

DIVISION 6. PROTECTION OF EMPLOYEES DISCLOSING SPECIFIED INFORMATION

Sec. 2-56.28.11. Legislative findings and purpose.

The Board of County Commissioners finds that it is in the best interests of the County to ensure that employees who have knowledge of unlawful activity, misfeasance or malfeasance by the County or independent contractors report such knowledge to the appropriate authorities for investigation and corrective action. In order to encourage employees to report such information without fear of reprisal, it shall be the policy of the County to prohibit adverse action against an employee for disclosing such information to an appropriate official or agency and to award such employees when the information they disclose leads to the County's recovery of public funds.

Recognizing that the State of Florida has adopted its own Whistle-blower's Act, Fla. Stat. Sections 112.3187, et. seq. (1993) and that the State Act provides for the adoption of local procedures for administrative enforcement, the Commission intends that this ordinance be interpreted consistently with the State Act, as it may from time to time be amended.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.12. Definitions.

As used in this division:

- (1) *County* shall include all Miami-Dade County departments, and all political subdivisions and special districts under the County Commission's legislative authority.
- (2) *Employee* shall mean a person who performs services for, and under the control and direction of, the County for wages or other remuneration.
- (3) *Independent contractor* shall mean a person, other than a federal, state or local government entity, engaged in any business and who enters into a contract with the County.
- (4) *Adverse personnel action* shall mean the discharge, suspension, transfer or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by the County.
- (5) All other words or terms used in this ordinance shall have the same meaning as such words and terms have under the State Whistle-blower's Act.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.13. Actions prohibited.

- (1) The County shall not dismiss, discipline, or take any other adverse personnel action against an employee for disclosing information pursuant to the provisions of this division.
- (2) The County shall not take any adverse action that affects the rights or interests of an employee in retaliation for the employee's disclosure of information under this division.

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- (3) The provisions of this division shall not be applicable when an employee discloses information known by the employee to be false.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.14. Nature of information disclosed.

The information disclosed under this division must include:

- (1) Any violation or suspected violation of any federal, state or local law, rule or regulation committed by an employee or agent of the County or independent contractor which creates and presents a substantial and specific danger to the public's health, safety or welfare; or
- (2) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty committed by an employee or agent of the County or an independent contractor.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.15. To whom information disclosed.

- (a) The information disclosed under this division must be disclosed to the Office of Inspector General, the County Mayor or such official or officials as the Mayor may designate to receive such information on his behalf or the Miami-Dade County Commission on Ethics and Public Trust.
- (b) To facilitate the disclosure of information under this division, information may be submitted to the Inspector General:
 1. through a telephone hotline established by the Office of the Inspector General;
 2. by email;
 3. by written and signed correspondence;
 4. through a website established by the Inspector General; or
 5. in person to the Inspector General or the Inspector General's staff.
- (c) Any information that complies with section 2-56.28.14, that is disclosed to the Mayor, Mayor's designee, or to the Miami-Dade County Commission on Ethics and Public Trust, may, at the discretion of the Mayor, the Mayor's designee or the Miami-Dade County Commission on Ethics and Public Trust, be forwarded to the Office of the Inspector General for investigation. The Inspector General shall make a determination whether an investigation by the Inspector General is necessary.

(Ord. No. 94-107, § 1, 6-9-94; Ord. No. 03-68, § 1, 4-8-03; Ord. No. 10-75, § 1, 11-4-10; Ord. No. 15-120, § 1, 10-20-15)

Sec. 2-56.28.16. Employees and persons protected.

- (1) This division protects employees who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by the County, any state agency or federal government entity having the authority to investigate, police, manage, or otherwise remedy the violation or act; who refuse to participate in any adverse action prohibited by this division; who disclose information to the Office of the Inspector General in accordance with the provisions of section 2-56.28.15; or who are otherwise protected by the State Whistle-blower's Act. The provisions of this

division may not be used by employees while they are under the care, custody, or control of the state or county correctional system, or after their release from the care, custody or control of the state or county correctional system, with respect to circumstances that occurred during any period of incarceration.

