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## Protection of Whistleblower (No.22)

### EXECUTIVE ORDER N° 22 PROTECTION OF WHISTLEBLOWER

**WHEREAS**, corruption and other criminal conduct in public institutions and private organizations undermine democratic rule and good corporate governance, which in turn affect the interest of individuals and society, and lead to disaffection and instability;

**WHEREAS**, every person has a social responsibility to disclose and expose acts of corruption and other criminal conduct in an orderly manner and without prejudice to the security and general wellbeing of the person;

**WHEREAS**, it is generally recognized that the needed disclosure of corruption and other criminal conduct will be advanced by appropriate laws that provide guidance for responsible disclosure and investigation of criminal conduct and also legal protection for the person(s) making the disclosure; and

**WHEREAS**, whilst a Whistleblower Act will be submitted to the Liberian Legislature upon its return from recess, it is important to protect the Liberian society against the continued acts of impropriety and other practices that will continue to seriously impact negatively upon the nation, and that effect be given to that concern pending the enactment of the Whistleblower Act.

**NOW THEREFORE**, I, Ellen Johnson Sirleaf, President of the Republic of [Liberia ↗](#), by the power vested in me, do hereby, by this Executive Order, and for the purpose of the foregoing, set out below the Protection of Whistleblower in [Liberia ↗](#).

#### SECTION 1. DEFINITIONS AND INTERPRETATIONS

- a. "Detriment" means personal injury or prejudice to safety; and property damage or loss; and intimidation or harassment; and adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and threats of detriment; and financial loss from detriment.
- b. "Investigate" means to seek evidence.
- c. "Maladministration" means administrative action that is unlawful, arbitrary, unjust, oppressive, discriminatory, improper or taken for an improper purpose.
- d. "Attorney General" refers to the Minister of Justice, Republic of [Liberia ↗](#).
- e. "Whistleblower" is anyone who discloses information about action of impropriety against the public interest or public good that is occurring, has occurred, or will occur in any public or private institution.
- f. "Public interest disclosure" means specific disclosure by an individual involving illegality,

criminality, breach of law, miscarriage of justice, danger to public health and safety and damage to environment and includes attempt to cover up such malpractices in any governmental establishment, public or private enterprise. The disclosure must provide sufficient probable cause to investigate, and/or the investigation must provide substantive information that leads to arrest and prosecution of the accused, or the assignment of liability for damages against the responsible party.

g. "Blacklist" means to inform others that a public employee acted in a manner that is protected by the Whistleblower Protection Executive Order with the intention of hindering the public employee's ability to obtain employment.

h. "Retaliatory action" means to blacklist or the discharge, suspend, demote, discipline or any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment.

i. "Employee" is any person, excluding an independent contractor, who works for another person or for the government of  Liberia and who received, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer.

j. "Employer" means any person who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer;

k. "Person", refers to a legal or natural person.

l. "Official Authority" means the exercise of power by virtue of ones position in a public or private entity.

m. "Good Faith" means the reasonable belief of the informant that the information given is true and corrects to the best of his/her certain knowledge.

## SECTION 2. OBJECTIVE

The Objective of this Executive Order is to protect persons employed in both public and private institutions who disclose information about action against the public interest or good in any public or private institution, unless otherwise provided by law, to allow individuals the right to take legal action in respect of retaliation; and related matters.

## SECTION 3. APPLICATION

This Executive Order shall apply to any protected public interest disclosure which is made after the date on which the Executive Order comes into operation. This Executive Order shall bind all persons, including the State.

## SECTION 4. SCOPE OF DISCLOSURE

### (1) Protected Disclosures:

A protected disclosure is any disclosure of information which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following:

- a. That a criminal offense has been committed is being committed or is likely to be committed;
- b. That a person has failed is failing or is likely to fail to comply with any legal obligation to which he or she is subject;

