

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 822
Appropriations

(Delegate Hettleman, *et al.*)

University System of Maryland - Regular Employees - Grievance Procedures and
Disciplinary Actions

This bill requires a constituent institution of the University System of Maryland (USM) to remove, suspend, or demote a regular full-time or part-time employee who is not on probation only (1) for cause, (2) on written charges, and (3) in accordance with the subtitle. For an employee who is represented by an exclusive representative for collective bargaining purposes, what constitutes cause must be collectively bargained. For an employee who is not represented by an exclusive representative, USM may only remove, suspend, or demote the employee in accordance with the provisions of Title 11 of the State Personnel and Pensions Article that apply to State employees in the skilled and professional services. The bill also clarifies that USM may not remove, suspend, or demote a regular full-time or part-time employee for any reason prohibited by State antidiscrimination law as specified.

Fiscal Summary

State Effect: The bill has no material impact on State finances; however, existing staff time and resources may be diverted from current responsibilities, as explained below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: In effect, under the bill, exempt employees who are currently at-will employees under USM policy will only be allowed to be terminated for cause.

As defined by the bill, “grievance” does not include complaints on the general level of wages, wage patterns, fringe benefits, or other broad areas of financial management and staffing. Further, “grievance” does not include any cause of complaint by faculty employees, deans, provosts, or administrators.

Under the bill, the current three-step grievance procedure for USM classified employees applies to *all* USM regular full-time and part-time employees. The bill also makes conforming changes to current law, including related to sovereign immunity.

Current Law:

State Personnel Management System

Generally the State Personnel Management System does not apply to USM. USM has latitude in creating and terminating positions. However, according to Section 4 of Chapter 592 of 2007, the Chancellor of USM must identify all nonmerit and at-will positions in the personnel systems of USM and its constituent institutions and report on them on an annual basis.

Title 11 of the State Personnel and Pensions Article addresses disciplinary actions, layoffs, and employment terminations in the State Personnel Management System.

Antidiscrimination in State Government, Generally

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. A personnel action may be taken with regard to age, sex, or disability to the extent age, sex, or physical or mental qualification is required by law or is a bona fide occupational qualification. For the purposes of this prohibition, the State and local governments are considered employers.

University of Maryland Classified Employees and Grievance Procedures

The Board of Regents of USM must establish general policies and guidelines governing the appointment, compensation, advancement, tenure, and termination of all *classified* personnel. The policies established must include consideration of hiring a contractual employee to fill a vacant position in the same or similar classification in which the contractual employee is employed.

USM has a grievance procedure for classified employees contained in statute. Under current law, “grievance” means any cause of complaint arising between a classified employee or associate staff employee and his employer on a matter concerning discipline, alleged discrimination, promotion, assignment, or interpretation or application of USM rules or departmental procedures over which USM management has control. However, if the complaint pertains to the general level of wages, wage patterns, fringe benefits, or to other broad areas of financial management and staffing, it is not a grievable issue.

If, following informal discussion with the supervisor, a dispute remains unresolved, the grievance procedure is available for classified employees. There are three steps in the grievance procedure. Under the first step, the employee or employee’s designee must discuss the matter with the appropriate department head or chairman. If the aggrieved employee is not satisfied with the decision rendered at this step, the employee or the employee’s designated representative may appeal in writing to step two within five days. Under step two, the dispute is taken to the president of the constituent institution or the president’s designated representative, who must issue a written decision within a set time.

In the case of any still unresolved grievance between an employee and the constituent institution, under step three, the aggrieved employee, after exhausting all available procedures provided by the constituent institution, may submit the grievance to either arbitration or to the USM chancellor who may delegate this responsibility to the Office of Administrative Hearings (OAH). If the grievance is arbitrated, the parties must select an arbitrator by mutual agreement. If they are unable to reach a mutual agreement, an arbitrator must be supplied by the American Arbitration Association by their procedures. Any fees resulting from arbitration are assessed by the arbitrator equally between the two parties. The arbitration award is advisory to the chancellor or administrative law judge, as appropriate, and an additional appeal or hearing may not be considered. The chancellor or administrative law judge, as appropriate, must make the final decision that is binding on all parties.

