What You Need to Know About Whistleblowing
Michigan’s Whistleblowing Statute

- An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

- An “employer” is defined under the WPA as “a person who has 1 or more employees. Employer includes an agent of an employer and the state or a political subdivision of the state.” MCL § 15.361(b).

- An “employee” is defined as “a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied…” MCL § 15.361(a).
“Engaged in Protected Activity”

A “protected activity” under the WPA refers to actions where any employee (1) reports to a public body a violation of the law, a regulation, or rule, (2) is about to report such a violation to a public body, or (3) is being asked by a public body to participate in an investigation.
"About to Report"

- Employee must be “on the verge of” reporting an alleged violation.
- A threat to report is generally not enough; there must be actual actions taken in furtherance of the threat.
“Violation of Law, Regulation, or Rule”

- Internal company policy not enough.
- New for 2016: Employee motivations not relevant – no longer must “advance the public interest” by blowing the whistle.
“Public Body”

The Act defines “public body” as employees and officers of any local or state governmental unit, agency, board, commission, legislative body, judicial body, law enforcement agency, etc.
Causation

The employee must show that he “suffered an adverse employment action as a result of [his] engaging in the protected activity, i.e., that there was some nexus or causal connection between the adverse employment action and the protected activity.”
Statute of Limitations

Employees must file suit within 90 days of the alleged violation.
Remedies

The Act allows recovery of back wages, full reinstatement of fringe benefits and seniority rights, and actual damages, as well as civil fines of up to $500. The court in its discretion, may include reasonable attorney fees in any award.
Top Tips – Before the Whistle Blows

1. Have a whistleblowing policy.
2. Set an appropriate corporate culture of openness.
3. Train employees appropriately – especially those who will respond to claims.
4. Make sure your records are complete and detailed!
Top Tips – After the Whistle Blows

1. Respond swiftly and appropriately.
2. Continue to document the file and involve whistleblower as necessary in the investigation.
3. Make sure HR is always involved – to reduce possibility of retaliatory motive.
4. Don’t terminate someone who reported something!
5. Involve counsel.