

KADUNA STATE WHISTLE BLOWER PROTECTION LAW, 2018

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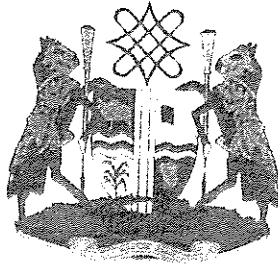
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KADUNA STATE WHISTLE BLOWER PROTECTION LAW, 2018



Kaduna State of Nigeria

Law No. 252018

(December 10, 2018)

Date of Commencement

PART I

PRELIMINARY

BE IT ENACTED by the House of Assembly of Kaduna State as follows:

Enactment

1. This Law may be cited as the Kaduna State Whistleblower Protection Law, 2018

Short Title

2. This Law shall come into operation on the 10th day of December2018

Commencement

3. In this Law Unless the Content otherwise requires:

Interpretation

"Attorney General" or Commissioner" means the Attorney General and Commissioner for Justice of Kaduna State;

"Economic Crime" means the non-violent Criminal and unlawful activity committed with the objectives of earning wealth illegally either individually or in a group, or organized manner, thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, embezzlement, bribery, looting and any form of corrupt practice and tax evasion.

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"Employee" means:

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) any person who in any manner assists in carrying on or conducting the business of an employer;

"Employer" means any person:

- (a) who employs or provides work for any person and who remunerates expressly or tacitly remunerates him; and
- (b) who permits any person in any manner to assist in the carrying on or conducting of his or its business, including any person acting on behalf of or on the authority of such employer;

"Family" means spouses, father, mother, child, grandchild, brother and sister.

"Occupational detriment" in relation to the working environment of an employee, means:

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated;
- (c) being transferred against his will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage; being refused a

- (f) being denied appointment to any employment, profession or office; or
- (g) being threatened with any of the actions referred to in paragraphs (a) to (f) above or being otherwise adversely affected in respect of his or her employment or profession including employment opportunities and work security;

"Organ of State" means:

- (a) any department of State or administration in the State or Local Government; or
- (b) any other functionary or institution when:
 - (i) exercising power or performing a duty in relation to any law; and
 - (ii) exercising public power or performing a public function in relation to any legislation;

"Protected disclosure" means a disclosure made to persons mentioned in section 6 (1) (a) to (l) of this Law;

"State" means Kaduna State and Local Government.

PART II

DISCLOSURE OF IMPROPRIETY AND PROTECTED INFORMATION

4. (1) Any person may make a disclosure of information where that person has reasonable cause to believe that the information tends to show: Disclosure of Impropriety
- (a) an economic crime has been committed, is about to, or is likely to be committed;
 - (b) a person has not complied with a law or is in the process of breaking a law or is likely to break a law.

- (b) a person has not complied with a law or is in the process of breaking a law or is likely to break a law.
 - (c) a person maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets;
 - (d) a person is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets;
 - (e) a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (f) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;
 - (g) the environment has been degraded, is being degraded or is likely to be degraded; or
 - (h) the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.
- (2). A person who makes a disclosure of impropriety is in this Law referred to as a "whistleblower"
- (3) Notwithstanding any other law to the contrary, a disclosure of an impropriety is protected if:
- (a) the disclosure is made in good faith,
 - (b) the whistleblower has reasonable cause to believe that the information disclosed and the allegation of impropriety contained in it are substantially true, and
 - (c) the disclosure is made to one or more of the persons or institutions specified in section 6 of this Law.

- (b) by an employee in respect of another employee, or
- (c) by a person in respect of another person (including spouses), or an institution.
- (d) by a person if it is made in the course of obtaining Legal advice.

6. (1) Disclosure of impropriety may be made to any one or more of the following:

Persons or Institutions to whom to make a Disclosure

- (a) an employer of the whistle blower;
- (b) the Commissioner of Police;
- (c) the Attorney-General and Commissioner of Justice;
- (d) the Auditor-General of the State or Local Government;
- (e) the Economic and Financial Crimes Commission, the Independent Corrupt Practices Commission or any other anti-corruption Agency established by Law;
- (f) a member of the State Traditional Council;
- (g) the head or an elder of the family of the whistleblower;
- (h) head of a recognized religious body;
- (i) the Chief Executive of any relevant Ministry, Department or Agency in the State;
- (j) the Kaduna State Internal Revenue Service;
- (k) a Member of the State House of Assembly; or
- (l) the Office of the Governor.

