific relief the complainant is seeking by filing the complaint;

(k) In addition to (a) – (j) above, the following information if the complaint is filed under RSA 275-E:-2, I (a) for reporting or causing to be reported an alleged violation:

(1) The alleged violation of the law or rule that was reported;

(2) -The name and title of the person to whom the alleged violation of law or rule was reported
The date the alleged violation of the law or rule was reported;

(3) The name of the person or persons who allegedly violated the law or rule;

(4) The date the alleged violation of law or rule occurred;

(5) How the alleged violation of law or rule occurred;

(6) -The name and title of the person to whom the alleged violation of law or rule was reported
The date the alleged violation of the law or rule was reported;

(7) How long the employer was given to correct the alleged violation before reporting it; and

(8) If the alleged violation was not reported to the employer, the reason why it was not.;

(l) In addition to (a) – (j) above, the following information if the complaint is filed under RSA 275-E:-2, I (b):

(1) The alleged illegal activity that the complainant objected to or refused to participate in;

(2) The name and title of the person or persons who asked the complainant to participate in the alleged illegal activity; and

(3) The date on which the complainant objected or refused to participate in the alleged illegal activity.

(m) In addition to (a) – (j) above, the following information if the complaint is filed under RSA 275-E:-2, I (c):

(1) Whether or not the complainant participated in an investigation, hearing, inquiry, or court action;

(2) The specific action, whether investigation, hearing, inquiry, or court action in which the complainant participated;

(3) The date or dates upon which the complainant participated in an investigation, hearing, inquiry, or court action; and

(4) The name of the agency or court where the complainant's participation in an investigation, hearing, inquiry, or court action, took place.;

(n) In addition to (a) – (j) above, the following information if the complaint is filed under RSA 275-E:-3 for refusal to execute an illegal directive:

(1) The alleged illegal directive ordered by the employer;

(2) The name and title of the person or persons who ordered the alleged illegal directive; and

(3) The date the alleged illegal directive was ordered.;

(o) In addition to (a) – (j) above, the following information if the complaint is filed by a public employee under RSA 275-E:-9:

(1) The date on which the public employee first reported the alleged violation of fraud, waste, or abuse in the expenditure of public funds, or in relation to programs involving procurement of supplies, services or construction by a governmental entity in the state to the department of labor;

(2) The case number provided to the complainant when the above complaint was filed with the department of labor; and

(3) For complaints filed for violation of RSA 275-E:-2, for the gross mismanagement or waste of public funds, property, or manpower, or for evidencesevidence of an abuse of authority or a danger to the public health and safety, the complainant shall provide the information on the form as described in (k), above.

(p) The signature and date of the complainant certifying that the complaint is a truthful statement of the facts involved.

Lab 904.02 Public Employee Complaint Form.

(a) A public employee filing a complaint under the provisions of RSA 275-E:-8 shall supply the following on the "Complaint Form for Public Employees" provided by the department of labor:

- (1) The complainant's name;
- (2) The complainant's mailing address and telephone number;
- (3) The name and address of the employer/public entity the complaint is filed against;
- (4) The name and telephone number of the contact person for a potential investigation;
- (5) An indication as to whether the complaint concerns possible fraud, waste, or abuse in the expenditure of public funds or relating- to programs and operations involving the procurement of any supplies, services, or construction by governmental entities within the state;
- (6) A detailed description of the possible fraud, waste, or abuse in the expenditure of public funds relating to programs and operations involving the procurement of any supplies, services, or construction by governmental entities within the state;
- (7) The name and title of the person to whom the alleged possible fraud, waste, or abuse in the expenditure of public funds was reported;
- (8) How long the employer was given to correct the alleged possible fraud, waste, or abuse in the expenditure of public funds before reporting it to the Department of Labor; ~~and~~
- (8) If the alleged possible fraud, waste, or abuse in the expenditure of public funds was not reported to the employer, the reason why it was not;
- (9) ~~7~~ The signature and date of the complainant certifying that the complaint is a truthful statement of the facts involved; and
- (10) ~~8~~ The signature and date of the complainant if authorizing the department of labor to disclose his/her identity to the appropriate enforcement authority if the complaint is deemed by the department of labor to have merit.

