

**KENTUCKY STATE UNIVERSITY FOUNDATION, INC.
WHISTLEBLOWER POLICY**

Provisions

The KSU Foundation shall not subject to reprisal, or use or threaten to use any authority or influence which tends to deter, coerce, or discriminate against any Trustee or staff who in good faith reports an actual or suspected violation of any federal or Kentucky law or Foundation policy, statute, executive order, administrative regulation, mandate, rule or ordinance, or a mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to health and safety. The Foundation shall not require any Trustee or staff member to give notice prior to making such a report, disclosure, or divulgence.

The KSU Foundation shall not subject to reprisal or discriminate against any person who supports, aids, or substantiates any Trustee or staff member who makes public any wrongdoing.

While staff members and individuals associated with the Foundation cannot seek the protection of Kentucky's Whistleblower Act, they can make complaints under a number of other statutes, which may be appropriate in certain contexts. In addition to these Kentucky statutes, a number of federal laws provide for protection of those who file complaints. These statutes provide additional protection.

Statutes Which Provide Whistleblower-Like Protection to Private Employees

A. Kentucky Civil Rights Act

KRS 344.280. Conspiracy to violate chapter unlawful.

It shall be an unlawful practice for a person, or for two (2) or more persons to conspire:

- (1) To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter; or
- (2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this chapter;

This statute is the basis for the common "retaliation claim" under the Kentucky Civil Rights Act ("KCRA").

B. Kentucky Wages and Hours Act

KRS 337.990. Penalties.

- (1) Any employer who discharges or in any other manner discriminates against any staff member because the staff member has made any complaint to his employer, to the executive director, or to his authorized representative that he has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the staff member has caused to be instituted or is about to cause to be instituted any proceeding under or related

to KRS 337.385, or because the staff member has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

The statute clearly affords wide protection to staff members who complain regarding wage and hour violations.

C. Equal Opportunities Act

KRS 207.170. Prohibited discriminatory acts by employer or others.

- (1) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against any person or applicant for employment, nor shall any employment agency discriminate against any person, nor shall a labor organization discriminate against any member or applicant for membership because such person has opposed any practice made an unfair employment practice by KRS 207.130 to 207.240 or because he has filed a charge, testified, assisted, or participated in any manner in an investigation, citizen's action suit, proceeding, or hearing under KRS 207.130 to 207.240.

Chapter 207 aims to protect those with physical disabilities. (*See* KRS 207.150.)

D. Occupational Safety and Health of Staff members

KRS 338.121 Request for inspection — Discrimination against staff member prohibited — Recourse.

- (3)(a) No person shall discharge or in any manner discriminate against any staff member because such staff member has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such staff member on behalf of himself or others of any right afforded by this chapter.

This provision allows staff members to use KRS 338.121 to not only exercise their own rights, but to exercise the rights of others.

E. Labor

KRS 336.130 Staff members may organize, bargain collectively, strike, picket — Conduct prohibited — Effect of violence or injury to person or property.

- (1) Staff members may, free from restraint or coercion by the employers or their agents, associate collectively for self-organization and designate collectively representatives of their own choosing to negotiate the terms and conditions of their employment to effectively promote their own rights and general welfare. Staff members, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes.

These rights are similar to those provided to staff members under the National Labor Relations Act (“NLRA”).