

TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY

RETALIATORY ACTION POLICY (WHISTLEBLOWER)

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this retaliatory action (whistleblower) policy (the “Policy”) is to implement Section 2824(1)(e) of Title Two of Article 9 of the Public Authorities Law (the “Act”), which requires that members of the board of directors of the Town of Montgomery Industrial Development Agency (the “Agency”) establish certain written policies and procedures, including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the Agency.

SECTION 2. DEFINITIONS. For purposes of this section, unless the context specifically indicates otherwise:

(A) “Employee” means an individual who performs services for and under the control and direction of the Agency for wages or other remuneration.

(B) “Law, rule or regulation” includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(C) “Public body” includes the following:

(1) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(2) any federal, state, or local judiciary, or any member or employee thereof, or any grand or petit jury;

(3) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or

(4) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(D) “Retaliatory personnel action” means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(E) “Supervisor” means any individual with the Agency who has the authority to direct and control the work performance of the affected employee, or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

SECTION 3. PROHIBITIONS. The Agency shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(A) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the Agency that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(B) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by the Agency; or

(C) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

SECTION 4. APPLICATION. The protection against retaliatory personnel action provided by subsection (A) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the Agency and has afforded the Agency a reasonable opportunity to correct such activity, policy or practice.

SECTION 5. VIOLATION; REMEDY.

(A) An employee who has been the subject of a retaliatory personnel action in violation of this Policy may institute a civil action in a court of competent jurisdiction for relief as set forth in section six of this Policy within one year after the alleged retaliatory personnel action was taken.

(B) Any action authorized by this Policy may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the Agency has its principal place of business.

(C) It shall be a defense to any action brought pursuant to this Policy that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this Policy. It shall also be a defense that the individual was an independent contractor.

SECTION 6. RELIEF. In any action brought pursuant to section five of this Policy, the court may order relief as follows:

(A) an injunction to restrain continued violation of this Policy;

(B) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(C) the reinstatement of full fringe benefits and seniority rights;

(D) the compensation for lost wages, benefits and other remuneration; and

(E) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

SECTION 7. EMPLOYER RELIEF. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to the Agency if the court determines that an action brought by an employee under this Policy was without basis in law or in fact.

SECTION 8. EXISTING RIGHTS. Nothing in this Policy shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this Policy shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.