

Subgrantee retaliated against employee-whistleblower for reporting concerns to AmeriCorps

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An employee with the Metropolitan Development and Housing Agency (MDHA), Nashville, TN, alleged that she was subjected to disciplinary action by her employer for disclosing to an AmeriCorps Portfolio Manager that the Nashville Mayor's Office, a MDHA VISTA service site, lacked VISTA site supervision. The allegations were sufficient to constitute a claim of retaliation for engaging in protected whistleblower activity under 41 U.S.C. § 4712, requiring AmeriCorps OIG to investigate the matter.

AmeriCorps OIG's investigation found evidence, including the recorded statements of MDHA officials, that MDHA took personnel actions against the employee because of her protected disclosures. The OIG recommended that AmeriCorps require MDHA to make the employee whole, which might include:

- Providing backpay to the employee for the eight-day unpaid suspension from work;
- Reimbursing the employee for associated costs and expenses;
- Reinstating the employee to the position and responsibility she held prior to the reprisal;
- Revising the reprimand issued to the employee to eliminate any reference to a Performance Improvement Plan (PIP); and,
- Expunging the retaliatory adverse personnel actions from the employee's record.

MDHA took issue with the investigation's conclusions, contending that the employee's statements were not disclosures subject to protection under 41 U.S.C. § 4712. Further, MDHA argued that the disciplinary actions taken against the employee resulted from misrepresentations made by her, along with other performance issues.

Agency/Administrative Actions

AmeriCorps found that the employee reasonably believed the violations she reported were protected under 41 U.S.C. § 4712 and concluded that MDHA violated the statute when it suspended the employee without pay for eight days; changed her job title and areas of responsibility; and placed her on a PIP. AmeriCorps also found that MDHA failed to demonstrate by clear and convincing evidence that it would have taken the aforementioned personnel actions if not for the employee's protected disclosure.

AmeriCorps ordered MDHA to (1) provide backpay to the employee for her eight-day unpaid suspension; (2) reimburse the employee for her associated costs and expenses incurred in connection with bringing her complaint; (3) offer to reinstate the employee to the position and level of responsibility she held prior to the reprisal; and (4) expunge the employee's record of the retaliatory adverse personnel actions.

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