

SENATE BILL 79

P4, R2, F5

(PRE-FILED)

3lr0913
CF 3lr1606

By: **Senator Kramer**

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **State Personnel – Education and Transportation – Grievance Procedures**

3 FOR the purpose of authorizing a certain employee or a certain exclusive representative to
4 initiate a grievance procedure under certain provisions of law; prohibiting the
5 dismissal of a grievance concerning wages for a certain reason; requiring certain
6 decision makers in a grievance procedure in certain higher education systems to
7 award certain damages under certain circumstances; requiring certain employee
8 grievance procedures and personnel systems to include certain redress for certain
9 violations; requiring regulations adopted by the Secretary of Transportation to be
10 consistent with certain provisions of law and include certain redress for certain
11 violations; and generally relating to grievance procedures for State personnel and
12 education and transportation employees.

13 BY repealing and reenacting, with amendments,
14 Article – State Personnel and Pensions
15 Section 2–407
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2022 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Education
20 Section 13–203(e), 14–408, and 16–510(a)
21 Annotated Code of Maryland
22 (2022 Replacement Volume)

23 BY adding to
24 Article – Education
25 Section 14–302(h)
26 Annotated Code of Maryland
27 (2022 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Transportation
Section 2–103.4(d)
Annotated Code of Maryland
(2020 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

2–407.

(a) If an appointing authority does not report payroll information in accordance with § 2–402 of this subtitle, the employee or the employee’s exclusive representative may initiate a grievance under the grievance procedure established under:

(1) Title 12, Subtitle 2 of this article;

(2) **TITLE 13, SUBTITLE 2 OF THE EDUCATION ARTICLE;**

(3) **TITLE 14, SUBTITLE 3 OF THE EDUCATION ARTICLE;**

(4) **§ 14–408 OF THE EDUCATION ARTICLE;**

(5) **§ 16–510(A) OF THE EDUCATION ARTICLE;**

(6) **§ 2–103.4 OF THE TRANSPORTATION ARTICLE;**

(7) **ANY OTHER APPLICABLE GRIEVANCE PROCEDURE; OR**

(8) **ANY OTHER APPLICABLE COLLECTIVE BARGAINING AGREEMENT.**

(b) (1) Except as provided in paragraph (2) of this subsection, and notwithstanding [§ 12–203 of this article] **ANY STATUTORY OR REGULATORY DEADLINE IN ANY GRIEVANCE PROCEDURE LISTED UNDER SUBSECTION (A) OF THIS SECTION**, a grievance under subsection (a) of this section shall be initiated within 20 days after the failure to pay occurred.

(2) If the failure to pay is not known to, or discovered by, the employee within 20 days after the failure to pay occurs, a grievance under subsection (a) of this section may be initiated no later than 6 months after the date on which the failure to pay occurred.

(c) (1) Subject to paragraphs (2) and (3) of this subsection, if a grievance is initiated in accordance with subsection (a) of this section, an employee is entitled to wages and damages unless the wage is withheld as a result of a bona fide dispute.

(2) If the grievance was filed:

(i) in the first 3 business days of a pay period, then damages shall start in the following regular pay period; or

(ii) after the third business day of a pay period, then the damages shall start in the second regular pay period following the pay period in which the employee was not paid the employee's full wage.

(3) The damages under paragraph (1) of this subsection:

(i) may not begin until at least 1 regular pay period has elapsed since the employee was not paid the employee's full wage due for a pay period;

(ii) shall increase per pay period by 30% of the wage that the appointing authority failed to report;

(iii) shall continue until the pay period when the appointing authority reports the missing wages and damages, if any, to the Central Payroll Bureau; and

(iv) may not exceed 3 times the amount of wage due that the appointing authority failed to report for a pay period.

(D) NOTWITHSTANDING THE DEFINITION OF GRIEVANCE UNDER § 13-201(C)(2) OF THE EDUCATION ARTICLE, A GRIEVANCE CONCERNING WAGES AS DEFINED BY § 2-402(C)(1) OF THIS SUBTITLE, MAY NOT BE DENIED OR DISMISSED BECAUSE THE GRIEVANCE RELATES TO:

(1) GENERAL LEVELS OF WAGES;

(2) WAGE PATTERNS;

(3) FRINGE BENEFITS; OR

(4) OTHER BROAD AREAS OF FINANCIAL MANAGEMENT AND STAFFING.

Article – Education

13-203.

(e) (1) The Chancellor or administrative law judge, as appropriate, shall have the power to award back pay in any grievance and the president of the constituent institution shall enforce such order. In any reclassification case in which the Chancellor or administrative law judge, as appropriate, or his designated representative, determines that an employee has been misclassified, the Chancellor or administrative law judge, as appropriate, may, in his discretion, award back pay to the employee for a period not to exceed one year prior to the initial filing of the grievance.

(2) AFTER A FINDING THAT WAGES WERE WITHHELD IN VIOLATION OF §§ 2-402 AND 2-407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, THE DECISION MAKER IN A GRIEVANCE PROCEDURE SHALL AWARD THE PAYMENT OF DAMAGES IN ACCORDANCE WITH § 2-407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

14-302.