(2) A whistleblower shall take into account that:

- (l) the Office of the Governor.
- (2) A whistleblower shall take into account that:
 - (a) there is a reasonable belief or fear that he may be subjected to dismissal, suspension, harassment, discrimination or intimidation;
 - (b) there is a reasonable belief or fear that evidence relevant to the impropriety may be concealed or destroyed;
 - (c) the person to whom the disclosure is made will not frustrate the objective;
 - (d) the impropriety is of an exceptionally serious nature and that expeditious action must be taken to avert the situation;
 - (e) the place where and the prevailing circumstances under which the whistleblower lives; in determining to whom the disclosure may be made.

PART III

PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND RELATED ACTIONS

- 7. (1) A disclosure may be made in writing, orally or by an electronic recording.
- (2) The disclosure shall contain as far as practicable:
 - (a) the full name, address and occupation of the whistleblower;
 - (b) the nature of the impropriety in respect of which the disclosure is made;
 - (c) the person alleged to have committed, who is committing or is about to commit the impropriety;

Procedure for making a disclosure

- (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
- (e) the full name, address and description of a person who witnessed the commission of the impropriety if there is such a person;
- (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and
- (g) if the person is an employee making a disclosure about that person's employer or a fellow employee, whether the whistleblower remains in the same employment.

8. (1) Where a whistleblower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced into writing or video containing the same particulars as are specified in subsection (2) of section 7 of this Law.

Oral Disclosure

(2) Where the whistleblower is illiterate, the writing required to be made under subsection (1) of this section shall be read over, interpreted and explained to him in a language he understands and he shall approve of it before thumb-printing it, and a certificate to that effect shall be attached to the writing.

(3) In the case of a person who is blind or with some other physical disability, but literate, a certificate as required in subsection (2) of this section shall be made with the necessary modification.

9. (1) When a disclosure of impropriety is made to a person specified in section 6, the person shall:

Action by person who receives disclosure of impropriety

(a) make a record of the time and place where the disclosure is made;

(b) give to the whistleblower an acknowledgment in writing of receipt of a copy of the disclosure; and

- (c) keep the writing in which the disclosure is made confidential and in safe custody pending investigation of the impropriety.
- (2) Where the disclosure is made to a Chief, Head of a recognized religious body or a head or an elder of a family, the chief, head or elder may instead of recording the disclosure as required under subsection (1) of this section, assist the whistleblower to make the disclosure to the police or to some other authority specified in section 6 of this Law.
- (3) Every person to whom a protected disclosure is made or referred to during the investigation or prosecution of the matter must not disclose information that might identify the person who made the protected disclosure unless:
- (a) the whistleblower consents in writing to the disclosure of that information ; or
 - (b) the Attorney General reasonably believes that the disclosure of identifying information:
 - (i) is essential to the effective investigation of the allegations in the protected disclosure; or
 - (ii) is essential to prevent serious risk to public health or public safety or the environment; or
 - (iii) is essential having regard to the principles of natural justice.
- (4) Where a person to whom the disclosure is made, or referred to fails to keep confidential the disclosure, or the identity of the whistleblower, the person commits an offence and is liable on summary conviction to a fine of not less than one hundred thousand naira or to a term of imprisonment of not less than two years or to both.

(5) A request for information under the Freedom of information Law or any other law(except a request made by the investigator appointed by the Attorney General for the purpose of investigating an offence) maybe refused, as contrary to this law, if it might identify the whistleblower.

10. Where a disclosure is made to a person specified under section 6 of this Law, other than the Attorney-General, the person shall submit a copy of the written disclosure to the Attorney-General within seven working days after receipt of the disclosure.

Submission of copy of written disclosure to the Attorney-General

PART IV

PROCEDURE FOR INVESTIGATION AND SUBMISSION OF REPORT TO THE ATTORNEY-GENERAL

11. (1) Where a disclosure is made to a person other than the Attorney General under this Law, the person shall refer the matter to the Attorney General within seven working days to investigate the matter.

Duty to Investigate

(2) Any investigation undertaken pursuant to any disclosure shall be carried out and completed within Sixty days of receipt of the disclosure.

(3) Any person assigned by the Attorney-General to investigate a disclosure and in the process conceals or suppresses evidence, commits an offence and is liable on summary conviction to a term of imprisonment of not less than two (2) year or a fine of not less than Two Hundred Thousand Naira Only (₦200,000.00) or both.

12. Where in the course of an investigation under section 11 of this Law, it appears to the investigator:

Preservation order

(a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed, tampered with or,

(b) that a person willing to provide information relevant to the investigation is being subjected to pressure, inducement or intimidation to withhold the information, the investigator may apply to the court for an order to

preserve the evidence or documents or to restrain the intimidation of the person willing to provide the information.

