



PERSONNEL POLICIES-SECTION 300

NUMBER: 340

SUBJECT: WHISTLEBLOWER POLICY & PROCEDURE

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EXECUTIVE COMMITTEE APPROVAL: 8/3/2020

FACULTY REVIEW:

BOARD APPROVAL: 10/21/2020

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340.1 PURPOSE

In order to promote a positive learning and work environment, employees at Mountainland Technical College (MTECH) are expected to maintain high ethical standards and practice honesty and integrity in all matters as a representative of the College.

This policy is established to encourage employees and others to report suspected fraud, corruption, conflict of interest, or other unethical activity within the college to the appropriate officials. The focus of this policy is on reporting improper activity that cannot be resolved by normal channels involving supervisors and other designated individuals for resolving such matters.

340.2 REFERENCES

Utah Protection of Public Employees Act, Sections 67-21-1 through 10.

340.3 DEFINITIONS

3.1 **Adverse Action** for the purposes of this policy means to discharge, threaten, or discriminate against an employee in a manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions, or privileges.

340.4 POLICY

4.1 Mountainland Technical College, in accordance with Utah Code 67-21-3, may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith any incidence of the following:

4.1.1 The waste or misuse of public funds, property, or manpower;

4.1.2 a violation or suspected violation of a law, rule, or regulation adopted under the law of the State of Utah, a political subdivision of the State of Utah, or any recognized entity of the United States; or

- 4.1.3 As it relates to an employee of Mountainland Technical College, gross mismanagement, abuse of authority, or unethical conduct.

340.5 PROCEDURE

5.1 Reporting Concerns in Good Faith

- 5.1.1 Employees should make a good faith effort to resolve their concerns by giving written notice, or other formal communication regarding conduct listed in section 3.1 of this policy to:
1. a person in authority over the person alleged to have engaged in the conduct described in 3.1;
 2. the Attorney General's office;
 3. law enforcement, if the conduct is criminal in nature;
 4. the Utah System of Higher Education or a trustee member of the Utah System of Higher Education;
 5. the Commissioner of Higher Education;
 6. the President of the Mountainland Technical College; or
 7. the entity that conducts audits of the College where the employee is employed.
- 5.1.2 The presumption that a communication was in good faith may be rebutted if there is evidence the employee knew the report was malicious, false, or frivolous.

5.2 Retaliation

- 5.2.1 Mountainland Technical College may not take adverse action against an employee because s/he has filed a good faith complaint under 3.1. An adverse action made for legitimate disciplinary or other purposes is not a violation of this policy.
- 5.2.2 MTECH may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of the State of Utah, a political subdivision of Utah, or the United States, or a rule or regulation adopted under the authority of the laws of Utah, a political subdivision of Utah, or the United States.

5.3 Reporting Adverse Action

An employee alleging adverse action for reporting in good faith under Subsection 3.1 shall have the opportunity to be heard before an independent personnel board.

- 5.3.1 An employee who believes s/he has experienced an adverse action in violation of 4.1 shall file a complaint with the Director of Human Resources.
- 5.3.2 The Director of Human Resources shall assemble an independent personnel board of three members to review the complaint.
- 5.3.3 No member of the board may be:
 1. in the same department as the complainant;
 2. a supervisor of the complainant; or
 3. have a conflict of interest in relation to the complainant or an allegation made in the complaint.

5.4 Hearing Procedures

- 5.4.1 The independent personnel board that receives the complaint under Subsection 4.1 shall hear the matter and make recommendation to the President of Mountainland Technical College within the later of:
 1. 30 days after the day on which the employee files the complaint; or
 2. a longer period of time, not to exceed 30 additional days, if the employee and the independent personnel board mutually agree on the longer time period.
- 5.4.2 Evidence and testimony disclosed during a hearing is confidential and board members and other participants are prohibited from discussing the proceedings outside the hearing.
- 5.4.3 The hearing is informal to allow a full and complete disclosure. Formal courtroom rules of evidence do not apply.
- 5.4.4 The burden of proof is on Mountainland Technical College to establish by substantial evidence that the action was justified by reasons unrelated to the employee's good faith actions in relation to 3.1.
- 5.4.5 At the hearing, Mountainland Technical College and/or the complainant may:
 1. be represented by counsel,
 2. produce witnesses,
 3. hear the testimony for or against the complainant,
 4. cross examine witnesses, and

5. examine documentary evidence.
- 5.4.6 Any probative evidence will be admitted unless it is totally irrelevant or repetitious.
- 5.4.7 Hearsay evidence is admissible, but the board's final decision must be based on all credible evidence and not merely on hearsay evidence alone.
- 5.4.8 Within five (5) days of the conclusion of the hearing the board shall make its recommendation in writing to the President of Mountainland Technical College. The board's recommendation shall include:
 1. Any relevant findings of fact, and
 2. recommended action, including any remedies recommended as outlined in 4.5.
- 5.4.9 The President of Mountainland Technical College shall render a decision after considering the recommendation of the independent personnel board and enter an order within seven (7) days after the day on which the President receives the recommendation.

5.5 Remedies

- 5.5.1 If an independent personnel board finds that adverse action was taken in violation of the policy described in Subsection 3.1, the independent personnel board may recommend the College President:
 1. Reinstatement of the employee at the same level as before the adverse action;
 2. pay back wages;
 3. fully reinstate fringe benefits;
 4. fully reinstate seniority rights; or
 5. if the adverse action includes failure to promote, institute a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.