

USM Bylaws, Policies and Procedures of the Board of Regents

USM HR Policy Review Sheet

Policy Number: VII – 2.30

New Policy Title: Policy on Employee and Applicant Disclosure of Misconduct for Nonexempt and Exempt Staff Employees and Applicants for USM Staff Positions

Old Policy Title: USM Policy on Employee and Applicant Disclosure of Misconduct for Exempt and Nonexempt Staff Employees and Applicants for USM Staff Jobs

1. Policy Application: Nonexempt Staff Exempt Staff Faculty Contingent Staff
 All Other: Applicants for Nonexempt and Exempt Positions

2. Proposed Revisions

Terminology outdated

Re-Formatting

Title Change

Obsolete provisions deleted

Merge with other policy: _____

Clarifications: Clarification of avenues for complaint of retaliation

Transfer to another policy or chapter: _____

Updates to reflect changes in law

Incorporate USM-wide existing practice into policy

Incorporated Pre-USM Policy:

Fills gap in policy:

Added definitions

Other revisions: _____

VII – 2.30 – ~~USM~~ POLICY ON EMPLOYEE AND APPLICANT DISCLOSURE OF MISCONDUCT FOR ~~NON~~EXEMPT AND ~~NON~~EXEMPT STAFF EMPLOYEES AND APPLICANTS FOR USM STAFF ~~JOBS~~POSITIONS

(Approved by the Board of Regents, December 13, 1996; Amended February 21, 2003; Amended , 2015)

I. PURPOSE AND APPLICABILITY

The purpose of this policy is to set forth the University System of Maryland (USM) policy on employee and applicant disclosure of misconduct, and to protect employees and applicants from retaliation in the form of an adverse personnel action for disclosing what the employee or applicant believes evidences certain unlawful, wasteful or hazardous practices. This policy is applicable to all ~~None~~Exempt; and ~~None~~Exempt Staff employees of the USM and to applicants for USM jobs in these categories

II. DEFINITIONS

The following terms and definitions shall apply for purposes of this policy:

“**Applicant**” - Means any USM or other state of Maryland employee or any external individual who is an applicant for a USM job.

“**Adverse Personnel Action**” - means any such actions as: a disciplinary suspension; a decision not to promote; a decision not to grant a salary increase; a decision not to hire; a termination; an involuntary demotion; rejection during probation; a performance evaluation in which the employee's performance is generally evaluated as unsatisfactory; an involuntary resignation; an involuntary retirement; an involuntary reassignment to a position with demonstrably less responsibility or status as the one held prior to the reassignment; or an unfavorable change in the general terms and conditions of employment.

III. STATEMENT OF POLICY

A. It is the policy of the University System of Maryland that any ~~None~~Exempt or ~~None~~Exempt Staff employee or applicant may, without fear of retaliation, make known allegations of alleged misconduct existing within the USM that he/she reasonably believes evidences:

- 1. An abuse of authority, gross misconduct, or gross waste of money; ~~or~~
- 2. A substantial and specific danger to public health or safety; ~~or~~
- 3. A violation of law.

USM Bylaws, Policies and Procedures of the Board of Regents

- B.** A representative of the USM shall not take any adverse personnel action as retaliation against an employee or applicant who discloses information regarding misconduct under this policy or who, following such disclosure, seeks a remedy provided under this policy or any law or other USM policy.
- C.** This policy does not apply to a disclosure that is specifically prohibited by law unless such disclosure is made in accordance with Section IV.E. of this policy.
- D.** This policy does not prohibit a personnel action that would have been taken regardless of a disclosure of information.

IV. PROCESS FOR DISCLOSURE

- A. An employee or applicant who chooses to disclose information regarding misconduct, shall disclose all relevant information regarding misconduct, as described in Section III, to the ~~Chief Executive Officer (CEO)~~ **President** or designee of the applicable USM institution in a signed written document within one-year of the day on which he/she knew or reasonably should have known of the misconduct.
- B. In consultation with the Maryland Attorney General's Office, the ~~President~~ **CEO** or designee shall consider the disclosure and take whatever action he/she determines to be appropriate under the law and circumstances of the disclosure.
- C. In the case of disclosure of misconduct involving the ~~President~~ **CEO** of an USM institution, the disclosure shall be directed to the ~~CEO~~ **Chancellor** of the University System of Maryland (~~Chancellor~~) or designee. In consultation with the Maryland Attorney General's Office and the Board of Regents, the Chancellor or designee shall consider the disclosure and take whatever action he/she determines to be appropriate under the law and circumstances of the disclosure.
- D. In the case of disclosure of misconduct involving the ~~CEO of the USM~~ (~~Chancellor~~), the disclosure shall be directed to the Chair of the USM Board of Regents. In consultation with the Maryland Attorney General's Office, the Chair shall consider the disclosure and take whatever action he/she determines to be appropriate under the law and the circumstances of the disclosure.
- E. The disclosure of information, which is otherwise prohibited by law, shall be disclosed to the Assistant Attorney General designated by the Maryland Attorney General to receive such information.