Sovereign Immunity

The defense of sovereign immunity may not be available to USM unless otherwise specifically provided by the laws of Maryland, in any administrative, arbitration, or judicial proceeding held pursuant to the USM classified employee grievance procedures, or the personnel policies, rules, and regulation for classified employees of USM involving any type of employee grievance or hearing, including, but not limited to charges for removal, disciplinary suspensions, involuntary demotions, or reclassification.

Background: [Section VII](#) of the USM bylaws address personnel and human resources. USM no longer uses the term “classified employee”; it was generally replaced by the term “nonexempt.” Exempt and nonexempt employees are legally mandated distinctions

contained in the federal Fair Labor Standards Act (FLSA 29 U.S.C.). Employees whose jobs are governed by FLSA are either “exempt” or “nonexempt.” Nonexempt employees are entitled to overtime pay. Exempt employees are not. Most employees covered by FLSA are nonexempt. Separate policies, [in Section II of the USM bylaws](#), cover faculty. In most cases, there are also separate USM policies for exempt and nonexempt employees.

According to [USM policy Section VII – 9.31 1 – policy on establishment and assignment of staff job groups and employment status groups](#), USM nonfaculty staff employees may be appointed to a “regular status” or a “contingent status” position. A “regular status” position is any position that is established as a line item and appears in the personnel detail of an institution’s budget. Employees on regular status are eligible for all benefits offered by USM, based on percentage of time worked. A “contingent status” position is any position established through a written agreement between USM and a person, who will provide personal services to an institution for pay and for a specific period of time, *i.e.*, contractual. Employees on contingent status are not eligible for retirement plans offered through USM. There are two categories of contingent employees, one is eligible for USM benefits and the other is not, unless otherwise mandated by federal or State statute or rules and regulations.

[USM policy VII – 8.00 – policy on grievances for nonexempt and exempt staff employees](#), establishes the employee’s right to file a grievance or special grievance and applies to regular status exempt and nonexempt staff employees. The policy states that it fully incorporates the requirements of Maryland Annotated Code, Education Article, Section 13-201 *et seq.*

[USM policy VII-1.22 – policy on separation for regular exempt staff employees](#), states the employment for regular USM employees in exempt positions is on an at-will basis. This means that, subject to applicable laws and policies, the employment relationship may be terminated at any time by either the employee or the institution, with or without cause.

USM advises that as of fall 2018 there were approximately 5,700 nonexempt employees and 11,600 exempt employees.

State Fiscal Effect: The bill does not define “regular employee”; however, it is assumed for the purpose of this analysis that it does not include faculty, deans, provosts, or administrators. In addition, it is assumed that the definition does not include contingent staff.

USM advises that under the bill exempt employees will no longer be at-will employees. Therefore, USM will lose flexibility to terminate exempt employees when, for example, a department decides to restructure. Further, USM advises that additional staff will be required to handle additional grievance requests when an exempt employee is terminated.

USM advises that grievance filings are routinely filed when nonexempt employees, who may only be terminated for cause under current USM policy, are terminated.

The Department of Legislative Services (DLS) concurs that it will be more difficult to terminate exempt employees under the bill; however, USM still has considerable flexibility in regard to personnel. Under the bill, employees may still be moved to different departments under a restructuring, which may mitigate some costs, especially since USM has approximately 11,600 exempt positions. DLS further advises that while there may be more grievance requests, it is likely that they can be handled using existing budgeted resources for the USM office and the USM institutions, although staff time and resources may need to be diverted from current responsibilities.

The bill requires what constitutes “cause” for demotions, removals, and suspensions to be collectivity bargained by USM collective bargaining units. The State Higher Education Labor Relations Board advises that this may increase the number of “failure to bargain” unfair labor practice matters and potentially the filing of impasses matters. However, any impact is anticipated to be minimal.

OAH states that while it is difficult to estimate the effect of the bill on the number of step-three grievances delegated to OAH, OAH believes that any increase or decrease will be small therefore any fiscal impact will be minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 711 (Senator Beidle) - Finance.

Information Source(s): State Higher Education Labor Relations Board; University System of Maryland; Department of Budget and Management; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510