

13-2323. Whistleblower Protection Act; retaliatory action.

“Retaliatory action” means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment.

USE NOTES

This instruction should be given in a case alleging violation of the Whistleblower Protection Act (“WPA”), NMSA 1978, §§ 10-16C-1 to -6 (2010), if there is a dispute about whether the employer’s action of which the employee complains is “retaliatory action” as defined by the WPA.

[Adopted by Supreme Court Order No. 22-8300-030, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — The Whistleblower Protection Act forbids public employers from taking “any retaliatory action” against a public employee because the public employee engaged in certain protected conduct. *See* NMSA 1978, § 10-16C-3; *see also Velasquez v. Regents of N. N.M. Coll.*, 2021-NMCA-007, ¶ 27, 484 P.3d 970. “Retaliatory action” is defined as “any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment.” NMSA 1978, § 10-16C-2; *Velasquez*, 2021-NMCA-007, ¶ 40.

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