

13-2324. Whistleblower Protection Act; causation.

An employee's engagement in protected activity is a cause of an employer's retaliatory action if the employee's protected activity was a factor that motivated, at least in part, the employer's action against the employee. A motivating factor is a factor that plays a role in an employer's decision to act. To be considered a motivating factor, the employee's protected activity need not be the only reason, nor the last reason, nor latest reason, for the employer's action.

USE NOTES

This instruction should be given in a case alleging violation of the Whistleblower Protection Act, NMSA 1978, §§ 10-16C-1 to -6 (2010), if causation is in dispute.

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

Committee commentary — *See Dart v. Westall*, 2018-NMCA-061, ¶¶ 18-24, 428 P.3d 292 (concluding sufficient evidence was presented to establish plaintiff suffered retaliatory action after plaintiff engaged in protected activity, which was found to be a cause of the retaliatory action). The definition of "motivating factor" used in this instruction is derived from UJI 13-2304 NMRA (discussing retaliatory discharge).

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