

State of Connecticut
Regulation of
Public Utilities Regulatory Authority
Concerning
Amendments to the Protection of Whistle-Blowers

Section 1. Section 16-8a-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-1. Definitions

For the purposes of [Section] section 16-8a-1 [through] to 16-8a-6, inclusive, of the [regulations] Regulations of Connecticut State Agencies:

(a) “Company” means a public service company as defined in [Section] section 16-1 of the Connecticut General Statutes [of Connecticut];

(b) “Holding Company” means any holding company as defined in [Section] section 16-47 of the Connecticut General Statutes [of Connecticut];

(c) “Licensee” means any federal Nuclear Regulatory Commission licensee operating a nuclear power generating facility in the State of Connecticut;

(d) “Person” means one or more [individuals] individuals, firms, corporations, joint ventures, partnerships, associations, cooperative associations, business trusts, legal representatives, or any organized groups of persons; and shall include any trustees, receivers, assignees or personal representatives thereof;

(e) “Employer” means any company, holding company, or licensee, or any contractor or subcontractor directly or indirectly providing goods or services to a company, holding company, or licensee;

(f) “Employee” means any person engaged in service to an employer;

(g) [“Department” means the Department of Public Utility Control] “Authority” means the Public Utilities Regulatory Authority;

(h) “Facility” means a nuclear power generating facility in the State of Connecticut;

(i) “Complaint” means the transmission of facts and information to the [Department] Authority by an employee having knowledge of any matter involving substantial misfeasance, malfeasance or nonfeasance, or of the discharge, discipline or other penalizing of, or threat of retaliatory action against a person reporting the misfeasance, malfeasance or nonfeasance, in the management of a company or facility;

(j) “Complainant” means an employee who transmits a complaint to the [Department] Authority; [and]

(k) “Equivalent position” means a position that provides the same level of pay and benefits, and the same or similar potential for career advancement for the employee as the employee’s former position. Whenever possible and practical the equivalent position shall be in the same department, unit and location as the former position[.]; and

(l) “Back pay” means payment of lost wages, benefits and other forms of compensation from any date, as determined by the Authority based on the relevant facts in each case, or from when the adverse employment action occurred until reinstatement or other remedy is made.

Section 2. Section 16-8a-2 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-2. Investigations by the [department] Authority; limitations period for complaints; issuance of decisions by the [department] Authority

(a) Any employee having knowledge of any matter involving substantial misfeasance, malfeasance or nonfeasance, or of the discharge, discipline or other penalizing of, or threat of retaliatory action against a person reporting the misfeasance, malfeasance or nonfeasance, in the management of a company or facility may transmit all facts and information in the possession of the employee concerning such matter to the [Department] Authority in a form prescribed by the [Department] Authority.

(b) The [Department] Authority shall investigate any complaint in accordance with the provisions of [Section] section 16-8 of the Connecticut General Statutes [of Connecticut].

(c) Any complaint shall be made to the [Department] Authority within two years of the date when any matter occurred, or was discovered, or reasonably should have been discovered, concerning the subject of the complaint.

(d) The [Department] Authority shall notify the employer by certified mail not more than five (5) business days after receiving a written complaint complying with the requirements of [Section] section 16-8a-3(e) of the Regulations of Connecticut State Agencies. The employer may file a response and both the complainant and employer may submit within [twenty (20)] forty-five business days from the date of the notice rebuttal statements or supporting evidence in the form of affidavits from witnesses and relevant documents, and may meet informally with the [Department] Authority to respond verbally. The [Department] Authority may consider any such responses received after [twenty (20)] forty-five business days only upon a showing of good cause and at the discretion of the [Department] Authority.

(e) The [Department] Authority shall make a preliminary finding within [thirty (30)] ninety business days of receipt of a written complaint based on such evidence submitted without a public hearing.

(f) The [Department] Authority shall initiate a full investigatory proceeding not later than thirty [(30)] days after making a preliminary finding.

Section 3. Section 16-8a-3 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-3. Posting of regulation by employer; confidentiality; procedure for filing a complaint

(a) No later than thirty [(30)] days after the effective date of this [regulation] section, each employer shall post a copy of this [regulation] section in a conspicuous location in the workplace where any employee can easily read it. The posted regulation shall contain the following heading, in type not less than twenty [(20)] point boldface:

NOTICE TO EMPLOYEES

[Department of Public Utility Control] Public Utilities Regulatory Authority.

(b) The [Department] Authority will not treat as a complaint any information provided to the [Department] Authority on an anonymous basis; but the [Department] Authority shall not disclose the identity of any complainant without the consent of the complainant, unless the [Department] Authority determines that such disclosure is unavoidable during the course of the investigation of a

complaint. The contents of any complaint, and [Department] Authority records related to any complaint, shall be exempt from disclosure under the Connecticut Freedom of Information Act, as provided in Chapter 14 of the Connecticut General Statutes [of Connecticut].

