

# UC SANTA BARBARA POLICY AND PROCEDURE

## Implementing Procedures for the University Whistleblower Protection Policy

Contact: Whistleblower Coordinator, Administrative Services

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## Implementing Procedures for the University Whistleblower Protection Policy

### I. Purpose and Scope

The University of California is committed to protecting employees and applicants for employment from 1) interference with making a protected disclosure or 2) retaliation for making a protected disclosure or refusing to obey an illegal order, as defined in this policy. The rights and protections of people when making protected disclosures are covered by the [University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints](#) (also known as the Whistleblower Protection Policy).

To report 1) allegations of interference or 2) retaliation for making a protected disclosure or refusing to obey an illegal order, as defined in Section III, all University of California Santa Barbara (UCSB) employees or applicants for employment are to follow UCSB's Implementing Procedures for the UC Whistleblower Protection Policy. These procedures also outline the processes the University will use for reviewing and investigating reports.

The Whistleblower Protection Policy is a companion to the [University of California Policy for Reporting and Investigating Allegations of Suspected Improper Governmental Activities](#) (also known as the Whistleblower Policy).

### II. Definitions

#### A. Improper Governmental Activity

Any activity undertaken by the University or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of University property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of University property and facilities, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, gross incompetence, or gross inefficiency.

#### B. Protected Disclosure

Any good faith communication that discloses or demonstrates an intention to disclose information that may evidence either (1) an improper

governmental activity or (2) any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

**C. Illegal Order**

Any directive to violate or assist in violating an applicable federal, state, or local law, rule, or regulation or any order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

**D. Interference**

Direct or indirect use of authority to obstruct an individual's right to make a protected disclosure.

**E. Official Authority or Influence**

Promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

**F. Retaliation Complaint**

Any [written complaint](#) by an employee or an applicant for employment which alleges retaliation for having made a protected disclosure or for having refused an illegal order or interference with an attempt to make a protected disclosure, together with a sworn statement, made under penalty of perjury, that the contents of the complaint are true or are believed by the complainant to be true.

**G. Sworn Statement**

Retaliation complaints filed pursuant to this procedure must be accompanied by a sworn statement that the facts set forth in the statement of complaint are true or are believed to be true under penalty of perjury. Employees who elect to file a grievance or complaint pursuant to the applicable personnel policy or collective bargaining agreement are not covered by the retaliation provisions of the California Whistleblower Protection Act unless the grievance or complaint is accompanied by a sworn statement.

#### **H. Locally Designated Official**

Campus Locally Designated Official  
[Administrative Services](#)  
4129 Cheadle Hall  
(805) 893-8291

The Locally Designated Official (the LDO) receives retaliation complaints and administers these procedures. The LDO may appoint one or more individuals or a standing body to serve as Retaliation Complaint Officer(s) to oversee the investigation of complaints.

#### **I. Retaliation Complaint Officer (RCO)**

The Retaliation Complaint Officer (RCO) is appointed by the LDO to oversee the investigation of complaints filed by employees and applicants for employment alleging interference with or retaliation for making a protected disclosure or for refusing to obey an illegal order. The RCO may delegate conduct of the investigation, including any factfinding, to another person. The term "RCO" as used in this procedure includes the person to whom the investigation may be delegated.

### **III. Options for Filing a Complaint.**

An employee or an applicant for employment alleging retaliation for having made a protected disclosure or for having refused an illegal order or interference with an attempt to make a protected disclosure may file a complaint as follows:

- A. Applicable Grievance or Complaint Procedure (Section V); or
- B. Campus Locally Designated Official (LDO) or Supervisor (Section VI); or
- C. Office of the President (Section VII). Complaints filed with Office of the President are limited to allegations involving the Chancellor or LDO.

### **IV. Filing Pursuant to an Applicable Grievance or Complaint Resolution Procedure**

A retaliation complaint may be filed pursuant to the applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure with the appropriate office.

- A. Academic Personnel** may file complaints alleging retaliation pursuant to the following procedures with the designated official:

- |    |  |  |   |
|----|--|--|---|
| 1. | Members of the Academic Senate             | <a href="#">Senate Bylaw 335</a>                               | Executive Director<br><a href="#">Academic Senate</a>     |
| 2. | Non-Senate Academic Personnel              | <a href="#">APM – 140</a>                                      | Director<br><a href="#">Academic Personnel</a>            |
| 3. | Exclusively Represented Academic Personnel | <a href="#">The applicable collective bargaining agreement</a> | Manager<br><a href="#">Employee &amp; Labor Relations</a> |

**B. Staff Personnel** may file complaints alleging retaliation pursuant to the following procedures with the designated official:

