

SUBTITLE 2. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT

§ 5-201. Definitions.

- (a) *In general.* – In this subtitle the following words have the meanings indicated.
- (b) *Coordinator.* – “Coordinator” means the Equal Employment Opportunity Coordinator.
- (c) *Program.* – “Program” means the Equal Employment Opportunity Program established under this subtitle.
- (d) *Unit.* – “Unit” means a unit of the Executive Branch of State government. (1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 5-202. Program established; purpose; eligibility.

- (a) *Program established.* – There is an Equal Employment Opportunity Program, which is under the authority of the Secretary.
- (b) *Purpose.* – The purpose of the Program is to ensure a system based on merit that provides equal opportunity in employment on the basis of merit and fitness.
- (c) *Eligibility.* – The following employees and applicants for employment are included in the Program:
 - (1) an employee in any unit of the Executive Branch of State government, including a unit with an independent personnel system; and
 - (2) an applicant for a position in the skilled service, professional service, or management service, of the State Personnel Management System or a comparable position in an independent personnel system in the Executive Branch of State government. (An. Code 1957, art. 64A, § 12A; 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 5-203. Election to pursue allegation under complaint resolution procedures.

Except as provided in § 5-209 of this subtitle, in addition to any right to file an employment discrimination complaint with the Maryland Commission on Human Relations, with the Equal Employment Opportunity Commission, or in court, an employee may elect to pursue an allegation of employment discrimination under the complaint resolution procedures of this subtitle. (1996, ch. 347, § 1.)

§ 5-204. Duties of Secretary.

The Secretary shall:

- (1) administer the Program in compliance with all applicable State and federal laws governing equal employment opportunity;
- (2) adopt regulations, policies, and directives to implement the Program;
- (3) evaluate the equal employment efforts in each unit in the Program;

- (4) take any action necessary and permitted by law to enforce this subtitle; and
- (5) at least annually report on the Program to the Governor. (1996, ch. 347, § 1.)

§ 5-205. Duties of units.

(a) *In general.* – In accordance with the provisions and intent of the Maryland Constitution and other laws of the State, each unit shall:

(1) comply with all applicable regulations, policies, guidelines, and directives of the Secretary to carry out this section;

(2) cooperate fully with the Coordinator in the investigation of complaints of discrimination in violation of § 5-208 of this subtitle;

(3) (i) in accordance with the regulations, policies, guidelines, and directives of the Secretary, annually prepare a plan that includes the development and implementation of policies and programs to ensure that protected group members are appropriately represented and that the personnel practices in the unit are not discriminatory; and

(ii) submit to the Secretary the progress reports about the plan that the Secretary requires;

(4) for each fiscal year, submit to the Coordinator by the following October 15 an annual report about the activities that the unit undertook in that fiscal year to implement the Program, including:

(i) information about personnel practices within the unit;

(ii) a summary of complaints filed, investigated, resolved, and pending; and

(iii) information about relations with other units of State government; and

(5) provide a copy of the annual report to the Maryland Human Relations Commission.

(b) *University System of Maryland.* – Notwithstanding any other provision of this subtitle, the University System of Maryland may satisfy any reporting requirement required by this subtitle or by regulations adopted under this subtitle by submitting to the Secretary an annual report on the System's equal employment opportunity policies and programs in such format as is determined by the System's Board of Regents.

(c) *Notices to employees.* – An appointing authority shall provide each employee subject to this subtitle with a notice of:

(1) the protections and remedies against employment discrimination available to the employee under:

(i) this subtitle;

(ii) the laws governing the Maryland Commission on Human Relations; and

(iii) the laws governing the Equal Employment Opportunity Commission; and

(2) the applicable time limitations for filing complaints under those laws. (1996, ch. 347, § 1; 1997, ch. 114, § 1.)

§ 5-206. Coordinator.

(a) *Appointment.* – The Governor, with the advice of the Joint Committee on Fair Practices, shall appoint an Equal Employment Opportunity Coordinator.

