

COMPLIANCE ADMINISTRATOR'S POLICY ON RETALIATION

The Compliance Administrator has a duty to monitor and investigate unlawful political discrimination occurring within Cook County under the Office of the President and the Health and Hospital Systems (formerly the Bureau of Health). The CA wants to thank those employees who have come forward with information and encourages others to do so.

There are many employment contexts within which retaliation can occur. For example, an employee may feel that he or she has been retaliated against because they invoked their FMLA rights or making a sexual harassment claim. Retaliation of any kind is unlawful. However, the type of retaliation that the CA is empowered to address is only retaliation based on an employee's assertion of his or her rights to be free from unlawful patronage practices. The CA will use best efforts to see that appropriate sanctions are entered against those who engage in retaliation.

Cook County Ordinance 06-0-52, adopted on November 29, 2006, imposes a number of duties on employees under the Office of the President and the Health and Hospital Systems. Two of these duties are (1) to not engage in unlawful political patronage practices, and (2) to report any knowledge of unlawful behavior to the Inspector General (IIG).

Thus, if you feel that you have been retaliated against, the Ordinance directs you to report the matter to the IIG. The IIG will forward your complaint to the Complaint Administrator for processing, investigation and reporting (see p. 4-7 for further information).

COMPLIANCE ADMINISTRATOR RECOMMENDATIONS TO COOK COUNTY

Cook County has recently enacted two key prohibitions of retaliation, a newly signed executive order issued by President Todd Stroger and a recently approved amendment to Ordinance 06-O-52.

On September 2, 2008, President Stroger signed Executive Order 2008-1. This order expressly prohibits retaliation against individuals complaining to or cooperating with the CA in an investigation. It further prohibits retaliation against individuals who have received an award from the CA as a result of her adjudication of claims of unlawful political discrimination.

The order also prohibits retaliation against individuals for complaining to or assisting the IIG in investigating allegations of unlawful political discrimination. It provides that anyone found to have engaged in retaliation shall be subject to disciplinary action up to and including termination of their employment.

On September 3, 2008 the Cook County Board of Commissioners approved an amendment of Cook County Ordinance 06-0-52 which included provisions concerning retaliation. The ordinance now specifically prohibits County employees and officials from retaliating against other County employees or job applicants for making complaints or reports to the IIG for engaging in unlawful political discrimination. It also prohibits retaliation for those individuals cooperating with the IIG in an investigation.

Since the enactment of the Executive Order and the ordinance described above, Mark Vogel was appointed as Post SRO Complaint Administrator (“Complaint Administrator”). These provisions concerning retaliation also prohibit such behavior against individuals who complain to or cooperate with investigations conducted by the Complaint Administrator.

The CA encourages Cook County to incorporate the following recommendations into its retaliation policies:

The *CA recommends that* all investigations of retaliation be conducted in a swift manner and that sanctions be ordered for those who are found to have engaged in retaliatory behavior.

The *CA recommends that* Cook County’s Anti-Retaliation Policy provide confidentiality safeguards to those employees who make reports of retaliation.

WHAT IS UNLAWFUL POLITICAL DISCRIMINATION?

The *Shakman* consent decrees prohibit the County from conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, upon or because of any political reason or factor. The Office of the President and the Health and Hospital Systems are covered by the consent decrees. It protects both current employees and those applying for jobs with the covered departments.

WHAT TYPES OF BEHAVIOR CONSTITUTE UNLAWFUL POLITICAL DISCRIMINATION?

Unlawful political discrimination includes directly or indirectly influencing any aspect of employment, including, but not limited to:

- Hiring
- Promotion
- Discharge
- Award of overtime
- Transfer
- Discipline

This does not prohibit an elected or appointed public official from recommending individuals where they have knowledge as to relevant qualifications for a position.

WHAT IS RETALIATION?

The CA has the authority to address retaliation made in response to disclosures of unlawful political discrimination and not retaliation of a general nature.

No disclosures of employee misconduct, including unlawful political discrimination, shall be used as the basis for making any decision to the employee's detriment, or to subject him or her to harassment or a hostile work environment.

Examples of potential retaliation are:

A Cook County employee submitted a claim to the Office of the Compliance Administrator. Shortly after the investigation of her claim began, the employee was *demoted* without cause.