13. (1) A report on investigation conducted under section 11 of this Law shall be submitted to the Attorney-General for directives immediately the investigation is completed.
- (2) Where the completion of the investigation is delayed beyond the sixty day period specified in subsection (3) of section 11 of this Law, a report shall be submitted to the Attorney-General stating:
- (a) the reasons for the delay;
 - (b) measures that are proposed to expedite the investigation, and
 - (c) any further assistance required to complete the investigation.
- (3) A detailed report of an investigation for submission to the Attorney-General shall contain particulars of:
- (a) the manner in which the investigation was conducted,
 - (b) the names and particulars of persons who provided information in the course of the investigation,
 - (c) facts obtained which either confirm or create doubt on the truth or accuracy of the information contained in the disclosure or the person who provided the facts,
 - (d) an obstacle encountered in the course of the investigation and the nature of the obstacle, and
 - (e) the recommendations of the investigator.

Submission of copy of written disclosure to the Attorney-General

14. The Attorney-General may on receipt of a report under subsection (3) of section 13 of this Law, take the following steps:

Action by the Attorney-General

- (a) accept the recommendations contained in the report and act on it; or
- (b) direct for further investigations by the same person or institution that conducted the investigations or by some other person or institution.

PART V

PROTECTION OF THE WHISTLEBLOWER

15. (1) A whistleblower shall not be subjected to victimization by his employer or by a fellow employee or by any other person or institution because a disclosure has been made.
- (2) A whistleblower shall be considered as having been subjected to victimization if because of making the disclosure:
- (a) he, being an employee, is:
 - (i) dismissed,
 - (ii) suspended,
 - (iii) declared redundant,
 - (iv) denied promotion,
 - (v) transferred against his will,
 - (vi) harassed,
 - (vii) intimidated,
 - (viii) threatened with any of the matters set out in sub-paragraph (i) - (vii), or
 - (b) not being an employee, he is subjected to discrimination, intimidation or harassment by any other person or an institution.

Disclosure of Impropriety
Protection of Whistle
blowers

(3) A whistleblower shall not be considered as having been subjected to victimization if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.

16. (1) A whistleblower who honestly and reasonably believes that he or she has been subjected to victimization or is likely to be subjected to victimization because of his disclosure, may in the first instance make a complaint to the Attorney-General.

Complaint of
victimization to the
Attorney-General

(2) A complaint made under subsection (1) of this section shall contain the following particulars:

(a) the name, description and address of the whistleblower's Employer or of any other person who the whistleblower claims has subjected or might subject him to victimization, and

(a) the specific acts complained of as constituting victimization.

17. A whistleblower who has been subjected to victimization may bring an action in Court to claim damages or for any other relief or remedy to which he may be entitled, except that an action shall not be commenced in court unless the complaint has first been submitted to the Attorney-General under section 16 of this Law.

Right of Action

18. (1) A whistleblower who makes a disclosure and who has reasonable cause to believe that:

Police Protection

(a) his life or property, or

(b) the life or property of a member of his family is endangered or likely to be endangered as a result of the disclosure, may request police protection and the police shall provide the protection considered adequate.

(2) Notwithstanding subsection (1) of this section, the Attorney-General may direct that the person who has

made or is about to make the disclosure and the person's family be given police protection.

19. A whistleblower shall not be liable to any civil or criminal proceedings in respect of a disclosure except if the information contained in the disclosure is false. Protection Against Civil and Criminal Action
20. (1) A provision in a contract of employment or other agreement between an employer and an employee is void if it: Void employment control
- (a) seeks to prevent the employee from making a disclosure;
 - (b) has the effect of discouraging an employee from making a disclosure;
 - (c) precludes the employee from making a complaint in respect of victimization; or
 - (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimization.
- (2) Subsection (1) of this section also applies to a contract of employment or agreement in existence on the commencement of this Law.

PART VI

COMPENSATION OF WHISTLE BLOWER

21. Where an investigation has been concluded and the disclosure found to be true, the Attorney-General shall authorize the payment of: Amount of Compensation
- (a) compensation to the whistleblower as may appear appropriate or proper in the circumstance;
 - (b) a percentage of the money recovered, in the case of a money disclosure, to the whistleblower as may be

prescribed by Regulations made by the Attorney-General under this Law.

22. The Attorney-General may make regulations for or with respect to any matter required or permitted by this law to be prescribed to give effect to this Law.

Regulation

DATED AT KADUNA this 10th day of December 2018



Nasir Ahmad el-Rufa'i, OFR
Governor of Kaduna State

EXPLANATORY NOTE

(This note does not form part of this Law and has no legal effect)

The purpose of this Law is to protect persons who expose information or activity that is illegal either in the public or private sector.

This printed impression has been carefully compared with the Bill which has passed the Kaduna State House of Assembly and found to be true and correctly printed copy of the said Bill.



HON. AMINU ABDULLAHI SHAGALI
(Speaker)



BELLO ZUBAIRU IDRIS Esq.
(Clerk to the Legislature)