

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2003**

No. 10

Introduced by Council Members Sears, Jackson, Nelson, Reed, Rivera, Stewart, Provenzano, Katz, Vallone Jr., Weprin, Gerson and Lanza; also Council Members Clarke, Yassky and Moskowitz.

A LOCAL LAW

To amend the administrative code of the City of New York, in relation to the enhancement of protection of whistleblowers.

Be it enacted by the Council as follows:

Section 1. Section 12-113 of the administrative code of the city of New York, subdivision a as amended by local law number 68 for the year 1993, is amended to read as follows:

§ 12-113 Protection of sources of information. a. *Definitions. For purposes of this section:*

1. "Adverse personnel action" shall include dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

2. "Remedial action" means an appropriate action to restore the officer or employee to his or her former status, which may include one or more of the following:

(a) reinstatement of the officer or employee to a position the same as or comparable to the position the officer or employee held or would have held if not for the adverse personnel action, or, as appropriate, to an equivalent position;

(b) reinstatement of full seniority rights;

(c) payment of lost compensation; and

(d) other measures necessary to address the effects of the adverse personnel action.

3. "Commissioner" shall mean the commissioner of investigation.

b. 1. No officer or employee of an agency of the city[, the head or members of which are appointed by the mayor,] shall take an adverse personnel action with respect to another officer or employee in retaliation for his or her making a report of information concerning conduct which he or she knows or reasonably believes to involve corruption, criminal activity, [or] conflict of interest, gross mismanagement or abuse of authority by another city officer or employee, which concerns his or her office or employment, or by persons dealing with the city, which concerns their dealings with the city, (i) to the commissioner [of investigation], or (ii) to a council member, the public advocate or the comptroller, who shall refer such report to the commissioner [of investigation]. *For purposes of this subdivision, an agency of the city shall be deemed to include, but not be limited to, an agency the head or members of which are appointed by one or more city officers, and the offices of elected city officers.*

2. *Upon request, the commissioner, council member, public advocate or comptroller receiving the report of alleged adverse personnel action shall make reasonable efforts to protect the anonymity and confidentiality of the officer or employee making such report.*

[b.] c. An officer or employee (i) of an agency of the city, or (ii) of a public agency or public entity subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter who believes that another officer or employee has taken an adverse personnel action in violation of subdivision [a] b of this section may report such action to the commissioner [of investigation].

[c.] d. 1. Upon receipt of a report made pursuant to subdivision [b] c of this section, the commissioner [of investigation] shall conduct an inquiry to determine whether retaliatory adverse personnel action has been taken.

2. *Within fifteen days after receipt of an allegation of a prohibited adverse personnel action, the commissioner shall provide written notice to the officer or employee making the allegation that the allegation has been received*

by the commissioner. Such notice shall include the name of the person in the department of investigation who shall serve as a contact with the officer or employee making the allegation.

3. Upon the completion of an investigation initiated under this section, the commissioner shall provide a written statement of the final determination to the officer or employee who complained of the retaliatory adverse personnel action. The statement shall include the commissioner's recommendations, if any, for remedial action, or shall state the commissioner has determined to dismiss the complaint and terminate the investigation.

[d.] e. Upon a determination that a retaliatory adverse personnel action has been taken, the commissioner [of investigation] shall without undue delay report his or her findings and, if appropriate, recommendations to the head of the appropriate agency or entity, who (i) shall determine whether to take remedial action [, including but not limited to the reinstatement of the officer or employee to a position the same or comparable to the position held prior to the adverse personnel action when such reinstatement is appropriate,] and (ii) shall report such [action] determination to the commissioner [of investigation] in writing. Upon a determination that the agency or entity head has failed to take appropriate remedial action, the commissioner [of investigation] shall consult with the agency or entity head and afford the agency or entity head reasonable opportunity to take such action. If such action is not taken, the commissioner [of investigation] shall report his or her findings and the response of the agency or entity head (i) if the complainant was employed by an agency the head or members of which are appointed by the mayor, to the mayor, (ii) if the complainant was employed by a non-mayoral agency of the city, to the city officer or officers who appointed the agency head, or (iii) if the complainant was employed by a public agency or other public entity not covered by the preceding categories but subject to the jurisdiction of the commissioner pursuant to chapter thirty-four of the charter, to the officer or officers who appointed the head of the public agency or public entity, who shall take such action as is deemed appropriate.

[e.]f. Nothing in this section shall be construed to limit the rights of any officer or employee with regard to any administrative procedure or judicial review.

[f. For the purpose of this section the term "adverse personnel action" shall include dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.]

g. Violation of this section may constitute cause for administrative penalties.

h. The commissioner shall conduct ongoing public education efforts as necessary to inform employees and officers of covered agencies of their rights and responsibilities under this section.

i. Not later than October thirty-first of each year, the commissioner shall prepare and forward to the mayor and the council a report on the complaints governed by this section during the preceding fiscal year. The report shall include, but not be limited to, the number of complaints received pursuant to this section, and the disposition of such complaints.

§ 2. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on January 29, 2003, and approved by the Mayor on February 18, 2003.

VICTOR L. ROBLES, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 10 of 2003, Council Int. No. 63-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on January 29, 2003: 48 for, 0 against, 0 not voting.

Was signed by the Mayor on February 18, 2003.

Was returned to the City Clerk on February 20, 2003.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel