

BAR ASSOCIATION OF ERIE COUNTY WHISTLEBLOWER POLICY

(Adopted July 26, 2022)

Bar Association of Erie County (the “Corporation”) is committed to upholding the highest standards of ethical, moral and legal business conduct, and transparency through open communication. Furthermore, the Corporation and all of its directors, officers, employees, independent contractors and volunteers (“Covered Persons”) are required to comply with applicable federal, state and local statutes, including New York Not-For-Profit Corporation Law Section 715-b, New York State Labor Law Section 740, ordinances, executive orders, rules, regulations, judicial or administrative decisions, rulings or orders, and must faithfully implement and adhere to the Corporation’s own policies and procedures in conducting their duties and responsibilities.

This policy provides an avenue for all directors, officers, current and former employees and independent contractors, employees of independent contractors, and volunteers to report any suspected or actual conduct contrary to these requirements and standards (“Covered Conduct”) without the fear of intimidation, harassment, discrimination, or retaliation.

In most cases, employee, independent contractor, consultant, and volunteer concerns can be addressed by Corporation’s management in accordance with the applicable corporate policies and procedures. As such, this Whistleblower Policy is not intended and may not be used for general complaints, employment grievances, etc. Such concerns should be pursued in accordance with the applicable policies and procedures articulated in employee handbooks and manuals or as otherwise promulgated by the Corporation from time to time.

ARTICLE I General Policy

Section 1.1. Whistleblower Protection. No individual, including current and former employees and independent contractors, employees of independent contractors, directors, officers, and volunteers, shall suffer intimidation, harassment, discrimination, retaliation,¹ or adverse employment consequences for making a report of Covered Conduct reasonably or otherwise in good faith (whether pursuant to this policy or otherwise in a manner which is protected under Section 740 of the New York State Labor Law) or for their participation in any internal or governmental investigation of a report of Covered Conduct. Retaliation against any person on one or both of these bases is a violation of this policy, and anyone who so retaliates is subject to disciplinary action, up to and including termination of employment.

¹ New York law includes among prohibited retaliatory actions the following, without limitation: (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

Section 1.2. Duty to Report. Each Covered Person who has engaged in, or who reasonably suspects any other Covered Person of engaging in Covered Conduct has an obligation to report such activity in accordance with the procedures set forth in Article III as soon as possible.

Section 1.3. Distribution of Policy. This policy shall be posted on the Corporation's website and/or at the Corporation's offices in a conspicuous location accessible to directors, officers, employees, independent contractors, and volunteers. Notification regarding the rights provided under Section 740 of the New York State Labor Law (effective January 26, 2022), which is annexed hereto as **Appendix "A"** ("Labor Law Section 740"), shall be included with such posting, and shall also be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment at the Corporation. In the event Labor Law Section 740 is amended, supplemented, or replaced at any time or from time to time, this policy shall automatically be deemed amended to refer to such amendments, supplements, or replacements without any need for an amendment to this policy, and such amendments, supplements, or replacements shall be annexed hereto as **Appendix "A"** in place of the statutory provisions which are so amended, supplemented, or replaced.

Section 1.4. Discipline for Retaliatory Conduct. Retaliation should be reported immediately to the Compliance Officer. Depending on the nature and seriousness of the offense, the Corporation will impose appropriate discipline against any Covered Person found to have engaged in any form of retaliatory conduct against an individual reporting actual or suspected Covered Conduct in accordance with this policy, up to and including dismissal or termination. Volunteers that engage in any such conduct will not be permitted to volunteer in Corporation activities.

Section 1.5 Good Faith Reporting. Any individual who files a report concerning actual or suspected Covered Conduct must do so in good faith and have reasonable grounds for believing the information in the report indicates a violation under this policy. The Corporation will impose appropriate discipline against any Covered Person found to have knowingly made a report in bad faith, up to and including dismissal or termination. This includes, but is not limited to, giving false information. Volunteers that engage in any such conduct will not be permitted to volunteer in Corporation activities.

ARTICLE II **Oversight**

Section 2.1. Oversight. The Corporation's Finance and Audit Committee shall serve as the "Compliance Committee" to oversee the adoption of, implementation of, and compliance with this policy in accordance with the procedures contained herein. If at any time such Finance and Audit Committee shall not exist, then the Board shall either assign this oversight responsibility to another Committee of the Board or to the Board itself, provided that no director who is an employee of the Corporation may deliberate or vote on matters relating to the administration of this Whistleblower Policy. Unless otherwise indicated, any reference in this policy to the "Compliance Committee" shall be interpreted as a reference to the Finance and Audit Committee, such other committee or the Board, as the case may be.