- c. That a miscarriage of justice has occurred is occurring or is likely to occur;
- d. That the health or safety of an individual has been is being or is likely to be endangered;
- e. That corruption, dishonesty or serious maladministration in a governmental body or on the part of an official of that body has taken place, is taking place or is likely to take place and without limiting the generality of this subsection includes:
  - i) An abuse of power by a governmental body or an official thereof; or
  - ii) An improper or unauthorized use of the funds or other assets of the state or a governmental body;
- f. A negligent administration, resulting or likely to result into a substantial waste of resources, danger to the health or safety of an individual or the public, or an offence referred to in Section 4( a);
- g. The environment has been degraded, is being degraded or is likely to be degraded;
- h. Price-fixing or other anti-competitive conduct;
- i. Misleading or unfair practices toward consumers;
- j. For the purpose of this Executive Order, it is immaterial whether the impropriety occurred, occurs or will occur in the Republic of **Liberia** or elsewhere but has an effect on **Liberia**, and whether the law applying to it is that of the Republic of **Liberia** or of another country, where the subject is a Liberian, or where the activity was done in **Liberia or directly affects Liberia**, whether the subject, legal or natural, is a Liberian or of another nationality.
- k. Any provision in an agreement to which this section applies is void in so far as it purports to preclude the person making the disclosure from making a protected disclosure, and any laws, including the Labor Laws of **Liberia**, vesting authority in an employer to dismiss an employee for divulging confidential information, not intending to infringe on the Government's fight against corruption and other acts of impropriety, shall not affect the "public interest disclosure" of this Executive Order and an employee making such disclosure shall not be subject to dismissal or any other retaliatory action.
- l. This section applies to any agreement between an employee and his or her employer (whether in the employee's contract or not), including an agreement to refrain from instituting or continuing any proceedings under this Executive Order or any proceedings for breach of contract.

## **(2) Non-protected Disclosures:**

A disclosure of information is not a protected disclosure if the person making the disclosure is in violation of the law and the person does not do so in good faith, has no basis for the accusation or suspicion, and/or does so solely out of spite, revenge, or other unlawful motive.

## **SECTION 5. WHO MAY MAKE A PROTECTED DISCLOSURE**

A protected disclosure under Section 4 can be made,

- a. by an employee in respect of an employer,
- b. by an employee in respect of another employee, or
- c. by a person in respect of another person, or an institution.

## **SECTION 6. PERSONS TO WHOM DISCLOSURES MAY BE MADE**

Disclosure of information may be made to one or more of the following:

- a. law enforcement agencies,
- b. public and private institutions,
- c. superintendent of county
- d. civil organizations and,
- e. other persons that are capable of acting and investigating the disclosure.

### **SECTION 7. INTERFERENCE WITH DISCLOSURES**

- a. It is unlawful to directly or indirectly use or attempt to use official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose all matters within the scope of this Executive Order.
- b. A person who receives a disclosure, whether oral or written, shall be required to protect the identity of the person making the disclosure, until and unless an investigation is commenced, in keeping with Section 10 of this Executive Order.

### **SECTION 8. GENERAL REQUIREMENTS FOR RECEIVING AND PROCESSING DISCLOSURES**

- a. Every public and private entity shall establish procedure(s), regulations and/or rules consistent with this Executive Order for receiving and processing public interest disclosure(s) as well as protecting the person making the disclosure.

### **SECTION 9. ACTION WHEN DISCLOSURE IS RECEIVED**

When a disclosure is made pursuant to this Executive Order, the person receiving it shall:

- a. Make a record of the disclosure including the identity of the person making the disclosure, provided that the record shall be made in a format that protects the identity of the person making the disclosure and be available only to individuals clothed with the legal authority to view such disclosure.
- b. Give a written acknowledgement of the whistleblower of the receipt of the disclosure, provided that acknowledgment shall not expose the identity of the person making the disclosure.
- c. Keep the disclosure in manner that will clearly protect the confidentiality of the content thereof and of the person making the disclosure, pending investigation of the matter.
- d. Submit written copy of the disclosure to the Attorney General, his/her representative, including, County Attorneys, and clearly marked "Confidential."

### **SECTION 10. INVESTIGATIONS**

- a. Where a disclosure is made to a person specified under Section 6.0, the person shall conduct preliminary investigation of the alleged impropriety disclosed by the whistleblower and submit a report of that investigation to the Attorney General, except in cases where the person or entity to whom the disclosure is made does not have the authority to undertake the investigation, the person within five (5) days shall refer the disclosure as recorded to the appropriate authority and/or law enforcement entity.
- b. Investigation undertaken in respect of a protected disclosure shall be carried out as

expeditiously as possible, and shall in any event be completed within sixty (60) days of receipt of the disclosure or directives to undertake the investigation.

c. A person or entity who undertakes an investigation of a protected disclosure, shall conduct such investigation with utmost care and integrity, and in keeping with procedures which disclose, record and preserve material evidence.

d. A person or entity who undertakes an investigation in respect of a protected disclosure and in the course of that investigation conceals or suppresses evidence, commits an offence; which offense shall be equivalent to a first degree misdemeanor as provided under the penal code of **Liberia**.

e. A person to whom a disclosure is made, who fails to keep confidential the disclosure, commits an offense equivalent to a first degree misdemeanor as provided for under the penal code of **Liberia**.

f. Following investigation, the Attorney General will determine whether the impropriety requires civil, criminal, or administrative action, and will act accordingly.

