

# Steward Notes

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UNION STEWARDS ARE THE FRONT LINE OF DEFENCE FOR UNION MEMBERS IN THE WORKPLACE. STEWARDS PLAY ONE OF THE MOST IMPORTANT ROLES IN THE LABOUR MOVEMENT.



## The Whistleblower FAQ

What Stewards need to know about the Public Interest Disclosure Act

by Jan Goodwin  
AUPE Research Officer

**Q: Does Alberta have provincial whistleblower protection legislation?**

**A:** On June 1, 2013, Bill 4 – the Public Interest Disclosure (Whistleblower Protection) Act – came into effect in Alberta. The Act is intended to create a structure within which employees covered by the Act can report a “wrongdoing” by the employer but still be protected from any backlash. The Act also creates the new office of the Public Interest Commissioner.

**Q: Who will be covered by the Act?**

**A:** To fall within the definition of “employee” covered by the Act you must be employed by a department, a public entity, or an office of the Legislature listed in the regulations. In addition, the Act specifically continues to cover ex-employees who were fired for whistleblowing, much like the collective agreement continues to apply to

someone grieving a termination.

The regulations and the Act identify the following as employers covered by the Act: all departments of the provincial government, all offices within the Legislature, public and separate school boards, Alberta Health Services, Calgary Lab Services, CapitalCare Group, Carewest, Covenant Health and Lamont Health Care Centre.

**Q: What kinds of actions can be reported under the provisions of the Act?**

**A:** “Wrongdoing” under the Act includes: illegal acts; acts that create a substantial and specific danger to human life or to the environment; and gross mismanagement of public funds.

There are three main problems with the Act: 1) anything that happened before the Act comes into effect is not covered; 2) the same people responsible for any wrongdoings will likely be the

same people who get to determine what falls within the definition of wrongdoing; and 3) the Commissioner can exempt any person, any group of people, any department, or any public entity from the operation of this Act.

**Q: How does someone go about reporting a wrongdoing under the Act?**

**A:** Every department of the government, every office of Legislature and every public entity will have its own Chief Officer. This officer will write the procedure for disclosure for their area – so each area may have a different procedure that employees should be aware of. In addition to this procedure, the Lieutenant Governor in Council may make regulations that employees should know about. Then the Act itself tells employees who to report to and how to do it. For example, if an employee is thinking about making a disclosure,

# The Whistleblower FAQ *Continued*

section 8 says that employee can make a request – in writing – to see if disclosing would be a good idea. Section 9 says an employee can disclose to someone designated by the Chief Officer to receive complaints and may also report a wrongdoing to the Commissioner. Section 10 says you can report just to the Commissioner if the Chief Officer didn't write a procedure or if the employee thinks there is imminent danger and there is no time to report it to the designated person and a number of other reasons.

The report must be in writing, must contain the information specified in the Act, must be accompanied by evidence and must reveal the identity of the employee. The good news is that section 21 of the Act allows for an anonymous complaint to be made, reducing the need to follow all these rules, although you still have to provide enough evidence for the Public Interest Commissioner to act on.

**Q: What protection does the Act offer for employees who report wrongdoing?**

**A:** The Act says no person shall take any action against an employee who has in good faith reported something they thought was wrong. Examples of retaliation would be things like

dismissal, layoff, suspension, demotion, transfer, etc. Realistically, the Act provides very little protection. A complaint can be filed, it may be investigated, but there is no indication of the powers the Commissioner has to correct the situation. The grievance process is likely a member's best, and perhaps only, shot at countering employer retaliation for whistleblowing.

The regulations state that any complaint of retaliation must be done on the form provided. That form asks – again – for all the information and all the evidence upon which the original complaint was made so make sure you keep a copy of everything. This information should also be retained in case of a grievance concerning retaliation.

**Q: Is there any other protection for employees?**

**A:** Yes, the Criminal Code of Canada contains s. 425.1, which prohibits threats and retaliation against any employee who reports criminal activity by any employer. Also, section 36 of the Occupational Health and Safety Act (OH&S) prohibits disciplinary action against a worker because that worker reported a problem in compliance with the OH&S Act.

Alberta Health Services has a whistleblower policy that creates a duty to report wrongdoing and provides protection for employees who come forward. The AHS policy provides access to an external disclosure service to receive anonymous or confidential disclosures.

**Q: What should I do if I become aware of wrongdoing?**

**A:** Members who work for the Alberta government, AHS or one of the other employers listed under the Act have several choices when they see something wrong: 1) do nothing; 2) report an illegal act to the police under the Criminal Code; 3) report a problem under the Occupational Health & Safety Act; 4) follow the process set by Alberta Health Services whistleblower policy (for AHS employees); 5) report under the Whistleblower Act following all the prescribed procedures for employees; or 6) make an anonymous complaint under the Whistleblower Act. In deciding to make a complaint and what route to take, keep in mind that in any situation you will be asked for names, dates, documents and any other evidence to support an allegation of wrongdoing.