Section 2.2. Compliance Officer. The Treasurer shall be the Chairperson of the Compliance Committee (“Compliance Officer.”) Should the Compliance Officer be the subject of the report, then the Compliance Committee shall appoint another member thereof to perform the Compliance Officer’s role regarding the allegations. The Compliance Officer shall be responsible for administering this policy and reporting to the Compliance Committee. The Compliance Officer shall report to the Board at least annually on compliance activity.

Section 2.3. Corporation Employees Excluded from Oversight. Directors who are employees of the Corporation may not participate in any Compliance Committee or Board deliberations or voting relating to the administration of this Whistleblower Policy.

ARTICLE III **Reporting Procedures**

Section 3.1. Reporting Violations or Suspected Violations.

A. Manner of Reporting. A report of actual or suspected Covered Conduct shall, except as otherwise provided in Labor Law Section 740, be reported using one of the following methods, as applicable:

- i. With respect to any employee, by speaking or writing to the employee’s supervisor.
- ii. By speaking or writing to the Corporation’s Executive Director.
- iii. Any report related to conduct of the Executive Director should be directed to the Compliance Officer.

The person receiving a report under this Policy shall be referred to as the “Recipient.” Contact information for the persons listed in ii. through iv. above is set forth in Section 3.6 below.

B. Form of Report. A report may be provided in person, in writing, or by electronic mail. Written reports by mail or electronic mail shall be made on the *Whistleblower Disclosure Statement* attached as **Appendix “B”**. For reports made in person, the Recipient shall record the information reported on a Whistleblower Disclosure Statement. With the exception of a person’s report of his or her own violation, the reporter shall not be required to provide his or her name on said form. However, anonymous reports must include sufficient information, including but not limited to, the name of the person against whom the report is being made, the date of the incident, the names of any potential witnesses, and a description of the incident, in order that an investigation can be conducted, or other appropriate action can be taken.

Section 3.2. Handling Reports. If the identity of the person making the report is known, the Recipient shall provide the reporter timely acknowledgement of receipt of the report, whether submitted in person, electronically, or otherwise. The report shall be reviewed by the Recipient with appropriate members of the Corporation’s management, the Compliance Officer, and/or the Compliance Committee (the “Reviewing Authorities”) and legal counsel, as appropriate. Generally, the composition of the Reviewing Authorities shall be determined in light of the nature of the reported Covered Conduct and the individuals involved. The Reviewing

Authorities shall undertake or cause to be undertaken such investigation as they deem appropriate, taking into consideration all relevant facts and circumstances.

The subject(s) of the report may be notified of the investigation, if the Reviewing Authorities deem it appropriate, unless prohibited by law.

The Corporation expects full cooperation by all individuals in the investigation of a report. An employee's failure to participate or otherwise cooperate in an investigation may result in disciplinary action, up to and including termination of employment.

Section 3.3. Results of Investigation. When the investigation is concluded, the Reviewing Authorities will determine if any disciplinary actions, up to and including termination of employment, and/or other corrective measures are required or otherwise warranted, which may include reporting the findings of the investigation to appropriate law enforcement or governmental authorities. Any person who is the subject of a report under this policy shall not be present at or participate in any deliberation, voting or other decision-making on any matter relating to such report, provided that nothing shall prohibit the Reviewing Authorities from requesting that the person who is the subject of the report present information as background or answer questions prior to such decision-making.

If, when the investigation is concluded, it is not established that Covered Conduct has occurred, the investigation will be closed. Any reports of Covered Conduct that are made in bad faith may result in disciplinary action, up to and including termination of employment and/or other appropriate corrective measures.

If the identity of the person making the report is known, the Reviewing Authorities may inform him or her of the resolution, if the Reviewing Authorities determine that it is appropriate. If the Reviewing Authorities deem it appropriate and/or the circumstances so require, the subject(s) of the report may be notified of the resolution.

Section 3.4. Documentation. The Reviewing Authorities shall document any investigation or other action carried out under this policy, including the rationale for any recommended resolution and/or corrective action. All documentation relating to the investigation, including the *Whistleblower Disclosure Statement*, and the resolution and/or corrective action taken shall be kept in the Corporation's records in the Executive Director and/or Compliance Committee records for at least five years.

Section 3.5. Confidentiality. All reports of actual or suspected Covered Conduct may be submitted on a confidential or anonymous basis. Reports will be kept confidential to the extent possible, consistent with applicable laws and the need to conduct an adequate investigation and prevent or correct actual or suspected Covered Conduct. Information relating to a report shall be provided only to those with a need to know so that effective investigation or other action can be taken. In appropriate cases, and without limitation, the investigation documents will be shared with law enforcement personnel. Disclosure of reports to individuals not involved in the investigation shall be viewed as a serious disciplinary offense and may result in discipline, up to and including dismissal, termination, or civil lawsuits.