## SECTION 11. RETALIATION AGAINST WHISTLEBLOWER PROHIBITED

a. A whistleblower meeting the criteria set forth in this Executive Order and acting in good faith shall not be subjected to retaliatory action by the employer, by a fellow employee or by another person because a disclosure has been made.

b. Retaliation is unlawful and is an indictable offence where the person making the disclosure has acted within the law, met the criteria of the Executive Order and acted in good faith. Therefore, an employer or person who retaliates against a person properly making a public interest disclosure commits an offense punishable by maximum penalty of 2 years, in the category as defined by the Penal Law of **Liberia**.

c. A whistleblower who is an employee, director, officer or member of an institution shall be considered a victim of retaliatory action, if because of making the disclosure, he/she is: dismissed, suspended, declared redundant, denied promotion, or subject to any discriminatory or other adverse measure by the employer or a fellow employee.

d. A whistleblower who discloses information for the public good in respect of an institution of which he or she is not an employee, officer, director or member, shall be considered a victim of retaliatory action if because of such disclosure he/she is subjected to discriminatory action, such as being blacklisted or denied opportunities that are otherwise applicable to members of the public, suffers termination of existing relationship or any other action that is traceable to the disclosure made by the whistleblower.

e. A whistleblower who has suffered retaliation as per Section 11 (c) or (d) as a result of a protected disclosure as per Section 4( 1) can seek redress according to the form of retaliation suffered; if criminal, from the Ministry of Justice; if employment-based, from the Ministry of Labour; if economic, from the civil courts through an action in damages.

f. An employee may appeal for a change of assignment on the ground that it is likely that he/she will suffer retaliation if he or she continues at the existing work location, and where the most effective way to remove or substantially remove the danger is to reassign or relocate the employee or a person who is accused of committing retaliation. Unless the employee requests reassignment or relocation as provided herein above, an entity may not direct re-assignment or relocation without the consent of the employee. In any case, the terms and conditions of employment of a person reassigned or relocated may not be less favorable to the term of the employee immediately before the transfer.

g. If retaliation is proven, the employee may not be reassigned, relocated or dismissed by the

employer within two years following proof of said retaliation, unless upon clear evidence of wrong doing and that such adverse personnel action is not the result of the disclosure.

## **SECTION 12. PROTECTION AGAINST LIABILITY**

- a. A person is not liable, civilly, criminally or under an administrative process, for making a public interest disclosure if he or she, acting in good faith and within the criteria set forth in this Executive Order believed and has reason to believe that the information disclosed was substantially true, even if it is later determined that the matter is incorrect.
- b. In a proceeding for defamation, the person has an affirmative defense that the information disclosed was done in good faith, met the criteria of the Executive Order, and was for the public good, and therefore privileged.

## **SECTION 13. CIVIL CLAIMS**

- a. The person who suffers a detriment in breach of Section 9C and shall be entitled to bring a claim for compensation for any loss or damage he/she has suffered as a result thereof or any other appropriate relief.
- b. In any civil action of damage for retaliation, once it has been demonstrated that there is a connection between an adverse action and a protected disclosure that has met the criteria of the Executive Order, the party denying the existence of retaliation shall have the burden of proof to demonstrate by preponderance of evidence that the alleged action would have occurred or did occur for legitimate, independent reasons whether or not the employee had engaged in protected disclosures or refused an illegal order.

## **SECTION 14. OTHER PROTECTIONS OF THE EXECUTIVE ORDER**

This Executive Order does not limit the protection given by another law to a person who makes disclosures of any type or affect another remedy available to the person.

## **SECTION 15. REWARDS ON RECOVERY OF MONEY**

- a. A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded with five (5) percent of the amount of money recovered.

## **SECTION 16. POSTING OF LAW AND INFORMATION**

Every employer shall keep posted in a conspicuous place on the employer's premises notice of the Whistleblower Executive Order and other relevant information.

**GIVEN UNDER MY HAND AND SEAL OF THE REPUBLIC OF LIBERIA THIS 18TH DAY OF DECEMBER A. D. 2009.**

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