

Adopting A Whistleblower Employee/Agent Protection Policy For Ulster County Employees/Agents

The Administrative Services Committee (Chairman Provenzano and Legislators Hochberg, Lomita, Terpening, Hansut, Petit and Ronk) and the Human Development and Personnel Committee (Chairman Gregorius and Legislators Loughran, Provenzano, Terpening, Hansut, Noonan and Terrizzi) offer the following:

WHEREAS, our public employees, on both the State and local level, are an integral part of the working class in New York State, and

WHEREAS, the Civil Service Law currently provides protection from retaliatory employment actions to employees who disclose certain information to governmental bodies, and

WHEREAS, our public employees are in need of information related to whistleblower protections so that they will be encouraged to take a positive step to report and remedy improper and/or unlawful conduct in government, and

WHEREAS, the Administrative Services Committee has met and reviewed said matter with a majority of the members voting approval, and

WHEREAS, the Human Development and Personnel Committee has met and reviewed said matter with a majority of the members voting approval, now, therefore, be it

RESOLVED, that the Ulster County Legislature adopts the following Whistleblower Employee/Agent Protection Policy (the "Policy") for Ulster County Employees/Agents as follows:

1. GENERAL STATEMENT OF POLICY:

- 1.1 It is the policy of Ulster County (hereinafter referred to as "the County"), to comply with all applicable federal, state and local laws and regulations, both civil and criminal.
- 1.2 It is also the policy of the County to require employees to comply with the Ulster County Ethics and Disclosure Law.
- 1.3 This Policy is intended to provide the employees of Ulster County with information about important federal and state laws. The provisions, standards and requirements of the Policy and these laws will be reviewed with each new employee and provided to all employees.

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2. SCOPE:

- 2.1 This Policy applies to all employees of Ulster County.
- 2.2 This Policy also applies to all consultants and agents (hereinafter referred to as "Agents") who furnish or authorize services on behalf of the County.

3. POLICY PROCEDURE:

- 3.1 Each employee or Agent of the County will strive to act in accordance with the provisions of any applicable federal, state and local laws, and the Ulster County Ethics and Disclosure Law, and will encourage other employees and/or Agents to act the same.
- 3.2 No employee or Agent of the County has authority to act contrary to the provisions of any applicable laws or the Ethics and Disclosure Law or to authorize, direct or condone such action by any other employee or Agent.
- 3.3 Any employee or Agent of the County who has direct knowledge of activities that he or she believes, in good faith, may violate a law, rule or regulation, has an obligation, promptly after learning of such activities, to report the matter to the Ulster County Personnel Director (hereinafter, the "Personnel Director"), and in the case of an Agent, to the supervisor of the department that contracted for the Agent's services. **However, if any employee feels that there exists a potential conflict, then in that event that person shall have no duty to report such information to the Personnel Director but shall report said information to a County Official.** The supervisor will promptly forward such Agent's report to the Personnel Director. Reports may be made anonymously and employees and Agents will not be penalized for reports made in good faith. Failure to report known violations **by Agents may result in** ~~may be grounds for employee disciplinary action, including termination, and in the case of violations by Agents, termination of their services contract. The appropriate form of discipline will be case specific and in accordance with NYS Civil Service Law and/or existing collective bargaining agreements.~~

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- 3.4 The County will take steps to communicate this Policy to all employees and Agents by disseminating information that explains in a practical manner what is required.
- 3.5 After improper and/or unlawful conduct has been reported, the Personnel Director may conduct his/her own investigation or refer the matter to the appropriate official for a more complete, detailed investigation of the allegations. In conducting an investigation, the Personnel Director shall use best efforts to keep confidential the identity of the person providing the information that initiated the investigation, unless the Personnel Director determines the information was provided other than in good faith. The result of any investigation shall be reported to such other authority as the Personnel Director deems appropriate. The Personnel Director will take whatever additional reasonable steps he or she deems necessary to respond appropriately and to prevent further similar violations, including proposing any necessary modifications to this Policy to prevent and detect violations of law.
- 3.6 All members of the County workforce as well as Agents shall be provided with information regarding important federal and state laws that are designed to prevent and detect waste, fraud and abuse. In addition, individuals who, in good faith, report suspected non-compliant behavior shall be advised that they are protected by both federal and state law.
- 3.7 All Agents who furnish or authorize services on behalf of the County are required to communicate this Policy to their employees,

and, be it further

RESOLVED, that it shall hereinafter be the Policy of Ulster County that in addition to the protections afforded by Section 75-b of the Civil Service Law as well as the Federal and New York State False Claims Acts, public employees of Ulster County shall not be subject to any retaliatory personnel action by disclosing, in good faith, any improper and/or unlawful conduct to the Personnel Director, and, be it further

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RESOLVED, that it shall also hereinafter be the Policy of Ulster County that in any action by a public employee of Ulster County who claims to have been the subject of a retaliatory personnel action in violation of Section 75-b of the Civil Service Law or of the Policy established herein with respect to any such disclosure to the Personnel Director, a court may order the relief provided for in Section 740.5(a)-(e) of the Labor Law as well as under the New York False Claims Act and all other relevant NYS and Federal statutes so as to protect the employee or Agent,

and move its adoption.

ADOPTED AS AMENDED BY THE FOLLOWING VOTE:

AYES: 29 NOES: 0
(Absent: Legislators Aiello, Decker, Felicello and Shapiro)

Legislator Cahill motioned, seconded by Legislator Cummings to amend Paragraph 3.3 as shown below and in the body of the resolution (changes appear in bold font and strikethroughs):

- 3.3 Any employee or Agent of the County who has direct knowledge of activities that he or she believes, in good faith, may violate a law, rule or regulation, has an obligation, promptly after learning of such activities, to report the matter to the Ulster County Personnel Director (hereinafter, the "Personnel Director"), and in the case of an Agent, to the supervisor of the department that contracted for the Agent's services. **However, if any employee feels that there exists a potential conflict, then in that event that person shall have no duty to report such information to the Personnel Director but shall report said information to a County Official.** The supervisor will promptly forward such Agent's report to the Personnel Director. Reports may be made anonymously and employees and Agents will not be penalized for reports made in good faith. Failure to report known violations **by Agents may result in** ~~may be grounds for employee disciplinary action, including termination, and in the case of violations by Agents, termination of their services contract. The appropriate form of discipline will be case specific and in accordance with NYS Civil Service Law and/or existing collective bargaining agreements.~~

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MOTION ADOPTED BY THE FOLLOWING VOTE:

AYES: 29 NOES: 0
(Absent: Legislators Aiello, Decker, Felicello and
Shapiro)

FINANCIAL IMPACT:
NONE

0907

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

This is to certify that I, the undersigned Clerk of the Legislature of the County of Ulster have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 9th Day of September, 2009, and that the same is a true and correct transcript of said resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 10th Day of September in the year Two Thousand and Nine.

|s| Mary L. Carey
Mary L. Carey, Clerk
Ulster County Legislature

Submitted to the County Executive this

11th Day of September, 2009.

|s| Mary L. Carey
Mary L. Carey, Clerk
Ulster County Legislature

Approved by the County Executive this

21st Day of September, 2009.

|s| Michael P. Hein
Michael P. Hein, County Executive