- (2) No remedy or other protection under this division applies to any person who has committed or intentionally participated in committing a violation or suspected violation for which protection under this division is being sought.
- (3) An employee who provides false information pursuant to this section may be investigated and prosecuted pursuant to Florida Statutes, including but not limited to, Florida Statute Sections 837.06, False Official Statements; 838.022, Official Misconduct; 837.05, False Reports.
- (4) It shall be an affirmative defense to any complaint brought pursuant to this division that the adverse action was predicated upon grounds other than, and would have been taken absent, the employee's exercise of rights protected by this division.

(Ord. No. 94-107, § 1, 6-9-94; Ord. No. 15-120, § 1, 10-20-15)

Sec. 2-56.28.17. Remedies.

- (1) Any employee protected by this division who has the right to file an appeal of an adverse personnel action under Section 2-47 shall also have the right to have the hearing examiner appointed under that section consider the issue of whether the adverse action was in violation of this division. The hearing examiner shall include in his findings of fact and conclusions a determination of whether the adverse action was in violation of this section and shall recommend an appropriate remedy.
- (2) Any employee protected by this division who does not have the right to file an appeal under Section 2-47 may file a written complaint within sixty (60) days after the action prohibited by this division with the Miami-Dade County Personnel Director. The Director shall refer the complaint to a panel of impartial persons from whom a hearing examiner shall be selected. The panel shall be comprised of all persons available to serve as a hearing examiner under Section 2-47. Such hearing examiners may be paid a fee for their services, but shall not be deemed County officials or employees within the purview of Sections 2-10.2, 2-11.1 or otherwise. The hearing examiner shall conduct a hearing after notice to the complainant and the County department, political subdivision or special district involved. The hearing shall be conducted in accordance with the procedures applicable to hearings under Section 2-47, except as may be provided herein. Any interested party may procure the attendance of witnesses and the production of records at such hearing in the manner provided by Section 2-50. All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within sixty (60) days of the Personnel Director's receipt of the complaint, except that the Director shall have the authority to extend such time for reasonable cause.
- (3) The hearing examiner shall transmit his findings of facts, conclusions of law and any recommendations together with a transcript of all evidence taken before him and all exhibits received by him to the County Mayor or Mayor's designee for a final decision. The Mayor or Mayor's designee may sustain, reverse or modify the adverse personnel action. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the Mayor or Mayor's designee may direct the employee to pay the costs of the hearing, including the employer's attorney's fees.
- (4) *Investigation by Ethics Commission.* In addition to the remedies set forth above:
 - (a) Any employee protected under this division who alleges retaliation may, only after exhausting available administrative remedies (i) under section 2-47, (ii) this division, or (iii) an applicable collective bargaining agreement, file a written complaint with the Miami-Dade County Ethics Commission alleging a prohibited personnel action, no later than 60 days after a final written decision regarding an alleged prohibited personnel action has been rendered under the administrative or contractual procedures

referenced above. The sole purpose of such complaint is to determine whether, in addition to any findings or determination made in any of the above-referenced administrative or contractual proceedings, there has been a violation of this division and not to change, rehear or revisit the determination, findings, actions taken or discipline imposed, if any, pursuant to any of the aforementioned administrative or contractual proceedings.

- (b) Within ten working days after receiving a complaint under this division, the Ethics Commission shall acknowledge receipt of the complaint and provide copies of the complaint to the employee accused of retaliation and the Department Director of the department in which such employee is employed.
- (c) Upon the filing of a complaint with the Ethics Commission under this division, the Ethics Commission shall:
 - (i) Conduct a preliminary investigation, to the extent necessary, to determine whether there is probable cause to believe that a prohibited personnel action under this division, has occurred.
 - (ii) Within 90 days after receiving the complaint in compliance with subsection (4)(a) herein, provide the accused employee, the Department Director of the department in which the accused employee is employed and the complainant with a copy of a probable cause memorandum and conduct a probable cause hearing before the Ethics Commission which shall make a determination as to whether there is probable cause to believe retaliation prohibited by this division has occurred. The probable cause memorandum and the final written decision and findings of the administrative or contractual proceedings referenced in subsection (4)(a) herein shall be presumed admissible in any Ethics Commission hearing conducted under this division.
 - (iii) Based on its probable cause determination, recommend to the County Mayor an appropriate course of action. In response to such a recommendation, the County Mayor shall thereafter be required to make a written determination of the appropriate remedial action, if any, to be taken in accordance with Section 2-56.28.18.
- (d) The time limits regarding the actions to be taken by the Ethics Commission set forth in subsections (b) and (c) may be extended by the Ethics Commission for good cause.
- (5) Any employee found by the Ethics Commission to have retaliated against another County employee in violation of this division, shall be considered to have committed a violation of the County's Code of Ethics and shall be subject to the penalties set forth in the County's Code of Ethics set forth in section 2-11.1 of the Code and disciplinary action up to and including dismissal from County employment.

