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GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821] (Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 2. Officers and Employees [53200 - 53299] (Chapter 2 added by Stats. 1949, Ch. 81.)

ARTICLE 4.5. Disclosure of Information: Local Government [53296 - 53299] (Article 4.5 added by Stats. 1986, Ch. 353, Sec. 7.)

53296. Definitions used in this article:

- (a) "Local agency" means any county, city, city and county, including any charter county, city, or city and county, and any district, school district, community college district, municipal or public corporation, political subdivision, or public agency of the state, or any instrumentality of any one or more of these agencies.
- (b) "Disciplinary action" means any direct form of discipline as defined in personnel rules and regulations adopted by the local agency. "Disciplinary action" shall include the firing of an employee.
- (c) "Disclosure of information" means the written provision of evidence regarding gross mismanagement or a significant waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (d) "Complaint" means any written document containing a disclosure of information as specified in subdivision (c).
- (e) "Employee" means any person employed by a local agency.
- (f) "Manager" means any employee having significant responsibilities for formulating or administering local agency or departmental policies and programs or administering the local agency or a department.
- (g) "Supervisory employee" or "supervisor" means any employee regardless of job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- (h) "Officer" means any appointed member of a local board, commission, or other governing body who supervises or is responsible for the work of one or more local agency employees.
- (i) "Administrative procedure" means any written administrative procedure adopted by the local agency for presentation of a grievance for ultimate decision by the governing body of the local agency. The term does not include grievance procedures embodied in collective bargaining agreements.
- (j) "Reprisal action" means any act of intimidation, restraint, coercion, discrimination, or disciplinary action against any employee, or applicant for employment, who files a complaint pursuant to Section 53297.

(Amended by Stats. 1993, Ch. 503, Sec. 1. Effective January 1, 1994.)

53297. (a) An employee, or applicant for employment, shall have the right to file a complaint with the local agency within 60 days of the date of the act or event which is the subject of the complaint.

(b) Prior to filing a written complaint pursuant to this article, the employee shall first make a good faith effort to exhaust all available administrative remedies. The 60-day time limit specified in subdivision (a) shall be extended by the amount of time actually utilized by the employee in pursuing available administrative remedies.

(c) A complaint pursuant to this article shall be filed in accordance with the locally adopted administrative procedure. If there is no administrative procedure, the complaint shall be filed with the governing body.

(d) All complaints brought by employees under this article shall be filed under penalty of perjury.

(Added by Stats. 1986, Ch. 353, Sec. 7.)

53298. (a) No local agency officer, manager, or supervisor shall take a reprisal action against any employee or applicant for employment who files a complaint pursuant to Section 53297.

(b) This article is not intended to prevent a local agency from taking, directing others to take, recommending, or approving any personnel action with respect to any employee or applicant for employment if the local agency reasonably believes that the action or inaction is justified on the basis of separate evidence which shows any of the following:

(1) The employee's complaint has disclosed information that he or she knows to be false or has disclosed information without regard for the truth or falsity thereof.

(2) The employee's complaint has disclosed information from records which are closed to public inspection pursuant to law.

(3) The employee's complaint has disclosed information which is confidential under any other provision of law.

(4) The employee was the subject of an ongoing or existing disciplinary action prior to the disclosure of information with the local agency.

(5) The employee has violated any other provision of the local personnel rules and regulations, has failed to perform assigned duties, or has committed any other act unrelated to the disclosure that would otherwise be subject to personnel action.

(c) It is not a violation of this article for an officer, manager, or supervisor to take disciplinary action against an employee if that officer, manager, or supervisor had no prior knowledge that a complaint had been filed by that employee.

(Amended by Stats. 1993, Ch. 503, Sec. 2. Effective January 1, 1994.)

53298.5. (a) Any officer, manager, or supervisor who violates Section 53298 with malicious intent is punishable by a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for up to a period of one year. In addition, any local agency officer, manager, or supervisor who maliciously engages in conduct prohibited by Section 53298 shall be disciplined as provided by local personnel rules and regulations.

(b) In addition to all other penalties provided by law, any local officer, manager, or supervisor who has been found by a court to have violated the provisions of Section 53298 with malicious intent shall be individually liable for damages in an action brought against him or her by the injured employee. Punitive damages may be awarded by the court where the offending party has acted with malice. Where liability has been established, the injured employee shall also be entitled to reasonable attorney's fees as provided by law. In no way, shall the provisions of this article establish any liability for punitive damages or any new cause of action against the local public entity other than liabilities contained in existing law.

(Added by Stats. 1986, Ch. 353, Sec. 7.)

53299. In order for the Governor and the Legislature to determine the need to continue or modify local agency personnel procedures as they relate to disclosure of information by public employees, the League of California Cities in consultation with the County Supervisors Association of California, may submit on June 30, 1987, and annually thereafter, a report to the Governor and the Legislature regarding complaints filed, hearings held, and legal actions taken pursuant to this section.

(Amended by Stats. 1989, Ch. 129, Sec. 1.)