(b) *Duties.* – The Coordinator shall:

- (1) administer and enforce the Program; and
- (2) investigate and, as appropriate, resolve complaints that involve allegations of violations of this subtitle. (An. Code 1957, art. 64A, § 12C; 1993, ch. 10, § 2; ch. 20, § 1; 1996, ch. 347, § 1.)

§ 5-207. Fair practices officers and equal employment opportunity officers.

(a) *Appointment and qualifications.* – (1) The head of each principal unit shall appoint:

(i) a fair practices officer who:

1. reports directly to the head of the unit; and
2. is an assistant secretary or an employee of the unit with stature similar

to that of an assistant secretary; and

(ii) an appropriate number of equal employment opportunity officers for the unit.

(2) If necessary, the fair practices officer of a unit may also be the unit's equal employment opportunity officer.

(3) All appointments under this subsection shall be made in accordance with position descriptions approved by the Secretary.

(b) *Training, assistance and advice.* – The Department shall provide training, assistance, and advice for equal employment opportunity officers and fair practices officers.

(c) *Duties – Fair practices officers.* – Each fair practices officer shall:

- (1) implement the Program within the unit;
- (2) investigate and, as appropriate, resolve complaints filed under § 5-211 of this subtitle; and
- (3) coordinate activities of equal employment opportunity offices in the unit.

(d) *Duties – Equal employment opportunity officers.* – An equal employment opportunity officer shall:

- (1) monitor all personnel actions adopted by the unit;
- (2) attest that procedures consistent with this article, the Governor's Code on Fair Practices, and other State and federal equal employment opportunity laws were followed by the unit in taking a personnel action; and

(3) perform the duties assigned by the fair practices officer and any other duty required by this article.

(e) *Adverse personnel actions.* – An appointing authority shall delay the effective date of any adverse personnel action that directly affects an equal employment opportunity officer for up to 45 days, pending review and resolution by the Coordinator. (1996, ch. 347, § 1.)

§ 5-208. Personnel actions.

(a) *Employees in Executive Branch.* – All personnel actions concerning an employee in the Executive Branch of State government shall be made in accordance with § 2-302 of this article.

(b) *Employees or applicants in skilled or professional service or comparable positions.* – Personnel actions concerning an employee or applicant for employment in the skilled service or professional service of the State Personnel Management System or comparable position in an independent personnel system in the Executive Branch of State government shall also be made without regard to:

- (1) political affiliation, belief, or opinion; or
- (2) any other nonmerit factor.

(c) *Employees or applicants in management service.* – All personnel actions concerning an employee or applicant in the management service shall also be made without regard to the employee's political affiliation, belief, or opinion.

(d) *Special Appointments.* – (1) Except as provided in paragraph (2) of this subsection, personnel actions concerning special appointments or applicants for special appointment in the State Personnel Management System or comparable positions in an independent personnel system in the Executive Branch of State government shall be made without regard to political affiliation, belief, or opinion.

(2) For the positions that are designated by the Secretary under § 4-201(c)(2)(ii) of this article or by the Secretary of Transportation under § 2-103.4(b)(2) of the Transportation Article, personnel actions concerning special appointments or applicants for special appointment in the State Personnel Management System or comparable positions in an independent personnel system in the Executive Branch of State government may be made with regard to political affiliation, belief, or opinion.

(e) *Nature of protections.* – The protections of this section are in addition to whatever legal or constitutional protections an employee or applicant has. (1996, ch. 347, § 1; 1997, ch. 549; 2002, ch. 116; 2007, ch. 592.)

§ 5-209. Election of procedures.

(a) *State Personnel Management System.* – An employee in the skilled service, professional service, or management service of the State Personnel Management System may elect to pursue an allegation of employment discrimination under:

- (1) the complaint procedures in this subtitle; or
- (2) the grievance procedures in 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 may elect to pursue an allegation of employment discrimination under:

- (1) the complaint procedures in 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 may elect to pursue an allegation of employment discrimination under :

- (1) the complaint procedures in this subtitle; or
- (2) a grievance under Title 14 of the Education Article. (1996, ch. 347, § 1; 2002, ch. 116.)

