

WHISTLEBLOWER LAW

Subtitle 3. Maryland Whistleblower Law in the Executive Branch of State Government.

§ 5-301. Applicability.

- (a) This subtitle applies to
 - (1) all employees and State employees who are applicants for positions in the Executive Branch of State government, including a unit with an independent personnel system; and
 - (2) if both the Commonwealth of Virginia and the District of Columbia enact similar whistleblower protections or waive their sovereign immunity as applied to the Washington Metropolitan Area Transit Authority for the purpose of providing whistleblower protections, all employees of the Washington Metropolitan Transit Authority.
- (b) For the purpose of subsection (a)(2) of this section, the General Assembly considers the following whistleblower protection laws to be similar to whistleblower protection laws established under Title 5, Subtitle 3 of the State Personnel and Pensions Article:
 - (1) the District of Columbia's Employees of District Contractors and Instrumentality Whistleblower Protection Act, Title 2, Chapter 2, Subchapter XII of the Code of District of Columbia; and
 - (2) the Commonwealth of Virginia's Fraud and Abuse Whistleblower Protection Act, Title 2.2, Chapter 30.1 of the Code of Virginia. (1996, ch. 347, § 1; 2020, ch. 193, § 1.)

§ 5-302. Effect of subtitle.

- (a) *Effect on legal actions.* – This subtitle does not preclude action for defamation or invasion of privacy.
- (b) *Effect on personnel actions.* – This subtitle does not prohibit a personnel action that would have been taken regardless of a disclosure of information.

§ 5-303. Regulations.

The Secretary shall adopt regulations for processing and resolving complaints brought under this subtitle.

§ 5-304. Notice of subtitle.

- (a) The head of each principal unit shall provide the employees of the unit with written notice of the protections and remedies provided by this subtitle.
- (b) In addition to the requirement specified in subsection (a) of this section, the Secretary of Juvenile Services shall:
 - (1) Provide all employees of the Department of Juvenile Services with written notice of the protections and remedies provided by § 5-305(2) and (3) of this subtitle; and

(2) Include information on the protections and remedies provided by § 5-305(2) and (3) of this subtitle in the Department's employee handbook and in any new employee orientation or training. (1996, ch. 347, § 1; 2020, ch. 483, § 1.)

§ 5-305. Disclosure of information – Reprisal prohibited.

Subject to the limitations of § 5-306 of this subtitle, a supervisor, appointing authority, or head of a principal unit may not take or refuse to take any personnel action as a reprisal against an employee who:

(1) discloses information that the employee reasonably believes evidences:

- (i) an abuse of authority, gross mismanagement, or gross waste of money;
- (ii) a substantial and specific danger to public health or safety; or
- (iii) a violation of law; or

(2) following a disclosure under item (1) of this section seeks a remedy provided under this subtitle or any other law or policy governing the employee's unit.

§ 5-306. Disclosure of information – Protected disclosures.

Section 5-305 of this subtitle applies to a disclosure that is specifically prohibited by law only if that disclosure is made exclusively to the Attorney General in the manner allowed in § 5-313 of this subtitle.

§ 5-307. Election of procedures.

(a) *State Personnel Management System* - An employee in the State Personnel Management System who seeks relief for a violation of § 5-305 of this subtitle may elect to file:

- (1) a complaint under § 5-309 of this subtitle; or
- (2) a grievance under Title 12 of this article.

(b) *University System of Maryland* - An employee of the University System of Maryland who is eligible to file a grievance under Title 13 of the Education Article and seeks relief for a violation of § 5-305 of this subtitle may elect to file:

- (1) a complaint under § 5-309 of this subtitle; or
- (2) a grievance under Title 13 of the Education article.

(c) *Morgan State University* - An employee of Morgan State University who is eligible to file a grievance under Title 14 of the Education Article and seeks relief for a violation of § 5-305 of this subtitle may elect to file:

- (1) a complaint under § 5-309 of this subtitle; or
- (2) a grievance under Title 14 of the Education article

§ 5-308. Representation; finality of decision; resolution of complaint.

(a) *Representation.* – (1) a complainant may be represented during the complaint process by any person the complainant chooses.

(2) Either party may be represented at a hearing by counsel.

(b) *Finality of decision.* – (1) if a complainant fails to appeal a decision in accordance with this subtitle, the complainant is considered to have accepted the decision.

(2) A failure to decide a complaint in accordance with this subtitle is considered a denial from which an appeal may be made.

(c) *Resolution of complaint.* – Each party shall make every effort to resolve a complaint at the lowest level possible.

§ 5-309. Filing of complaints; actions on complaint.

(a) *Who may file; time requirements.* – (1) an employee subject to this subtitle may file with the Secretary a complaint that alleges a violation of § 5-305 of this subtitle.

