

## **4167-9-01 Discrimination.**

(A) No public employer shall discharge or in any manner discriminate against any public employee because the employee in good faith has:

- (1) Filed any complaint under or related to the act;
- (2) Instituted or caused to be instituted any proceeding under or related to the act;
- (3) Testified or is about to testify in any proceeding under or related to the act; or
- (4) Exercised on his own behalf or on the behalf of others any right afforded by the act.

(B) Any public employee who believes that he has been discharged or otherwise discriminated against by any public employer in violation of paragraph (A) of this rule and who wishes to file a complaint must elect any one of the remedies provided for in division (B) of section 4167.13 of the Revised Code.

(C) Nothing in this rule limits a public employer's right to take any actions provided in rules 4167-2-01 to 4167-2-04 of the Administrative Code.

(D) Actions taken by the public employer which adversely affect a public employee shall be predicated upon nondiscrimination grounds. The proscriptions of paragraph (A) of this rule apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(E) To establish a violation of paragraph (A) of this rule, the employee's activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, paragraph (A) of this rule has been violated.

(F) Discharge of, or discrimination against, an employee because the employee has filed any complaint under or related to this act is prohibited by this rule. An example of a complaint made under the act would be an employee request pursuant to section 4167.11 of the Revised Code. However, this would not be the only type of complaint protected by this rule. The range of complaints related to the act is commensurate with the broad remedial purposes of the act and the sweeping scope of its application.

(G) Complaints made to other state, local, and federal agencies regarding occupational safety and health would be related to the act. Such complaints, however, must be related to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(H) Discharge of, or discrimination against, any employee because the employee has instituted or caused to be instituted any proceeding under or related to the act is also prohibited by paragraph (A) of this rule. Examples of proceedings which could arise specifically under the act would be inspections as a result of employee requests, employee participation in employer variance requests, employee contests of abatement dates, and employee challenges to an order, rule, Ohio employment risk reduction standard proposed, adopted, or issued by the superintendent. In determining whether a proceeding is related to the act, paragraphs (F) and (G) of this rule are to be considered.

(I) An employee need not directly institute the proceedings. It is sufficient if the employee sets into motion activities of others which result in proceedings under or related to the act.

(J) Discharge of, or discrimination against, any employee because the employee has testified or is about to testify in proceedings under or related to the act is prohibited by this rule.

(K) Discriminatory protection is not limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, or adjudicative functions.

(L) This rule protects employees from discrimination as a result of the exercise of any right afforded by the act. Certain rights exist by implication. For example, employees may request information from the public employment risk reduction program. Such requests would constitute the exercise of a right afforded by the act.

(M) Employees interviewed by designees of the superintendent in the course of inspections or investigations cannot subsequently be discriminated against because of their cooperation.

(N) There is no right afforded by the act which would entitle employees to refuse to work because of potential unsafe conditions at the workplace unless the provisions of rules 4167-2-01 to 4167-2-04 of the Administrative Code are met. An employee will normally have the opportunity to file a complaint with the superintendent about the existence of a condition alleged to be hazardous that has not been corrected by the employer. Under such circumstances, an employer would not ordinarily be in violation of paragraph (A) of rule 4167-9-01 of the Administrative Code by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

(O) Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the act are not exercising any rights afforded by the act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as discriminatory activity prohibited by paragraph (A) of this rule.

(P) A complaint of discrimination under this rule must be filed by the employee or by a representative authorized to so do on the employee's behalf.

(Q) The complaint must be filed in accordance with the procedures listed in paragraph (B) of this rule.

(R) The sixty day period outlined in section 4167.13 of the Revised Code will be stayed until the employee knows or should have known of extenuating circumstances, including but not limited to, where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action, or where the discrimination is in the nature of a continuing violation.

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