(b) The form shall include a statement notifying the complainant, pursuant to RSA 275-E:-8, II, -that if the complaint is referred to a law enforcement agency for a criminal investigation the complainant's identity shall be disclosed to the agency without the complainant's consent.

Lab 904.03 Processing A Complaint under RSA 275-E:-4.

(a) If an employee files a complaint under RSA 275-E:-4, the complaint shall be presented to the department in the form prescribed by Lab 904.01 (a) through (o), with all substantiating documents attached.

(b) The department of labor shall process the complaint as set forth in (1) – (4) below:

(1) The department of labor shall notify the employer by serving the complaint via US mail, email, or in hand along with an order to file an objection to the complaint with the department of labor within 10 days of receipt of such complaint, specifying the grounds thereof;

(2) The department of labor shall forward a copy of the objection to the claimant, who shall be notified of his/her right to request a hearing in the matter;

(3) If the employer fails to respond to the notification above under Lab 904.03 (b) (1), the claimant shall also be informed by the department of labor of the claimants' ~~his/her~~ right to a hearing;

(4) If the claimant fails to request formal hearing on the matter, the claim will be dismissed without a finding, and

~~(5)–4~~ If a hearing is requested by the claimant ~~employee~~, the request shall be in writing pursuant to Lab 204.01.

Lab 904.04 Processing A Public Employee Complaint under RSA 275-E:–8.

(a) If an employee files a complaint under RSA 275-E:–8, the complaint shall be presented to the department of labor in the form prescribed by Lab 904.02, (a) (1) through (8), with all substantiating documents attached.

(b) The department of labor shall ~~assign a case number and~~ process the complaint as set forth in (1) – (7) below:

(1) If the department of labor makes an initial determination that the complaint is without merit or unfounded, the complainant shall be notified and the complaint shall be dismissed without further action;

(2) If the department of labor is in need of further information or clarification, the department of labor shall make such request of the complainant ~~employee~~ and hold the complaint for ~~30~~ 15 days from the date of the request;

(3) If no information is received within the above timeframe, the complaint shall be dismissed without further action;

(4) The case shall be reopened if the commissioner or commissioner's representative determines there was good cause for failing to respond, including:

a. Serious illness;

b. Hospitalization;

c. Incarceration;

d. Death of a family member; or

e. Any other unforeseeable circumstance beyond the complainant's control that prevents the complainant from providing the required information or clarification to the department;

(5) If the department of labor suspects any violation of state or federal criminal law, it shall be reported immediately to the attorney general and either the United States Attorney or local law enforcement agency;

(6) If the department of labor determines that the complaint would be more appropriately investigated by another authority having jurisdiction over the subject matter, the department of labor ~~shall~~ may refer the complaint to that authority and notify the complainant in writing;

(7) If the department of labor determines that the complaint has merit and it is not referred to another agency under (b) (5) or (6) above, the department of labor shall undertake further investigation as set forth in a. - d. below:

a. The department of labor shall contact the public entity the complaint is filed against and request all records, confidential or otherwise, reports, audits, reviews, papers, books, documents, recommendations, and correspondence, including information or data that is deemed necessary to carry out the investigation;

b. If deemed necessary for a complete investigation, the department of labor shall perform an onsite audit of the records of the employer;

c. If deemed necessary for a complete investigation, the department of labor shall conduct confidential interviews;

d. If the investigation results in a final determination that validates the complaint, the department of labor shall notify the appropriate enforcement authority;

(8) The department of labor shall notify the complainant, and the public entity against which the complaint is filed, in writing of the results of the investigation by the department; and

(9) The department of labor shall maintain the complaint on file ~~by case number~~ for a period of at least 3 years.

Lab 904.05 Hearings.

(a) Hearings held under RSA 275-E:-4 and Lab 904.03 shall be conducted according to the rules established by Lab 201-204, and the requirements of RSA 541-A.

(b) Following such hearing, the labor commissioner or designee shall order such remedies as are appropriate, including reinstatement of the employee, payment of back pay, fringe benefits, seniority rights, attorney fees, any appropriate injunctive relief, or any combination of these remedies.

Appendix

Rule	Specific State or Federal Statutes which the Rule Implements
Lab 901-902	RSA 275-E:2
Lab 903	RSA 275-E:7
Lab 904	RSA 275-E:4, 5 ; RSA 275-E: 8; RSA 541-A:16 I, (b) (2)