



Legislation Details (With Text)

File #: 19-0377 **Version:** 0 **Name:** Whistleblower Rights and Responsibilities
Type: Ordinance **Status:** Enacted
File created: 4/22/2019 **In control:** City Council
On agenda: **Final action:** 10/23/2019
Enactment date: **Enactment #:** 19-308

Title: Whistleblower Rights and Responsibilities
 For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

Sponsors: Ryan Dorsey, Sharon Green Middleton, Bill Henry, Isaac "Yitzy" Schleifer, Robert Stokes, Sr., Brandon M. Scott, Eric T. Costello, Leon F. Pinkett, III, Zeke Cohen, Kristerfer Burnett, Mary Pat Clarke, Edward Reisinger, John T. Bullock, Shannon Sneed

Indexes: Responsibility, Rights, Whistleblower

Code sections:

Attachments: 1. 19-0377~1st Reader, 2. Law 19-0377, 3. Finance 19-0377, 4. HR 19-0377, 5. 2nd Reader Amendments to Committee Amendments 19-0377, 6. 2nd Reader Committee Amendments 19-0377, 7. 19-0377~3rd Reader, 8. Complete Bill File 19-0377

Date	Ver.	Action By	Action	Result
11/4/2019	0	Mayor	Signed by Mayor	
10/7/2019	0	City Council	Approved and Sent to the Mayor	
9/23/2019	0	City Council	3rd Reader, for final passage	
9/23/2019	0	Judiciary and Legislative Investigations	Recommended Favorably with Amendment	
9/17/2019	0	Judiciary and Legislative Investigations	Recommended Favorably with Amendment	Pass
8/19/2019	0	Judiciary and Legislative Investigations	Scheduled for a Public Hearing	
6/11/2019	0	Judiciary and Legislative Investigations	Scheduled for a Public Hearing	
5/6/2019	0	Judiciary and Legislative Investigations	Scheduled for a Public Hearing	
4/25/2019	0	The City Council	Refer to Office of the Inspector General	
4/25/2019	0	The City Council	Refer to Dept. of Human Resources	
4/25/2019	0	The City Council	Refer to Dept. of Finance	
4/25/2019	0	The City Council	Refer to City Solicitor	
4/22/2019	0	City Council	Assigned	

4/22/2019

0

City Council

Introduced

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Dorsey

A Bill Entitled

An Ordinance concerning

Whistleblower Rights and Responsibilities

For the purpose of prohibiting retaliation against whistleblowers for making covered disclosures; defining certain terms; establishing the Whistleblower Board; providing for the appointment, term, and service of Whistleblower Board members; authorizing the Whistleblower Board to adopt implementing rules, regulations, and procedures; establishing complaint procedures for whistleblowers; authorizing the Office of the Inspector General to investigate whistleblower complaints; detailing remedies and disciplinary action the Whistleblower Board can take when ruling on a whistleblower retaliation case; establishing judicial and appellate review; requiring training for supervisors and employees; and mandating that the Office of the Inspector General creates an administrative manual to further detail procedures relating whistleblower complaints.

By repealing and reordaining, with amendments

Article 1 - Mayor, City Council, and Municipal Agencies
Subtitle 8, to be under the amended subtitle designation,
“Subtitle 8. Whistleblower Rights and Responsibilities”
Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 8. [Employee Disclosure Protection] Whistleblower Rights and Responsibilities.

[§ 8-1. Protected Disclosures.]

[(a) *In general.*]

[Unless a disclosure is specifically prohibited by law, rule, regulation, or written policy, an appointing authority may not take or refuse to take a personnel action with respect to any employee or applicant for employment as a reprisal for any disclosure of information which the employee reasonably believes evidences:]

[(1) a violation of any law, rule, or regulation;]

[(2) gross mismanagement, gross waste of funds, or abuse of authority; or]

[(3) a substantial or specific danger to public health or safety.]

[(b) *Disclosures to be made to Board of Estimates.*]

[An employee shall make his or her disclosure to the Board of Estimates or to its designee.]

[§ 8-2. Personnel Actions.]

[In any personnel action, the affected employee may have the action alleged to be in retaliation for a disclosure investigated by way of a grievance or dismissal appeal.]

[§ 8-3. Prohibited disclosures to be made to Attorney General.]

[Where a disclosure is specifically prohibited by law, rule, regulation, or written policy, an employee may make the disclosure exclusively to the Attorney General of the State of Maryland and shall be entitled to all of the benefits for the state's employee disclosure and confidentiality protection.]

§ 8-1. Definitions.

(a) *In general.*

In this subtitle, the following words have the meanings indicated.