(H) AFTER A FINDING THAT WAGES WERE WITHHELD IN VIOLATION OF §§ 2-402 AND 2-407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, THE DECISION MAKER IN A GRIEVANCE PROCEDURE SHALL AWARD THE PAYMENT OF DAMAGES IN ACCORDANCE WITH § 2-407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

14-408.

(a) (1) (i) On the recommendation of the President, and in accordance with the requirements of Title 3 of the State Personnel and Pensions Article, the Board of Trustees of St. Mary's College of Maryland shall establish a personnel system.

(ii) The personnel system established under subparagraph (i) of this paragraph shall include provisions for consideration of hiring a contractual employee to fill a vacant position in the same or similar classification in which the contractual employee is employed.

(2) To carry out the requirements of this section, the Board:

(i) May establish and abolish positions;

(ii) May determine employee qualifications;

(iii) May establish terms of employment, including compensation, benefits, holiday schedules, and leave policies;

(iv) May determine any other matters concerning employees; and

(v) Shall designate one or more representatives to participate as a party in collective bargaining on behalf of the College in accordance with Title 3 of the State Personnel and Pensions Article.

(b) The personnel system shall provide fair and equitable procedures for:

(1) The redress of employee grievances; and

(2) The hiring, promotion, and termination of employees in accordance with law.

(c) THE EMPLOYEE GRIEVANCE PROCEDURES SHALL INCLUDE REDRESS OF ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, INCLUDING THE AWARD AND PAYMENT OF DAMAGES.

(D) (1) Except as provided in paragraph (2) of this subsection, an employee of the College qualifies for and shall participate in the Employees' Pension System of the State of Maryland or the Teachers' Pension System of the State of Maryland.

(2) An employee in a position determined by the Board to be a professional or faculty position may join the optional retirement program under Title 30 of the State Personnel and Pensions Article.

16–510.

(a) (1) All employees of the College are in an independent personnel system.

(2) The personnel system established under this subsection shall include provisions for [consideration]:

(I) CONSIDERATION of hiring a contractual employee to fill a vacant position in the same or similar classification in which the contractual employee is employed; **AND**

(II) REDRESS OF ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, INCLUDING THE AWARD AND PAYMENT OF DAMAGES.

Article – Transportation

2–103.4.

(d) (1) The Secretary shall adopt regulations to govern the human resources management system established under this section.

(2) The regulations shall address procedures for leave, appointment, hiring, promotion, layoff, removal, termination, redress of grievances, as defined in § 12–101 of the State Personnel and Pensions Article **AND CONSISTENT WITH § 2–407 OF THE STATE PERSONNEL AND PENSIONS ARTICLE**, and reinstatement of employees and shall be presented to the Joint Committee on Administrative, Executive, and Legislative Review under Title 10, Subtitle 1 of the State Government Article.

(3) The regulations shall provide that before taking any disciplinary action related to employee misconduct, an appointing authority or designated representative shall:

- (i) Investigate the alleged misconduct;
- (ii) Meet with the employee;
- (iii) Consider any mitigating circumstances;
- (iv) Determine the appropriate disciplinary action, if any, to be imposed; and
- (v) Give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

(4) (i) The regulations shall provide that the appointing authority or designated representative may suspend an employee, with or without pay, pending the filing of charges for termination.

(ii) If an employee is suspended without pay, the appointing authority or designated representative shall provide to the Secretary the charges for termination within 30 calendar days after the first day of the suspension period.

(iii) If the appointing authority or designated representative files the charges for termination after the 30–day period described in subparagraph (ii) of this paragraph, the employee shall be placed on leave with pay until the Secretary receives the charges.

(5) The regulations shall provide that an appointing authority or a designated representative and an employee may agree to the holding in abeyance of a disciplinary action for a period not to exceed 18 months in order to permit an employee to improve conduct or performance.

(6) The employee grievance procedures shall include, at a minimum, the following sequence of levels of appeal:

(i) Initially an aggrieved employee shall present any grievance to the appointing authority or a designated representative, who shall render a written decision;

(ii) Any appeal shall be presented to the Secretary or a designated representative, who shall render a written decision; and

(iii) If the dispute is still unresolved, the aggrieved employee may appeal to the Office of Administrative Hearings or a mutually agreed upon third party arbiter that may not hear grievances relating to classification, salary, or fiscal matters.

(7) THE EMPLOYEE GRIEVANCE PROCEDURES SHALL INCLUDE REDRESS OF ANY VIOLATION OF TITLE 2, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, INCLUDING THE AWARD AND PAYMENT OF DAMAGES.

(8) The Secretary shall establish appeal procedures for disciplinary actions through regulations and policy.

[(8)] (9) (i) During any stage of a complaint, grievance, or other administrative or legal action that concerns State employment by a full-time or part-time executive service, career service, or commission plan employee of the Department, or by a temporary or contractual employee of the Department, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of the Department solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(ii) An employee of the Department may not intentionally take or assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(iii) An employee who violates the provisions of this paragraph is subject to disciplinary action, including termination of employment.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.