

University of Massachusetts Amherst Whistleblowing Policy

Massachusetts General Laws c. 149, § 185 protects employees from retaliation for engaging in what is commonly known as "whistleblowing" activities. The scope of the law is very broad. It protects state employees who report or threaten to report illegalities, regulatory violations, health and safety violations, and environmental hazards committed by the employer or by another employer with whom the employer has a business relationship. The law also protects employees who refuse to participate in such activities and provides protections for employees who testify or report crimes. As a general matter, employees are protected against retaliatory action so long as the employee has brought the matter to the attention of a supervisor by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice. Written notice may not be required to be filed when an emergency exists, when the employee reasonably believes the University has knowledge, or when the employee fears physical harm as a result of disclosure.

The following notice will be posted on the appropriate website and brought to the attention of all employees.

NOTICE TO EMPLOYEES:

Protection Against Retaliation

Massachusetts General Laws, Chapter 149, Section 185 offers protections against retaliation to an employee of the Commonwealth who:

- Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or of another employer with whom the employee's employer has a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment;
- Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice which the employee reasonably believes poses a risk to public health, safety or the environment by the employer, or by another employer with whom the employee's employer has a business relationship; or
- Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment.

Although some specific statutory exceptions exist, these protections against retaliatory action... "shall not apply to an employee who makes disclosures... unless the employee has brought the activity... to the attention of a supervisor of the employee by written notice and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice".

How to File a Complaint of Retaliation

Employees with complaints should file their notices with the Associate Chancellor for Compliance, Administration and Finance, 340 Whitmore Administration Building, University of Massachusetts Amherst, 181 Presidents Drive, Amherst, MA 01003.

All complaints of retaliation shall be made in writing and include a clear, detailed, and factual description of the retaliation action, employee(s) involved, and specific date(s) or timeline(s) of the retaliatory action. When relevant, the notices should include a discussion of oral reporting of the issue to managers or supervisors and/or internal communication regarding the issue.

All complaints of retaliation shall be made within two (2) years of the incident that the complainant believes to be retaliation. A complaint is considered filed based on the date it is postmarked, hand-delivered, faxed, or emailed to the Associate Chancellor.

Processing a Complaint of Retaliation

Initial response to a Complaint

The Associate Chancellor shall confirm receipt of the complaint in writing to the complainant.

The Associate Chancellor shall review the details of the complaint to determine if an investigation should occur. An investigation shall occur if the complaint:

- a. Is filed within twelve (12) months of the retaliatory incident.
- b. At least one negative personnel action occurred after the date of the retaliatory incident and in connection with the person(s) named in the complaint.

If a complaint does not meet the conditions under which an investigation shall occur, the Associate Chancellor shall notify the complainant in writing within fifteen (15) calendar days of the decision not to pursue an investigation.

Initiating an Investigation

The Associate Chancellor shall notify the employee(s) accused of retaliation in writing that an investigation shall commence. The accused employee(s) shall receive a copy of the complaint.

The Associate Chancellor shall interview the accused employee(s) and provide an opportunity for the accused employee(s) to respond to the complaint in writing. Responses shall be made in writing to the Associate Chancellor within 30 calendar days of the accused employee(s)'s receipt of the notification of an investigation or the date of the interview, as indicated by the Associate Chancellor.

The Associate Chancellor may request that the complainant and/or accused employee(s) submit supplementary information for the investigation, including the names of witnesses.

Within six (6) months of the date that the Associate Chancellor notified the complainant that an investigation shall commence, the Associate Chancellor shall prepare a written report of the investigation findings, including the original complaint of retaliation, a list of individuals interviewed, and any other documentation collected during the investigation.

The Associate Chancellor shall render a decision on the complaint within six (6) months of the close of the investigation. The complainant and accused employee(s) shall receive notification of the decision in writing. The complainant has no right to appeal a final decision.

The decision and written report shall remain on file in the Associate Chancellor's Office for a period of five (5) years.

Reporting Improper Activity

Filing a Report of Improper Activity

Employees with complaints should file their written notice of improper activities with their immediate supervisor or other appropriate administrator within their unit. When there is the potential for a conflict of interest, notices may be filed with the Associate Chancellor for Compliance, Administration and Finance, 340 Whitmore Administration Building, University of Massachusetts Amherst, 181 Presidents Drive, Amherst, MA 01003. When the issue involves the Chancellor or his office, notices should be made to the UMass President, Office of the President, 1 Beacon Street, 31st floor, Boston, MA 02108.

Responsibilities of Supervisors and Administrators

Supervisors and administrators who receive notice of significant improper activities -- as defined as those which constitute a violation of the law or regulation, or which the employee reasonably believes poses a risk to public health, safety or the environment,--shall immediately report such allegations in writing to the Associate Chancellor, with a copy to their unit's Vice Chancellor. Significant improper activities include, but are not limited to:

- Allegations that reflect a problem with an internal policy that is likely to exist at other units within the University.
- Allegations that are likely to receive media or public attention.
- Allegations that involve the misuse of University resources.
- Allegations that have the potential to create significant liability for the University.
- Allegations that are criminal in nature.
- Allegations that have the potential to pose a threat to the health and safety of members of the University and/or the public.
- Allegations that are judged by the supervisor or administrator to be sensitive for another reason.

Description of Notices

All notices shall be made in writing and include a clear, detailed, and factual description of the issue and employee(s) involved. When relevant, the notices should include a discussion of oral reporting of the issue to managers or supervisors and/or internal communication regarding the issue. Notices may be submitted anonymously. Notices submitted anonymously must provide sufficient evidence to justify an investigation.

Investigation Process

Upon receipt of a notice, the Associate Chancellor shall promptly review the documentation provided and investigate the allegations in conjunction with relevant University or State agencies or units based on their areas of expertise.

Upon completion of the investigation(s), the Associate Chancellor shall classify allegations as "improper" or "not improper" activities. When an allegation is classified as "not improper," the investigation shall be formally closed and findings shall be communicated in writing to the employee(s) who initiated the notice. When an allegation is classified as "improper" activity, the Associate Chancellor shall notify appropriate University or State agencies or units and initiate appropriate legal or disciplinary procedures as required by University policy and/or state or federal law.

Paperwork documenting the notice and investigation shall be kept on file in the Office of the Associate Chancellor for five (5) years.

Supporting documents:

- [Massachusetts General Laws, Chapter 149, Section 185](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter149/Section185)
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