

**13-2325. Whistleblower Protection Act; affirmative defense.**

To establish a defense to a claim under the Whistleblower Protection Act, \_\_\_\_\_ (*name of defendant*) has the burden of proving that the action taken against \_\_\_\_\_ (*name of plaintiff*) was due to:

[ \_\_\_\_\_'s (*name of plaintiff*) misconduct]

[or]

[ \_\_\_\_\_'s (*name of plaintiff*) poor job performance]

[or]

[a reduction in work force]

[or]

[ \_\_\_\_\_ (*insert another legitimate business purpose claimed by the employer unrelated to the conduct prohibited by the Whistleblower Protection Act*)],

AND that

\_\_\_\_\_ 's (*name of plaintiff*) engagement in the protected activity was not a motivating factor for \_\_\_\_\_ 's (*name of defendant*) action against \_\_\_\_\_ (*name of plaintiff*).

**USE NOTES**

This instruction applies in every case alleging violation of the Whistleblower Protection Act, NMSA 1978, §§ 10-16C-1 to -6 (2010), in which the employer asserts an affirmative defense under NMSA 1978, Section 10-16C-4.

[Adopted by Supreme Court Order No. 22-8300-030, effective for all cases pending or filed on or after December 31, 2022.]