



Ohio Administrative Code Rule 4167-9-01 Discrimination.

Effective: [March 1, 2024](#)

(A) No public employer shall discharge or in any manner discriminate against any public employee because the public employee in good faith has:

- (1) Filed any complaint under or related to the act;
- (2) Instituted, or caused to be instituted, any proceeding under or related to the act;
- (3) Testified, or is about to testify, in any proceeding under or related to the act; or
- (4) Exercised on his own behalf, or on the behalf of others, any right afforded by the act.

(B) Any public employee who believes that they have been discharged or otherwise discriminated against by any public employer in violation of paragraph (A) of this rule, and who wishes to file a complaint, must elect any one of the remedies provided for in division (B) of section 4167.13 of the Revised Code.

(C) Nothing in this rule limits a public employer's right to take any actions provided in rule 4167-2-01 of the Administrative Code.

(D) Actions taken by the public employer which adversely affect a public employee shall be predicated upon nondiscrimination grounds. The proscriptions of paragraph (A) of this rule apply when the adverse action occurs because the public employee has engaged in protected activities. A public employee's engagement in activities protected by the act does not automatically render the public employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(E) To establish a violation of paragraph (A) of this rule, the public employee's activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a



substantial reason for the action, paragraph (A) of this rule has been violated.

(F) Discharge of, or discrimination against, a public employee because the public employee has filed any complaint under or related to this act is prohibited by this rule. An example of a complaint made under the act would be a public employee request pursuant to section 4167.11 of the Revised Code. The range of complaints related to the act is commensurate with the broad remedial purposes of the act and the sweeping scope of its application.

(G) Complaints made to other state, local, and federal agencies regarding occupational safety and health may be related to the act. Such complaints, for protection under this rule, must be related to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

(H) Discharge of, or discrimination against, any public employee because the public employee has instituted, or caused to be instituted, any proceeding under or related to the act is also prohibited by paragraph (A) of this rule. Examples of proceedings which could arise specifically under the act would be inspections as a result of public employee requests, public employee participation in employer variance requests, public employee contests of abatement dates, and public employee challenges to an order, rule, Ohio employment risk reduction standard proposed, adopted, or issued by the superintendent. In determining whether a proceeding is related to the act, paragraphs (F) and (G) of this rule are considered.

(I) Discriminatory protection is not limited to testimony in proceedings instituted or caused to be instituted by the public employee but applies to any statements or cooperation given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections and investigations.

(J) This rule protects public employees from discrimination as a result of the exercise of any right afforded by the act.

(K) There is no right afforded by the act which would entitle public employees to refuse to work because of potential unsafe conditions at the workplace unless the provisions of rule 4167-2-01 of the Administrative Code are met. A public employee may file a complaint with the superintendent about the existence of a condition alleged to be hazardous that has not been corrected by the public



employer as provided in rule 4167-2-02 of the Administrative Code. When a public employee refuses to perform normal job activities because of alleged safety or health hazards, and the provisions of rule 4167-2-01 of the Administrative Code are not met, the public employer is not in violation of paragraph (A) of this rule by taking action to discipline the public employee.

(L) Public employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the public employer in furtherance of the act are not exercising any rights afforded by the act. Disciplinary measures taken by public employers solely in response to public employee refusal to comply with appropriate safety rules and regulations, will not be regarded as discriminatory activity prohibited by paragraph (A) of this rule.

(M) A complaint of discrimination under this rule must be filed by the public employee or by a public employee representative or attorney authorized to so do on the public employee's behalf.

(N) The complaint must be filed in accordance with the procedures listed in paragraph (B) of this rule.

(O) The sixty-day period outlined in division (B)(1) of section 4167.13 of the Revised Code will be stayed until the public employee knows or should have known of extenuating circumstances, including but not limited to, where the public employer has concealed or misled the public employee regarding the grounds for discharge or other adverse action, or where the discrimination is in the nature of a continuing violation.