(Ord. No. 94-107, § 1, 6-9-94; Ord. No. 07-63, § 1, 5-8-07; Ord. No. 10-75, § 1, 11-4-10; Ord. No. 15-120, § 1, 10-20-15)

Sec. 2-56.28.18. Relief.

In any case brought under this division in which the County Mayor or Mayor's designee finds that the employee has been discharged, disciplined, or subjected to other adverse personnel action in violation of this division, the Mayor or Mayor's designee may:

- (a) Reinstatement the employee to the same position held before the adverse action was commenced or to an equivalent position, or award reasonable front pay as alternative relief,
- (b) Reinstatement the employee's fringe benefits and seniority rights, as appropriate, and
- (c) Compensate the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse action.

(Ord. No. 94-107, § 1, 6-9-94; Ord. No. 10-75, § 1, 11-4-10)

Sec. 2-56.28.19. Reserved.

Editor's note(s)—Ord. No. 15-120, § 1, adopted October 20, 2015, repealed § 2-56.28.19, which pertained to reporting employee's award program and derived from Ordinance No. 94-107, § 1, adopted June 9, 1994; Ordinance No. 10-75, § 1, adopted November 4, 2010.

Sec. 2-56.28.20. Existing rights.

This division shall not be construed to diminish the rights, privileges or remedies of any employee under any other law or rule or under any collective bargaining agreement or employment contract; however, the election of remedies provided by Florida Statute Section 447.401 shall also apply to complaints under this division.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.21. Retroactive application.

Notwithstanding the requirements of Section 2-56.28.17 employees who have filed complaints of whistleblowing in state or federal court as of the date this ordinance is enacted shall have the right to file a complaint and receive a hearing in accordance with the terms of this division.

(Ord. No. 94-107, § 1, 6-9-94)

Sec. 2-56.28.22. Confidentiality of Individuals Disclosing Information.

The Board of County Commissioners intends for the protections of state law to be afforded to any individual who discloses information in compliance with this division to the local officials set forth in this division. The identity of such individuals shall be confidential and exempt from the provisions of the public records laws to the fullest extent permitted by, and in accordance with the law including, but not limited to, the confidentiality requirements and exemptions set forth in sections 119.0713 and 112.3188 of the Florida Statutes.

(Ord. No. 15-120, § 1, 10-20-15)

Sec. 2-56.28.23. Outreach to Employees and Mandatory Training.

- (a) The Mayor and the Inspector General, or their designees, shall provide training regarding this division to all new County employees hired after the effective date of this Ordinance as part of the initial County orientation. The Mayor and the Inspector General, or their designees, shall also provide training regarding this division to all County employees.
- (b) The Inspector General or his or her designee shall periodically provide information on this division including, but not limited to, the disclosure of information, the methods of disclosing information, and the protections afforded by this division, to all employees of the County and public officials.
- (c) The Office of the Inspector General shall periodically publish to all County employees instructions regarding the methods of disclosing information to the Inspector General. as provided by section 2-56.28.15.
- (d) The Office of the Inspector General shall periodically notify all County employees of the existence of the Inspector General's hotline and its purpose, and provide an address to which written or electronic information may be forwarded to the Office of the Inspector General.

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- (e) Notwithstanding subsections (a) through (d) herein, other means of dissemination to ensure awareness of this division may be implemented by the Mayor, the Office of the Inspector General or the Commission on Ethics and Public Trust.

(Ord. No. 15-120, § 1, 10-20-15)

Sec. 2-56.28.24. Coordination with County Attorney's Office.

In the event the Inspector General believes that civil relief may be available to the County during the course of any investigation under this division, the Inspector General shall so inform the County Attorney. The County Attorney or the County Attorney's staff shall notify the Inspector General regarding any potential civil relief. The County Attorney and the County Attorney's staff shall maintain the confidentiality to the extent provided by state law of all information as set forth in section 2-56.28.22 of the Code.

(Ord. No. 15-120, § 1, 10-20-15)

Secs. 2-56.28.25—2-56.28.30. Reserved.