



## Mississippi Department of Human Services

### Title 18: Human Services

#### Part 4: Division of Human Resources

##### Part 4 Chapter 1: Whistleblower Policy

*Rule 1.1 Definitions:* The following definitions shall apply to this policy:

- A. "Abuse" means acting in an arbitrary and capricious manner that adversely affects the accomplishment of a function of any governmental entity.
- B. "Governmental entity" means a board, commission, department, office or other agency of state or political subdivision of the state.
- C. "Employee" means any individual employed or holding office in any department or agency of state or local government.
- D. "Improper governmental action" means any action by an employee which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment:
  - 1) Which is in violation of any federal or state law or regulation, is an abuse of authority, results in substantial abuse, misuse, destruction, waste, or loss of public funds or public resources; or
  - 2) Which is of substantial and specific danger to the public health or safety; or
  - 3) Which is discrimination based on race or gender.
- E. "Misuse" means an illegal or unauthorized use.
- F. "Personnel action" means an action that affects an employee's promotion, demotion, transfer, work assignment or performance evaluation.
- G. "State investigative body" shall mean the Attorney General of the State of Mississippi, the State Auditor, the Mississippi Ethics Commission, the Joint Legislative Committee on Performance Evaluation and Expenditure Review or any other standing committee of the Legislature, or any district attorney of the State of Mississippi.

- H. "Use of official authority or influence" includes taking, directing others to take, recommending, processing or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation or other disciplinary action.
- I. "Waste" means an unnecessary or unreasonable expenditure or use.
- J. "Whistleblower" means an employee who in good faith reports an alleged improper governmental action to a state investigative body, initiating an investigation. For the purposes of the provisions of Sections 25-9-171 through 25-9-177, the term "whistleblower" also means an employee who in good faith provides information to a state investigative body, or an employee who is believed to have reported an alleged improper governmental action to a state investigative body or to have provided information to a state investigative body but who, in fact, has not reported such action or provided such information.

Source: *Miss. Code Ann. §25-9-171 (2012)*

*Rule 1.2 Prohibitions:* The Mississippi Department of Human Services (MDHS) shall not dismiss or otherwise adversely affect the compensation or employment status of any employee because he/she testified or provided information to a state investigative body whether or not the testimony or information is provided under oath.

Reprisal or retaliatory action means, but is not limited to:

- A. Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- B. Demotion;
- C. Reduction in pay;
- D. Denial of promotion;
- E. Suspension;
- F. Dismissal; and
- G. Denial of employment.

This policy does not, in any way, prohibit MDHS from making any decision exercising its authority to terminate, suspend or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

**MDHS is not precluded from taking any action in accordance with established personnel policies against an employee who knowingly and intentionally provides false information to a state investigative body.**

Source: *Miss. Code Ann. §25-9-173 (2012)*

*Rule 1.3 Liability of Agency for Violating Provisions:* If an employee of MDHS is found to have violated the provisions of this policy MDHS shall be liable to the affected employee for back pay and reinstatement. The affected employee may also bring action against MDHS seeking certain fees and damages. Additionally, the court may find MDHS's executive director individually liable for a civil fine of up to \$10,000.00 for each violation.

Conversely, if the court determines that any action filed under this policy by an employee is frivolous and unwarrantable, the court may award to the employer court costs and reasonable expenses, including attorney's fees, incurred in defense of actions brought by the employee under this policy.

Source: *Miss. Code Ann. §25-9-175 (2012)*

*Rule 1.4 Actions to Recover Civil Fines and Other Penalties:* All actions brought against MDHS under the provisions of this policy may be instituted in the Circuit Court. In such action, the employee shall prove by a preponderance of the evidence that, but for his providing information or testimony to a state investigative body prior to occurrence of the dismissal or any adverse action, his dismissal or any adverse action taken against him would not have occurred.

**Employees of Mississippi state agencies who are eligible to do so are required to utilize the grievance process as provided in the Mississippi State Employee Handbook prior to initiating any action under this policy.**

Source: *Miss. Code Ann. §25-9-177 (2012)*