(b) *Agency.*

(1) *In general.*

“Agency” means any department, board, commission, council, authority, committee, office, or other unit of City government.

(2) *Inclusions.*

“Agency” also includes:

(i) Baltimore City Parking Authority;

(ii) Baltimore Development Corporation;

(iii) Baltimore Police Department;

(iv) Enoch Pratt Free Library of Baltimore City;

(v) Housing Authority of Baltimore City;

(vi) Local Development Council, South Baltimore Video Lottery Terminal;

(vii) Pimlico Community Development Authority; and

(viii) South Baltimore Gateway Community Impact District Management Authority.

(c) *Board*.

“Board” means the Whistleblower Board established under this subtitle.

(d) *Covered disclosure*.

(1) *In general*.

“Covered disclosure” means a disclosure made by an employee that the employee reasonably believes provides evidence of:

(i) fraud;

(ii) gross misuse or waste of public resources;

(iii) a violation of law; or

(iv) a substantial and specific threat to health, safety, or security.

(2) *Inclusions*.

“Covered disclosure” includes a disclosure made during participation in an investigation by the Office of the Inspector General.

(3) *Exclusions*.

“Covered disclosure” does not include a disclosure that is prohibited by law.

(e) *Employee*.

“Employee” means:

(1) any current or former employee, whether full-time, part-time, seasonal, contractual, or otherwise, of a City agency;

(2) any applicant for a position with a City agency; and

(3) any member of a City board or commission, regardless of whether the member is compensated.

(f) *Personnel action*.

“Personnel action” means an act or omission by a supervisor that has a significant adverse impact on an employee, including dismissal, demotion, suspension, punitive transfer or assignment, disciplinary action, negative performance evaluation, failure to appoint, failure to promote, failure to transfer, or failure to assign.

(g) *Supervisor*.

“Supervisor” means an individual with direct or indirect supervisory authority over an employee.

(h) *Whistleblower.*

“Whistleblower” means an employee of Baltimore City who makes a covered disclosure.

§§ 8-2 to 8-3. {Reserved}

§ 8-4. Board established.

(a) *In general.*

There is a Whistleblower Board.

(b) *Composition.*

The Board comprises 3 members, or their respective designees:

- (1) the Director of Human Resources;
- (2) the Labor Commissioner; and
- (3) the City Solicitor.

(c) *Alternate.*

In the event a Board member or designee is implicated in a whistleblower complaint, the City Council President or his or her Councilmember designee must replace the Board member or designee implicated in the complaint.

§ 8-5. Purpose.

The Board is responsible for encouraging the elimination of fraud, waste, and illegal activity by protecting whistleblowers.

§ 8-6. {Reserved}

§ 8-7. Staff.

In consultation with the Board, the Inspector General must assign staff from the Office of the Inspector General to assist the Board.

§ 8-8. Powers and duties of Board.

The Board is authorized to:

- (1) adjudicate disputes under this subtitle;
- (2) analyze any findings made by the Office of the Inspector General as a result of whistleblower complaints;
- (3) hold hearings to determine whether a retaliatory personnel action was taken at least in part against a whistleblower because of the whistleblower’s covered disclosure; and
- (4) determine whether remedial action is necessary.

§ 8-9. Agency cooperation.

At the request of the Board, all City officials and agencies must cooperate with the Board and extend the services and facilities that the Board requires.

§§ 8-10 to 8-11. {Reserved}

§ 8-12. Whistleblower protection against retaliatory action.

(a) *In general.*

Unless a disclosure is specifically prohibited by law, a supervisor may not take a retaliatory personnel action against a whistleblower.

(b) *Exceptions.*

This section does not prohibit:

- (1) a supervisor from taking any personnel action against a whistleblower if the supervisor would have taken the personnel action regardless of whether the employee made the covered disclosure; or
- (2) an employee from making a disclosure that is otherwise prohibited by law if the employee exclusively made the disclosure to the Office of the Maryland Attorney General, the State's Attorney, or the Maryland State Prosecutor.

§§ 8-13 to 8-14. {Reserved}

§ 8-15. Complaint process - In general.

(a) *Filing complaint with supervisor.*

- (1) A whistleblower who believes he or she has been retaliated against for making a covered disclosure may file a written complaint with one or another of his or her supervisors.
- (2) The complaint must be filed within 180 days from when the whistleblower knew or reasonably should have known about the violation.

(b) *Supervisor responsibilities.*

- (1) Within 5 business days after receiving a complaint under this section, the supervisor who received the complaint must give the whistleblower written notice of the complaint's receipt.
- (2) Within 60 days after the supervisor received the complaint, the supervisor must conduct an investigation and provide the whistleblower with written findings of that investigation.

