

**CHAPTER 319. PROTECTION OF EMPLOYES**

Sec.	
319.1.	Purpose and scope.
319.2.	Prohibition of discharge or discipline.
319.3.	Burden of proof.
319.4.	Waiver of rights prohibition.

**Source**

The provisions of this Chapter 319 adopted August 1, 1986, effective December 1, 1986, 16 Pa.B. 2909, unless otherwise noted.

**§ 319.1. Purpose and scope.**

This chapter implements the protection of employee requirements under section 13 of the act (35 P. S. § 7313) and governs the authority of employees to exercise their rights under the act.

**§ 319.2. Prohibition of discharge or discipline.**

(a) No nonmanufacturing employer may discharge or cause to be discharged, or otherwise discipline or discriminate against an employee because the employee has done one of the following:

- (1) Filed a complaint.
- (2) Assisted the Department with respect to an inspection under section 14 of the act (35 P. S. § 7314) and Chapter 321 (relating to enforcement procedures and penalties).
- (3) Instituted or caused to be instituted a proceeding under or related to the act and this part.
- (4) Testified or is about to testify in a proceeding under or related to the act and this part.
- (5) Requested information or properly refused to work with the specific hazardous substance under section 5 of the act (35 P. S. § 7305) and Chapter 307 (relating to Material Safety Data Sheet (MSDS)).
- (6) Exercised a right afforded under the act and this part.

(b) The protections against discharge or discrimination contained in subsection (a) do not apply to a nonmanufacturing employee who, in taking any of the activities outlined in this subsection, has been found to have violated any of the following statutes:

- (1) 42 Pa.C.S. § 8351 (relating to wrongful use of civil proceedings).
- (2) 18 Pa.C.S. § 4902 (relating to perjury).
- (3) 18 Pa.C.S. § 4903 (relating to false swearing).
- (4) 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).
- (5) 18 Pa.C.S. § 4906 (relating to false reports to law enforcement authorities).
- (6) 18 Pa.C.S. § 4909 (relating to witness or informant taking bribe).

(7) 18 Pa.C.S. § 4910 (relating to tampering with or fabricating physical evidence).

(8) 18 Pa.C.S. § 4911 (relating to tampering with public records or information).

(9) 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or victims).

(10) 18 Pa.C.S. § 4953 (relating to retaliation against witnesses or victims).

(c) Where appropriate, the Department will postpone taking action under this section if enforcement actions under other statutes designed to prevent similar discrimination have been commenced and would remedy alleged violations of this chapter.

### **§ 319.3. Burden of proof.**

If the Department or the employee establishes that within the 6 months prior to the alleged violation, the employee exercised a right provided in the act, the non-manufacturing employer shall have the burden to show just cause for the employer's action by clear and convincing evidence in a proceeding brought under Chapter 321 (relating to enforcement procedures and penalties). For purposes of this section, just cause is substantial evidence that the employer's action would have been taken regardless of whether the employee exercised rights under the act.

### **§ 319.4. Waiver of rights prohibition.**

(a) A waiver by an employee or applicant for employment of the benefits or requirements of the act and this part shall be against public policy and shall be void.

(b) A nonmanufacturing employer's request or requirement that an employee waive rights under the act as a condition of employment shall constitute a violation of section 13 of the act (35 P. S. § 7313) and this chapter.

[Next page is 321-1.]