A Cook County employee made an informal report of unlawful political discrimination occurring within his department. Without explanation, the employee is subsequently *transferred* to another department and assigned tasks outside the scope of his job description.

A Cook County employee was involved in the hiring of a new employee. He knows that this new employee was not qualified and hired merely because of his "political clout." Afraid of the impact that this unqualified individual will have on his department, he complains to Human Resources. Despite his exemplary performance evaluations the employee is *discharged*.

I THINK THAT I HAVE BEEN RETALIATED AGAINST BECAUSE OF MY DISCLOSURE OF UNLAWFUL POLITICAL DISCRIMINATION. WHAT SHOULD I DO?

The SRO provides that employees under the Office of the President and the Health and Hospital Systems *shall* report unlawful political discrimination to the IIG. Cook County Ordinance 06-0-52 *requires* these employees to report all incidents of unlawful political discrimination to the IIG.

The IIG will forward your complaint to the Complaint Administrator for processing, investigation and reporting (see p. 4-7 for further information) or you may also contact the Complaint Administrator directly.

I KNOW OF SOMEONE IN MY DEPARTMENT THAT IS RETALIATING AGAINST OTHERS BECAUSE THEY DISCLOSED UNLAWFUL POLITICAL DISCRIMINATION. WHAT SHOULD I DO?

As stated above, the SRO provides that you *shall* report unlawful political discrimination to the IIG. According to Cook County Ordinance 06-O-52 you have a *duty* to report unlawful political discrimination to the IIG.

We strongly encourage you to also report retaliation to the CA. You may call the office, or mail or email the “Report of Retaliation” form. The CA will follow-up in the manner that is outlined above.

CAN I SEEK MONEY DAMAGES FOR RETALIATION? Yes. The SRO provides a process for individuals seeking damages for unlawful political discrimination that occurred after February 2, 2007 (“Post-SRO Process”). It also allows individuals who believe that they have been retaliated against in relation to complaints of unlawful political discrimination to seek damages by following the same process. This Post-SRO Process is outlined below:

How do I seek relief through the claim and arbitration procedure established by the SRO?

The claim and arbitration procedure is a three step process:

- (1) The complainant must first file a complaint with the Post SRO Complaint Administrator (“Complaint Administrator”) for investigation.
- (2) The complainant seeking relief must then file a complaint with the States Attorneys Office for possible settlement.
- (3) If no settlement is reached, then the complainant must file a request for arbitration.

(1) Filing a Complaint with the Complaint Administrator

Any individual, whether he or she is already a County employee or is trying to obtain employment with the County, may file a complaint of unlawful political discrimination in connection with any aspect of employment with the County with the Complaint Administrator. The Complaint Administrator may establish certain procedures for the receipt of such complaints.

When must a claim be filed with the Complaint Administrator?

The SRO specifically requires a complainant to file his or her complaint of unlawful political discrimination within one hundred twenty days (120) after the date on which the Complainant learned or should have learned of the unlawful conduct.

Will the Complaint Administrator investigate the complaint?

The Complaint Administrator is responsible for conducting or directing the investigation of any complaints alleging unlawful political discrimination filed with that office after February 2, 2007.

Any complaint filed with the Complaint Administrator will remain confidential except as otherwise provided in the Supplemental Relief Order (SRO) and Section 2-289 of the IIG

ordinance. These files will only be disclosed to the extent that is necessary to complete the investigation and in instances that involve potential criminal activity.

How long will the Complaint Administrator investigation take?

The Complaint Administrator is required to complete its investigation of the complaint within one hundred eighty (180) from the date the complaint is received. If the Complaint Administrator is unable to complete the investigation within that time frame, the Complaint Administrator must send a Notice of Rights to the complainant informing the complainant that if he or she wishes to seek relief for the alleged unlawful political discrimination, the complainant has two options: (1) wait for the Complaint Administrator to complete its investigation or (2) pursue his or her claim under applicable law by filing suit within forty-five (45) days.

What happens when the Complaint Administrator concludes its investigation?