(2) A complaint under this subtitle must be filed within 6 months after the complainant first knew of or reasonably should have known of the violation.

(b) *Notice of complaint; response.* – When a complaint is received, the Secretary or designee promptly shall:

(1) send a copy of the complaint to the head of the principal unit named in the complaint; and

(2) advise the head of the principal unit to respond in writing to the complaint within 20 days after receiving the copy.

(c) *Investigation; action upon complaint; written decision.* – Within 60 days after a complaint is received:

(1) the complaint shall be investigated to determine whether a violation of § 5-305 of this subtitle has occurred:

(i) by the Secretary or designee of the Secretary; or

(ii) if the Department is charged in the complaint, by a designee of the Governor; and

(2) the Secretary or designee or the Governor's designee shall:

(i) take the action described in subsection (d)(1) or (2) of this section; and

(ii) issue to the complainant and head of the principal unit a written decision that includes any remedial action taken.

(d) *Disposition by Secretary.* – (1) if the Secretary or designee or the Governor's designee determines that a violation has not occurred, the Secretary or Governor's designee shall dismiss the complaint.

(2) If the Secretary or designee or the Governor's designee determines that a violation has occurred, the Secretary or designee shall take appropriate remedial action.

(e) *Permissible remedial actions.* – As a remedial action for a violation of § 5-305 of this subtitle, the Secretary or designee may:

(1) order the removal of any related detrimental information from the complainant's State personnel records;

(2) require the head of the principal unit to:

(i) hire, promote, or reinstate the complainant or end the complainant's suspension from employment;

(ii) award the complainant back pay to the day of the violation;

(iii) grant the complainant leave or seniority;

(iv) take appropriate disciplinary action against any individual who caused the violation;

and

(v) take any other remedial action consistent with the purposes of this subtitle.

§ 5-310. Appeals.

(a) *When permitted.* – A complainant may appeal to the Office of Administrative Hearings:

- (1) within 10 days after receiving a decision under § 5-309 of this subtitle; or
- (2) when a decision is not issued within 60 days after the complaint is filed and the complainant requests a hearing.

(b) *Hearings.* – (1) The Office of Administrative Hearings shall conduct a hearing on each appeal in accordance with Title 10, Subtitle 2 of the State Government Article. The Office is bound by any regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the Department is or would have been bound if it were hearing the case.

(2) A record that is protected from disclosure under Title 4 of the General Provisions Article may be used as evidence in a hearing only if:

- (i) the material is essential to the conduct of the hearing; and
- (ii) names and other identifying information are deleted to the extent necessary to maintain confidentiality.

(3) The confidentiality of records and information protected from disclosure under Title 4 of the General Provisions Article shall be maintained in each hearing.

(c) *Decision; finality.* – (1) Within 45 days after the close of the hearing record, the Office of Administrative Hearings shall issue to the parties a written decision and may grant any appropriate relief under subsection (d) of this section.

(2) The decision of the Office of Administrative Hearings is final.

(d) *Relief available.* – A complainant who prevails at a hearing may be awarded any appropriate relief, including:

- (1) any remedial action allowed under § 5-309(e) of this subtitle; and
- (2) costs of litigation and reasonable attorney's fees.

(e) *Judicial review.* – A complainant or appointing authority may appeal the decision issued under subsection (c) of this section in accordance with § 10-222 of the State Government Article.

§ 5-311. Costs and attorney's fees.

After reviewing a final decision under this subtitle, the court may award costs of litigation and reasonable attorney's fees to a prevailing complainant and any other appropriate relief.

§ 5-312. Referral of suspected criminal conduct.

If, during an investigation under § 5-309(c) of this subtitle, the Secretary or Governor's designee finds that reasonable grounds exist to believe that a crime has been committed, the Secretary or Governor's designee shall:

- (1) promptly refer the matter to an appropriate prosecutor;
- (2) make all pertinent evidence available to the prosecutor; and
- (3) send to the individual believed to have committed the crime a notice that:
 - (i) contains a statement of the allegation;
 - (ii) notifies the individual that the matter has been referred to a prosecutor;
 - (iii) advises the individual of the individual's right to obtain counsel; and

(iv) advises the individual of the individual's right to refuse to respond to the allegation if a response might be incriminating.

§ 5-313. Disclosure of protected information to Attorney General.

For purposes of this subtitle, the Attorney General shall:

(1) designate an assistant Attorney General to receive from applicants and employees any information the disclosure of which is otherwise protected by law;

(2) investigate each allegation of illegality or impropriety;

(3) take appropriate legal action; and

(4) if the investigation concerns an allegation of illegality or impropriety in the Executive Branch, submit a confidential report to the Governor that describes the content of the disclosure.

§ 5-314. Confidentiality.

Information obtained as part of an investigation conducted under this subtitle is confidential within the meaning of Title 4 of the General Provisions Article.