3.6 Contact Information.

Anne M. Noble
Executive Director
438 Main Street Suite 600
Buffalo NY 14202
716-852-8687 x119
Fax 716-852-7641
anoble@eriebar.org

Compliance Officer
BAEC Treasurer

Please visit Eriebar.org for contact information for the Treasurer or call 716-852-8687 to obtain additional information.

Division of Labor Standards
Harriman State Office Campus
Building 12, Albany, NY 12226

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www.labor.ny.gov

Notice of Employee Rights, Protections, and Obligations Under Labor Law Section 740

Prohibited Retaliatory Personnel Action by Employers Effective January 26, 2022

§ 740. Retaliatory action by employers; prohibition.

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

- (a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers.
- (b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.
- (c) “Law, rule or regulation” includes: (i) any duly enacted federal, state or local statute or ordinance or executive order; (ii) any rule or regulation promulgated pursuant to such statute or ordinance or executive order; or (iii) any judicial or administrative decision, ruling or order.
- (d) “Public body” includes the following:
 - (i) the United States Congress, any state legislature, or any elected local governmental body, or any member or employee thereof;
 - (ii) any federal, state, or local court, or any member or employee thereof, or any grand or petit jury;
 - (iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;
 - (iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer;
 - (v) any federal, state or local department of an executive branch of government; or
 - (vi) any division, board, bureau, office, committee, or commission of any of the public bodies described in subparagraphs (i) through (v) of this paragraph.
- (e) “Retaliatory action” means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee’s current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee’s family or household member, as defined in subdivision two of section four hundred fifty-nine-a of the social services law, to a federal, state, or local agency.

**To Be Posted Conspicuously in easily accessible and well-lighted places
customarily frequented by employees and applicants for employment.**

- (f) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.
2. Prohibitions. An employer shall not take any retaliatory action against an employee, whether or not within the scope of the employee's job duties, because such employee does any of the following:
- (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety;
 - (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practice by such employer; or
 - (c) objects to, or refuses to participate in any such activity, policy or practice.
3. Application. The protection against retaliatory action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has made a good faith effort to notify his or her employer by bringing the activity, policy or practice to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where:
- (a) there is an imminent and serious danger to the public health or safety;
 - (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice;
 - (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor;
 - (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or
 - (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.
4. Violation; remedy.
- (a) An employee who has been the subject of a retaliatory action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory action was taken.
 - (b) Any action authorized by this section may be brought in the county in which the alleged retaliatory action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business. In any such action, the parties shall be entitled to a jury trial.
 - (c) It shall be a defense to any action brought pursuant to this section that the retaliatory action was predicated upon grounds other than the employee's exercise of any rights protected by this section.
5. Relief. In any action brought pursuant to subdivision four of this section, the court may order relief as follows:
- (a) an injunction to restrain continued violation of this section;
 - (b) the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
 - (c) the reinstatement of full fringe benefits and seniority rights;

- (d) the compensation for lost wages, benefits and other remuneration;
 - (e) the payment by the employer of reasonable costs, disbursements, and attorney's fees;
 - (f) a civil penalty of an amount not to exceed ten thousand dollars; and/or
 - (g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.
6. Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.
7. Existing rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.
8. Publication. Every employer shall inform employees of their protections, rights and obligations under this section, by posting a notice thereof. Such notices shall be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment.

CONFIDENTIAL

**BAR ASSOCIATION OF ERIE COUNTY
WHISTLEBLOWER DISCLOSURE STATEMENT**

Date of Report: _____

REPORTER'S CONTACT INFORMATION: <i>Not required if being submitted anonymously</i>	
Name	Position/Title
Dept/Location	Work #
Home Address	Home/cell #
Best time to reach you	Email
Preferable method of communication:	

PERSON AGAINST WHOM THE REPORT OF ACTUAL OR SUSPECTED COVERED CONDUCT IS BEING MADE: <i>If more than one, please complete additional form(s).</i>	
Name	Position/Title
Dept/Location (if applicable)	Phone # (if known)

WITNESS(ES) TO ACTUAL OR SUSPECTED COVERED CONDUCT: <i>Attach additional sheets if necessary.</i>	
Name	Position/Title
Dept/Location	Phone # (if known)
Name	Position/Title
Dept/Location	Phone # (if known)

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The Whistleblower Disclosure Statement provides an avenue for all directors, officers, current and former employees and independent contractors, employees of independent contractors, and volunteers to report actual or suspected wrongful conduct without fear of retaliation. Please refer to the Whistleblower Policy for additional information.

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DESCRIPTION OF KNOWN OR SUSPECTED COVERED CONDUCT: (Please be as specific as possible including who, what, where, when and how?) *Attach additional sheets of paper if necessary.*

The Whistleblower Disclosure Statement provides an avenue for all directors, officers, current and former employees and independent contractors, employees of independent contractors, and volunteers to report actual or suspected wrongful conduct without fear of retaliation. Please refer to the Whistleblower Policy for additional information.