Once the Complaint Administrator concludes his investigation of the complaint, he is required to report in writing the results of the investigation to the Compliance Administrator, the President, the SAO, the Class Counsel and the OIIG. If the complainant has alleged that he or she was harmed by the unlawful political discrimination, then the Complaint Administrator must also report in writing the results of the investigation to the complainant. If the Complaint Administrator finds that impermissible political factors were considered in an employment decision, his report must include the names of all individuals who he found were victims of the unlawful political discrimination as well as the individuals who were responsible for such discrimination.

(2) Filing a Complaint with the States Attorney to Obtain Monetary or Other Relief

In order to obtain relief for unlawful political discrimination in connection with any aspect of employment with the County, a complainant must file a Complaint Form with the SAO – Civil Actions Bureau within forty-five (45) days of the Complaint Administrator’s report or notice.

What must be contained within the Complaint Form filed with the SAO?

The Complaint Form filed with the SAO must contain a sworn statement setting forth the claim, including:

- (1) The date or dates of the alleged violation;
- (2) A narrative description of the alleged violation;
- (3) A description of the alleged damages;
- (4) The complainants name, address, telephone number and social security number;

- (5) Copies of any supporting documentation that is within the complainant's possession; and
- (6) A statement of the relief requested including the amount of any damages the complainant seeks to recover or injunctive relief.

The SAO may request additional information from the Complaint Administrator within seven (7) days of the Complaint Form having been filed and the Complaint Administrator is required to provide such information to both the SAO and the complainant within seven (7) days.

What happens after the SAO receives all the necessary information?

Within 28 days from the date the Complaint Form was filed with the SAO, the SAO and the complainant must hold an in person settlement conference. The settlement conference is for settlement purposes only and the statements made and positions taken must not be disclosed in any subsequent arbitration. Settlement offers may include, but are not limited to, monetary damages, reinstatement, or other equitable relief.

What if no settlement is reached?

If the SAO and the complainant are not able to reach a settlement by the conclusion of the settlement conference, the SAO is required to provide the complainant with an Arbitration Request Form.

(3) Filing a Request for Arbitration

If the SAO and the complainant cannot reach a settlement, then the complainant may seek relief through arbitration.

When must the Arbitration Request Form be completed?

The Arbitration Request Form must be completed by the complainant and filed with the SAO within thirty (30) days after the SAO either makes a written settlement offer or provides written notification that no offer will be made. This thirty (30) day period may be extended only by written agreement between the complainant and the County.

What must be contained in the Arbitration Request Form?

The Request for Arbitration must state with reasonable specificity sufficient to put the County on notice of the actions that are alleged to violate the Consent Decrees or the SRO in addition to the relief sought.

Is there a fee for filing the Request for Arbitration?

Yes, there is a \$100 fee due at the time the Request for Arbitration is filed. If the complainant prevails at the arbitration, the complainant will be awarded the \$100 filing

fee together with any other relief decided by the arbitrator. The arbitrator's fees and other costs of administration will be paid by the County.

Do I need an attorney for the arbitration?

A complainant may appear at the arbitration on his or her own behalf, be represented by an attorney, or be represented by any other representative of his or her choice.

Who selects the arbitrator and schedules the arbitration?

The Court will establish a panel of arbitrators. Within fourteen (14) days of receiving the Arbitration Request Form, the SAO must select one of the arbitrators from the panel and send the arbitrator a copy of the Arbitration Request Form. The arbitrator will provide the complainant and the SAO with a proposed schedule providing for pre-hearing production of documents and information. The arbitration must be completed within one hundred twenty (120) days of the selection of the arbitrator. The arbitration will be governed by the National Rules for Employment Disputes of the American Arbitration Association.

When will the arbitrator issue an award?

The arbitrator must issue an award within thirty (30) days of the completion of the arbitration hearing. The award must contain written findings of fact. A copy of the decision will be provided to the complainant. Prevailing complainants are entitled to reasonable attorneys' fees and costs. The arbitrator's award is final and binding upon all parties.

Can I still file a lawsuit if I am not satisfied with the arbitrator's decision?

No, the arbitrator's award is final and binding upon all parties. Any complainant who proceeds through the arbitration process waives any and all rights she or he may otherwise have arising from the alleged violation of the Consent Decrees or SRO set forth in the Arbitration Request Form.