(c) *Filing initial complaint with Inspector General.*

- (1) A whistleblower need not file his or her complaint with a supervisor and, instead, may file the complaint directly with the Office of the Inspector General if the whistleblower reasonably believes that:
 - (i) all of the whistleblower's supervisors are implicated by the covered disclosure; or

(ii) all of the whistleblower's supervisors took part in or were otherwise complicit in the retaliatory action taken against the whistleblower.

(2) A complaint filed with the Inspector General under paragraph (1) of this subsection must be filed within 180 days from when the whistleblower knew or should reasonably have known about the retaliatory action.

(d) *Filing with Inspector General as appeal from supervisor.*

(1) If the Whistleblower initially filed a complaint with a supervisor, the whistleblower may appeal to the Inspector General if:

(i) the supervisor who received the complaint failed to provide the whistleblower with written findings of her or his investigation; or

(ii) the whistleblower does not agree with the supervisor's written findings.

(2) A complaint filed with the Inspector General under paragraph (1)(i) of this subsection must be filed within 30 days from the date by which the supervisor had to respond to the whistleblower.

(3) A complaint filed with the Inspector General under paragraph (1)(ii) of this subsection must be filed within 30 days from when the supervisor presented the whistleblower with the written findings of the supervisor's investigation.

(e) *Confidentiality.*

The identity of the whistleblower must be kept confidential to the extent practicable and permitted by law.

§ 8-16. Complaint investigation - Office of the Inspector General.

(a) *Notice of receipt of complaint.*

Within 5 business days after receiving a written complaint under § 8-15(c) or (d) of this subtitle, the Office of the Inspector General must give the whistleblower written notice of the complaint's receipt.

(b) *Completing investigation.*

Within 60 days after the Office received the complaint, the Office of the Inspector General must conduct an investigation and present its findings to the Whistleblower Board.

(c) *Extension for completing investigation.*

On a finding of good cause, the Board may approve an extension for completing the investigation.

§ 8-17. Hearing procedures.

(a) *Whistleblower's case.*

The whistleblower must make a prima facie case by establishing through a preponderance of the evidence that his or her covered disclosure was a contributing factor in the supervisor's taking the

personnel action.

(b) *Showing by supervisor.*

Once the whistleblower has made a prima facie case, the supervisor has the burden of proof to demonstrate by clear and convincing evidence that he or she would have taken the personnel action even if the whistleblower had not made the covered disclosure.

(c) *Representation.*

Both the whistleblower and the supervisor may be represented at a hearing by counsel.

§ 8-18. Rules and regulations.

(a) *In general.*

The Inspector General must adopt rules and regulations to carry out this subtitle.

(b) *Filing with Legislative Reference.*

A copy of all rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(c) *Posted to Inspector General's website.*

A copy of all rules and regulations adopted under this subtitle must be posted on the Inspector General's website.

§ 8-19. Remediation by the Board.

(a) *In general.*

If the Board decides to take remedial action, the Board may:

- (1) discipline the supervisor for the retaliation and provide remedies for the whistleblower;
- (2) discipline the supervisor for the retaliation and decline to provide remedies for the whistleblower; or
- (3) decline to discipline the supervisor for the retaliation and provide remedies for the whistleblower.

(b) *Possible disciplinary action.*

The disciplinary action that the Board may take against a person for retaliation against a whistleblower includes:

- (1) a reprimand;
- (2) demotion; or

(3) termination.

(c) *Possible remedies.*

The remedies that the Board may provide to a whistleblower includes:

- (1) reinstatement to the status that the whistleblower would have had but for the retaliation; or
- (2) any backpay, with interest; or
- (3) both.

§ 8-20. Judicial and appellate review.

(a) *Judicial review.*

Any person aggrieved by an order of the Board may seek judicial review of that order by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

(b) *Appellate review.*

Any party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

§ 8-21. Other remedies not affected.

Nothing in this subtitle affects:

- (1) any action for defamation or invasion of privacy;
- (2) employee protections or employee grievance procedures provided by law or contract; or
- (3) any other remedy provided by law.

§§ 8-22 to 8-23. {Reserved}

§ 8-24. Training.

The Office of the Inspector General, with assistance from the Law Department and the Department of Human Resources, must conduct trainings regarding this subtitle to inform employees and supervisors of their rights and responsibilities.

§ 8-25. Administrative manual.

The Office of the Inspector General must create an administrative manual that outlines procedures and other information relative to the handling of complaints under this subtitle.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the 60th day after the date it is enacted.