§ 5-210. Representation of complainant; finality of decision; resolution of complaint.

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

(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. (1996, ch. 347, § 1.)

§ 5-211. Filing of complaint.

(a) *Who may file.* – An applicant or employee subject to this subtitle may file with the head of the principal unit a written complaint that alleges a violation of § 5-208 of this subtitle.

(b) *Time requirements.* – A complaint under this subtitle must be filed within 30 days after the complainant first knew of or reasonably should have known of the alleged violation that is the basis for the complaint. (1996, ch. 347, § 1.)

§ 5-212. Actions on complaint.

Within 30 days after a complaint under § 5-211 of this subtitle is received:

(1) an equal employment officer, under the direction of the fair practices officer, shall investigate the complaint and recommend a proposed decision to the head of the principal unit; and

(2) the head of the principal unit shall issue a written decision to the complainant and may grant any appropriate relief. (1996, ch. 347, § 1.)

§ 5-213. Appeals.

(a) *Time of filing.* – Within 10 days after receiving a decision under § 5-212 of this subtitle, a complainant may appeal the decision in writing to the Secretary.

(b) *Duties of Coordinator and Secretary.* – Within 30 days after an appeal is received:

- (1) the Coordinator:

(i) shall review the complaint and the decision being appealed;
(ii) may conduct any necessary investigation; and
(iii) shall recommend to the Secretary or designee a finding of whether a violation of this subtitle has occurred; and

(2) the Secretary or designee shall:

(i) take the action described in subsection (c)(1) or (c)(2) of this section; and
(ii) issue to the parties a written decision that includes notice of any remedial action taken.

(c) *Disposition by Secretary.* – (1) If the Secretary or designee determines that a violation has not occurred, the Secretary or designee shall dismiss the complaint.

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

(d) *Permissible remedial actions.* – As remedial action for a violation of § 5-208 of this subtitle, the Secretary or designee may:

(1) order the removal of 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 up 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; or

(v) take any other remedial action that the Secretary or designee considers appropriate.

(e) *Finality.* – The decision of the Secretary or designee is final. (1996, ch. 347, § 1.)

§ 5-214. Confidentiality.

Information obtained as part of an investigation conducted under this subtitle is confidential within the meaning of Title 10, Subtitle 6 of the State Government Article. (1996, ch. 347, § 1.)

§ 5-215. Violations; disciplinary actions.

An employee who violates or fails to comply with this subtitle is subject to disciplinary action, including termination of employment. (1996, ch. 347, § 1.)

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

§ 5-301. Applicability.

This subtitle applies to 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. (1996, ch. 347, § 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. (An. Code 1957, art. 64A, §§ 12F, 12G, 12K; 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 5-303. Regulations.

The Secretary shall adopt regulations for processing and resolving complaints brought under this subtitle. (An. Code 1957, art. 64A, § 12H; 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 5-304. Notice of subtitle.

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. (1996, ch. 347, § 1.)

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

Subject to the limitation of § 5-306 of this subtitle, a supervisor, appointing authority, or the 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. (An. Code 1957, art. 64A, § 12G; 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 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. (An. Code 1957, art. 64A, § 12G: 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 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. (1996, ch. 347, § 1; 2002, ch. 118.)

§ 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. (1996, ch. 347, § 1.)

§ 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.

(1996, ch. 347, § 1.)

§ 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 10, Subtitle 6 of the State Government 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 10, Subtitle 6 of the State Government Article shall be maintained in each hearing.

(c) *Decisions; 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. (1996, ch. 347, § 1.)

§ 5-311. Costs and attorney's fees.

After reviewing a final decision under this subtitle, the court may award cost of litigation and reasonable attorney's fees to a prevailing complainant and any other appropriate relief. (1996, ch. 347, § 1.)

§ 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. (An. Code 1957, art. 64A, § 12H: 1993, ch. 10, § 2; 1996, ch. 347, § 1.)

§ 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. (An. Code 1957, art. 64A, § 12J: 1993, ch. 10, § 2; 1996, ch. 347, § 1.)