



HOUSE APPROPRIATIONS COMMITTEE
House Bill 112
State Personnel - Whistleblower Law - Procedures and Remedies
January 31, 2023
Information

Chair Barnes, Vice Chair Chang and members of the committee, thank you for the opportunity to share our thoughts regarding House Bill 112. The bill alters the prohibition on reprisal against certain employees for disclosures and actions under the Maryland Whistleblower Law.

The University System of Maryland (USM) protects an individual who discloses information reasonably believed to be evidence of an abuse of authority, gross mismanagement, a gross waste of money, or a substantial and specific danger to public health and safety. The USM has established a Fraud Hotline, administered by the USM Office of Internal Audit, as a non-retaliatory mechanism for employees, students, and others in the community to report such matters confidentially. The USM Board of Regents have promulgated at least seven policies that provide protections to individuals sometimes referred to as whistleblowers under various federal and State laws, including the State's Whistleblower Act, Title IX, Title VII, the Americans with Disabilities Act, and others.

The USM is concerned that House Bill 112 expands the concept of retaliation to include threatened actions, even those that never came to be and were not of a nature that would deter a reasonable employee from engaging in protected activity, which is the regular definition of retaliation.

House Bill 112 expands protected activity far beyond fraud, waste, abuse, and major threats to public health and safety to include anything that an employee reasonably believes is in the public interest. That is essentially anything an employee believes it to be, which is a contradiction to longstanding First Amendment case law in the public employment context.

There are many laws that prohibit retaliation when a person engages in protected activity, and those laws provide administrative and court remedies for retaliation, i.e., damages and attorney fees. In duplicating the many anti-retaliation laws, the statute actually imposes greater liability and damages. It cuts out traditional definitions, analyses, and defenses, and appears to disregard all good faith by the employer as it imposes something close to strict liability on employers and damages that exist nowhere else in employment laws.

House Bill 112 expands the concept of what an adverse employment action is to include an employee being given an assignment that another employee finds less favorable. The possibilities here are endless and it is difficult to imagine a change that would be more disruptive to USM's institutions in managing their day-to-day operations.

House Bill 112 enables employers to treat a retaliation complaint like a nuisance lawsuit, dispensing with it by simply paying a whistleblower \$5,000. Employers will be faced with a “business decision” whether to pay out these claims rather than risk legal exposure to incalculable “pain and suffering” and punitive damages.

The fiscal implications associated with House Bill 112 are significant. Institutions will likely experience higher legal costs associated with managing these whole new causes of action. The institutions will likely have to add human resources staff FTEs to intake, process, and investigate a broader type of complaint that will be brought under the amended Whistleblower law; amend the USM’s policies to reflect the changes; and develop effective communications to inform employees.

Thank you for allowing the USM to share our concerns regarding House Bill 112.



About the University System of Maryland

The University System of Maryland (USM)—one system made up of twelve institutions, three regional centers, and a central office—awards eight out of every ten bachelor’s degrees in the State of Maryland. The USM is governed by a Board of Regents, comprised of twenty-one members from diverse professional and personal backgrounds. The chancellor, Dr. Jay Perman, oversees and manages the operations of USM. However, each constituent institution is run by its own president who has authority over that university. Each of USM’s 12 institutions has a distinct and unique approach to the mission of educating students and promoting the economic, intellectual, and cultural growth of its surrounding community. These institutions are located throughout the state, from western Maryland to the Eastern Shore, with the flagship campus in the Washington suburbs. The USM includes Historically Black Colleges and Universities, comprehensive institutions, research universities, and the country’s largest public online institution.

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