HAVE QUESTIONS?  
**CONTACT YOUR  
MEMBER SERVICES OFFICER**  
CALL 1-800-232-7284



Have your local/chapter number and worksite location ready so your call can be directed quickly.



# Mitigating circumstances versus treating all members the same

by Wendy Webber  
Membership Services Officer

As Stewards, we're taught the employer must treat all members the same. However, there are some exceptions.

For instance if an employer's policy reads: "As it is important that our customers/clients be able to reach us during work hours, tardiness (lateness) will have disciplinary consequences.

- The first and second time the employee is late he/she will be given a verbal warning and be reminded of this policy
- The third time an employee is late he/she will be given a letter of discipline
- The fourth time an employee is late he/she will be given a one-day suspension
- The fifth time an employee is late he/she will be given a three-day suspension
- The sixth time an employee is late he/she may be terminated"

Although the policy is clearly set out and appears to treat all employees equally, the question from a union perspective is, does it really?

If an employee is late five times over the course of a year, once because their bus was late, once because their child was sick, once because there was a traffic jam, and twice because of bad weather, should they be disciplined the same as a person who is late five times in one month because they don't get up in the morning?

The union does not believe so. This is called mitigating circumstances. These are events or reasons where an employer

should apply different levels of discipline for the same or similar infraction.

The union would argue that mitigating circumstances should reduce or remove discipline even if the employer's policy would treat all members the same. However, every circumstance should be looked at on its own merit.

The employee who was late five times in one year should be treated differently, possibly not disciplined for tardiness. The employer would certainly want to have a conversation with the member who was late five times in one month and may decide discipline is warranted.

The union would, of course, file a grievance at the request of either member.

are exactly the same, the employer is consistent in giving everyone the same chances and discipline.

This may mean doing some investigation on your own or having a conversation with the supervisor or manager after the meeting with your member. Remember, you are there to support the member.

A member can file a grievance for any reason if they feel they have been wronged by the employer. Even if you personally do not believe the issue will be successful, the union will take the grievance forward. The employer will make whatever decision they choose to make.

**The union may use mitigating circumstances to reduce or remove discipline.**

The length of service may also be considered a mitigating circumstance when looking at discipline, as could an employee's health and wellness or accommodation.

As a steward, part of your job is to make sure that if the circumstances

While it is easy to say the employer needs to treat every employee the same, it is probably better to say the employer needs to treat every employee fairly. When considering that fairness, each individual case should be looked at on its own merits.

# Labour Education

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For information on any of these courses or to register please call **1-800-232-7284**

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### Respect in the Workplace

Sept 18  
Nov 13

### Introduction to Your Union

Sept 20  
Nov 14

### Union Steward Level 1

Sept 25 - 26  
Nov 19 - 20

### Union Officer Training

Oct 1 - 2

### OH&S Advocate Level 2

Oct 8 - 9  
Dec 3 - 4

### Union Steward Level 2

Oct 22 - 23  
Dec 10 - 11

### Contract Interpretation

Oct 29  
Dec 18

### OH&S Advocate Level 1

Nov 5 - 6

## Calgary

### Respect in the Workplace

Sept 18  
Nov 14

### Introduction to Your Union

Sept 20  
Nov 13

### Union Steward Level 1

Sept 25 - 26  
Nov 19 - 20

### Union Officer Training

Oct 1 - 2

### OH&S Advocate Level 2

Oct 8 - 9  
Dec 17 - 18

### Union Steward Level 2

Oct 22 - 23  
Dec 9 - 10

### Contract Interpretation

Oct 30  
Dec 19

### OH&S Advocate Level 1

Nov 5 - 6

## Red Deer

### Introduction to Your Union

Sept 17  
Nov 5

### Respect in the Workplace

Sept 20

### Union Steward Level 1

Sept 26 - 27  
Nov 13 - 14

### OH&S Advocate Level 2

Oct 2 - 3  
Dec 3 - 4

### Union Steward Level 2

Oct 9 - 10  
Dec 17 - 18

### Union Officer Training

Oct 22 - 23

### Contract Interpretation

Oct 31  
Dec 10

### OH&S Advocate Level 1

Nov 27 - 28

Steward Notes is published by the Alberta Union of Provincial Employees to provide information of technical interest to AUPE Union Stewards, worksite contacts and other members. Topics deal with training for union activists, worksite issues, disputes and arbitrations, health and safety, trends in labour law, bargaining and related material. For more information, contact the editor.

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The goal of Steward Notes is to help today's AUPE union stewards do their jobs effectively. To help us, we encourage readers to submit story ideas that deserve exposure among all AUPE stewards.

Story suggestions for Steward Notes may be submitted for consideration to Communications Staff Writer Tyler Bedford by e-mail at t.bedford@aupe.org or by mail. Please include names and contact information for yourself and potential story sources.

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