

61.103 Definitions of "disclosure" and "contributing factor" -- Civil action by employee authorized -- Evidence.

As used in this section, unless the context otherwise requires:

- (1) (a) "Disclosure" means a person acting on his own behalf, or on behalf of another, who reported or is about to report, either verbally or in writing, any matter set forth in KRS 61.102.
(b) "Contributing factor" means any factor which, alone or in connection with other factors, tends to affect in any way the outcome of a decision. It shall be presumed there existed a "contributing factor" if the official taking the action knew or had constructive knowledge of the disclosure and acted within a limited period of time so that a reasonable person would conclude the disclosure was a factor in the personnel action.
- (2) Notwithstanding the administrative remedies granted by KRS Chapters 16, 18A, 78, 90, 95, 156, and other chapters of the Kentucky Revised Statutes, employees alleging a violation of KRS 61.102(1) or (2) may bring a civil action for appropriate injunctive relief or punitive damages, or both, within ninety (90) days after the occurrence of the alleged violation. The action may be filed in the Circuit Court for the county where the alleged violation occurred, the county where the complainant resides, or the county where the person against whom the civil complaint is filed resides or has his principal place of business.
- (3) Employees filing court actions under the provisions of subsection (2) of this section shall show by a preponderance of evidence that the disclosure was a contributing factor in the personnel action. Once a prima facie case of reprisal has been established and disclosure determined to be a contributing factor to the personnel action, the burden of proof shall be on the agency to prove by clear and convincing evidence that the disclosure was not a material fact in the personnel action.
- (4) Any employee who testifies in an official proceeding shall be afforded the same protections and rights as the employee who makes a disclosure as set forth in KRS 61.102.

Effective: September 16, 1993

History: Amended 1993 (1st Extra. Sess.) Ky. Acts ch. 4, sec. 65, effective September 16, 1993. -- Created 1986 Ky. Acts ch. 301, sec. 3, effective July 15, 1986.