(c) Any complaint may be transmitted to the [Department] Authority by facsimile machine or other form of electronic media, or in writing. The [Department] Authority may request written verification of any complaint not transmitted in writing. Each written complaint shall be typewritten or printed clearly. The envelope containing the complaint shall be clearly marked on the front side with the inscription “CONFIDENTIAL,” and the first page of the complaint shall be clearly marked with the inscription “CONFIDENTIAL” at the top. An original of any document submitted in support of a complaint shall be filed, except that a good quality photographic reproduction may be submitted if an original copy is not available. In addition, each complaint shall conform to any other filing requirement that may be established from time to time by the Executive Secretary of the [Department] Authority.

(d) Prior to filing a formal written complaint a prospective complainant [should] may contact the [Department] Authority by telephone by calling the [Department] Authority toll free at 1-800-382-4586, or by calling the [Department] Authority at 860-827-2622. Each written complaint filed pursuant to Connecticut General Statutes [Section] section 16-8a(c)(b) shall be addressed to the Executive Secretary of the [Department] Authority, 10 Franklin Square, New Britain, CT 06051. The [Department] Authority [will] shall discuss and review the complaint and advise the complainant as to the complaint filing process.

(e) A complaint may be delivered to the [Department] Authority by United States mail, private delivery service, or in person at the office of the executive secretary. Each written complaint filed pursuant to Connecticut General Statutes [Section] section 16-8a(c)(b) shall contain a clear and concise statement of the matter complained of, and of the relief requested, including the material facts relied on by the complainant. Any relevant and material exhibits, illustrations, written testimony, or any other evidence may be annexed to a complaint. Each complaint shall include: the name, address and phone number of the employer and any parties against whom the complaint is made; facts and incidents occurring no more than two years prior to the date of filing presented in a concise chronological manner; names of witnesses to alleged incidents; and the name and address of the agent for service of process.

(f) Each complainant shall provide the complainant’s mailing address or street address if the mailing address is a Post Office box and a telephone number at which the [Department] Authority may contact the complainant. The complainant shall sign each written complaint filed pursuant to Connecticut General Statutes [Section] section 16-8a(c)(b).

(g) Not more than [30] ninety business days after the receipt of a written complaint filed pursuant to Connecticut General Statutes [Section] section 16-8a(c)(b), in the form prescribed by the [department] Authority, the [department] Authority shall make a preliminary finding. If the [department] Authority finds that: [an employee:] (1) the employee reported substantial misfeasance, malfeasance or nonfeasance in the management of the company, holding company or licensee; (2) the employee was subsequently discharged, suspended, demoted or otherwise penalized by having his status of employment changed by his employer; and (3) the employee’s report was not knowingly false, the [department] Authority shall issue an order requiring the employer to immediately return the employee to the employee’s previous position of employment or an equivalent position. The Authority may also order back pay or award attorneys’ fees.

Section 4. Section 16-8a-4 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-4. No retaliation by employer

(a) No employer or person may take or threaten to take any retaliatory action against any employee for the disclosure of information pursuant to the provisions of [Section] sections 16-8a [of the General Statutes of Connecticut, as amended by Public Act No. 91-247,] and [Section] 31-51m of the Connecticut General Statutes [of Connecticut].

(b) Any employee found to have knowingly made a false report shall be subject to disciplinary action by his employer, up to and including dismissal.

Section 5. Section 16-8a-5 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-5. Costs or expenses of a company related to [department] Authority proceedings pursuant to section 16-8a of the Connecticut General Statutes [of Connecticut]

No costs or expenses associated with any action brought under the provisions of [Section] sections 16-8a [of the General Statutes of Connecticut,] or [Section] 31-51m of the Connecticut General Statutes [of Connecticut], may be included in the rates or charges of any company until such time as the [Department] Authority or the Connecticut Department of Labor, in a final decision, finds in favor of the company; or if such action is appealed, until such time as the court finds, in a final decision, in favor of the company.

Section 6. Section 16-8a-6 of the Regulations of Connecticut State Agencies is amended to read as follows:

Sec. 16-8a-6. Enforcement

The [Department] Authority may issue orders, including cease and desist orders, under [Section] section 16-9 of the Connecticut General Statutes [of Connecticut], and the [Department] Authority may impose civil penalties under [Section] section 16-41 of the Connecticut General Statutes [of Connecticut], and the Authority may order back pay and award attorney's fees as it deems appropriate to enforce the provisions of [Section] section 16-8a of the Connecticut General Statutes [of Connecticut, as amended by Public Act No. 91-247].

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Statement of Purpose

The purpose of the proposed amendments to the existing regulations is to comply with Section 3 of Public Act 13-119, which changed some of the action time periods and included additional remedies for protected employees. The proposed amendments will reflect the statutory changes and incorporate technical changes reflecting the Public Utilities Regulatory Authority's recent name change.