V. COMPLAINTS OF RETALIATION AS A RESULT OF DISCLOSURE

- A.** If an employee or applicant believes that he or she has been retaliated against in the form of an adverse personnel action for disclosing information regarding misconduct under this policy he/she may file a written complaint requesting an appropriate remedy.

USM Bylaws, Policies and Procedures of the Board of Regents

B. The employee may choose to file the complaint either:

1. As a grievance filed with the institution and subject to the requirements and procedures of Title 13 of the Annotated Code of Maryland and USM Policy VII – 8.00 Policy on Grievances and Appeals for Nonexempt and Exempt Staff Employees, or
2. A complaint under the Maryland Whistleblower law, filed with the Secretary of the Department of Budget and Management and subject to the requirements and procedures of the State Personnel and Pensions Article, Title 5, Subtitle 3.

~~VI. PROCESS FOR ADJUDICATION OF COMPLAINTS STEMMING FROM DISCLOSURE~~

~~A. An employee may file a complaint with the appropriate CEO or designee within thirty (30) calendar days from the effective date of the adverse personnel action or from the date on which the employee or applicant should reasonably have had knowledge of the adverse personnel action.~~

~~B. Complaints shall be filed in writing and shall include:~~

- ~~1. name and work address of the complainant;~~
- ~~2. name and title of USM official(s) against whom the complaint is made;~~
- ~~3. the specific type(s) of adverse personnel action(s) taken;~~
- ~~4. the specific date(s) on which the adverse personnel action(s) was (Were) taken;~~
- ~~5. a clear and concise statement of the facts that form the basis of the complaint;~~
- ~~6. a clear and concise statement of the complainant's explanation of how his/her previous disclosure of misconduct is related to the adverse personnel action; and~~
- ~~7. a clear and concise statement of the remedy sought by the complainant.~~

~~C. A complaint shall not be accepted, or continue to be resolved under this Section VI., which is substantially the same as a complaint that is currently being considered or has previously been determined under this policy, under another USM policy, or by an external agency.~~

~~D. Within sixty (60) calendar days of receipt of the complaint, the CEO or designee shall consider the written complaint, shall conduct an investigation which, in his/her judgment, is consistent with the circumstances of the complaint and disclosure, and shall provide the complainant with a determination regarding the complaint.~~

~~The determination shall be in writing and shall include the findings of fact, the conclusions of the investigation and, if applicable, a specific and timely remedy consistent with the findings.~~

~~For purposes of this policy a remedy may include back pay, promotion, reinstatement, reassignment, removal of detrimental material from institutional files, a written correction of institutional records, appointment, a change in the terms and conditions of employment, or any other action considered by the CEO or designee to be consistent with the findings.~~

USM Bylaws, Policies and Procedures of the Board of Regents

~~Irrespective of a complainant's appeal of the determination, if it is determined that an employee or applicant has been retaliated against for his/her prior disclosure of misconduct, in consultation with the Maryland Attorney General's Office, the CEO shall initiate appropriate and immediate disciplinary and/or legal action consistent with the circumstances of the complaint and the disclosure against the perpetrator(s) of the retaliation.~~

~~E. In the event the complainant takes exception to the determination issued by the CEO or designee, or if the determination is not issued within sixty (60) days, then the complainant, if eligible, may file a grievance.~~

~~VII. FILING OF A COMPLAINT WITH DBM~~

~~An employee may file a complaint with the Secretary of the Department of Budget and Management (DBM) in accordance with DBM regulations, provided that a complaint may not be filed with DBM as to any matter which is the subject of a grievance filed by the employee under USM Policy VII-8.00.~~

~~VIII.VI. DISCIPLINARY ACTION AGAINST THOSE RESPONSIBLE FOR THE RETALIATION~~

If it is determined that an employee or applicant has been retaliated against for his/her prior disclosure of misconduct, appropriate disciplinary action shall be initiated against those responsible for the retaliation.

IMPLEMENTATION PROCEDURE:

~~Each President shall identify his/her designee(s) as appropriate for this policy, develop procedures as necessary to implement this policy, communicate this policy and applicable procedures to his/her institutional community, and post it on its Institutional website.~~

~~Each Chief Executive Officer shall identify his/her designee(s), if appropriate, for this policy; shall develop procedures as necessary to implement this policy; and shall forward a copy of such procedures to the Chancellor.~~

REFERENCES:

State Personnel and Pensions Article, Section 5-302 and 5-307, October 1, 2002.

REPLACEMENT FOR:

~~UM BOR III-20.00, June 25, 1985, Policy on Protection of Certain Classified Employee Disclosures.~~

~~UM Personnel Policies and Rules for Classified Employees, Section VIII, Conduct and Discipline, Page VIII-4.~~

USM Bylaws, Policies and Procedures of the Board of Regents

~~Additionally, this policy supersedes, in whole, or in part, any policy(ies) and/or procedures(s) established by the Regents, Trustees, Presidents, or their designees, of the former institutions of the University of Maryland, and of the former State Universities and Colleges, and of the Regents of the University of Maryland System that are in conflict with this policy's purpose, applicability, or intent, that may have been overlooked and not included as a specific citation under "Replacement for."~~