- |    |  |  |                                       |
|----|--|--|---------------------------------------|
| 1. | Senior Managers  | <a href="#">PPSM II-70</a>                                     | Manager<br>Employee & Labor Relations |
| 2. | Managers and Senior Professionals, Salary Grades VIII and IX   | PPSM 71  | Manager<br>Employee & Labor Relations |
| 3. | Managers and Senior Professionals (except Salary Grades VIII and IX) and Professionals and Support Staff | PPSM 70  | Manager<br>Employee & Labor Relations |
| 4. | Exclusively Represented Staff Personnel  | <a href="#">The applicable collective bargaining agreement</a> | Manager<br>Employee & Labor Relations |

**C. Filing Requirements for Grievance or Complaint**

Filing requirements for grievances or personnel policy complaints are located in the applicable personnel policy or collective bargaining agreement. The designated official shall advise the complainant of his or her rights to also file a whistleblower retaliation complaint and the timeframe for filing. The designated official may delegate responsibility for processing the grievance or complaint to a member of his or her staff.

If the grievance or personnel policy complaint raises issues of retaliation covered by the Whistleblower Protection Policy, the designated official will notify the LDO as soon as possible following receipt of the grievance or personnel policy complaint.

**D. Referral to the Retaliation Complaint Officer**

When an employee files a grievance or personnel policy complaint, which contains an eligible allegation of retaliation, the LDO shall appoint the RCO to investigate the allegation of retaliation or interference in the following instances:

1. If the complaint is filed under a complaint resolution procedure containing factfinding as specified in University policies as part of the final available step (e.g., Staff Policies 70, 71, and II-70 for some issues), the RCO will serve as the factfinder in that process.
2. If the complaint is filed under a grievance procedure in personnel policy, a collective bargaining agreement, or under procedures established by the Academic Senate, but is not eligible under that policy, collective bargaining agreement, or procedure for arbitration, hearing, or factfinding, the RCO will investigate the complaint after exhaustion of the available steps of the policy, collective bargaining agreement, or Academic Senate procedure. The investigation and findings will be limited to the interference or retaliation aspect of the complaint only.
3. When an employee has filed a complaint under an applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure (1) which alleges retaliation for an action protected by this policy, and (2) a final University decision within the meaning of the applicable complaint resolution policy or collective bargaining agreement has been rendered, and (3) the employee later files a timely whistleblower retaliation complaint, the designated official shall provide the RCO with a copy of the final University decision.
  - a. If there is a finding of retaliation, the RCO shall review it to ensure that the remedy is consistent with the policy, and if not, the RCO shall make a recommendation to the Chancellor or designee.
  - b. If the final University decision does not include a finding related to the retaliation allegation, the LDO shall request

that the hearing officer, committee, or arbitrator reopen the case and apply the standard of proof specified in Appendix I, and if necessary, find additional facts for application of the standard.

- c. If the foregoing does not occur, the RCO shall find additional facts, if necessary, for application of the standard of proof specified in Appendix I. The case shall then be forwarded to the Chancellor or designee for a decision.

**E. Review of Decision Based on Findings of an Arbitrator, University or Non-University Hearing Officer, or University Committee**

1. The designated official shall provide the RCO with a copy of the decision in those cases in which the complaint was heard before an arbitrator, University or non-University hearing officer, or University committee.
2. If the decision does not include findings regarding the alleged interference or retaliation, the RCO shall request that the arbitrator, University or non-University hearing officer, or University committee revise the report to include findings regarding the alleged interference or retaliation. If the arbitrator, University or non-University hearing officer, or University committee subsequently fails to include such findings in the report, the RCO will conduct a separate investigation on that issue only.
3. When there are findings that interference or retaliation has occurred, the RCO will provide that information to the Chancellor or designee. If the decision is final and binding, the Chancellor, or designee, may not alter the decision in any way, but may communicate the decision and findings to the appropriate administrator or manager for action.

**V. Filing with the Locally Designated Official (LDO) or Supervisor**

A [written retaliation complaint](#) may be filed directly with the LDO or supervisor. The supervisor shall immediately refer the complaint to the LDO for processing.

**A. Threshold Review of Complaints Filed with the LDO**

The LDO shall conduct a threshold review of the complaint to determine the following threshold requirements.

1. A retaliation complaint, accompanied by a sworn statement, must be filed within 12 months of the alleged act or threat of interference or retaliation. If the complaint alleges a pattern of retaliation, the complaint must be filed within 12 months of the most recent alleged act or threat of interference or retaliation.
2. The retaliation complaint must set forth in sufficient detail the necessary facts including dates and names of relevant persons. The complaint must contain a description of the adverse employment action(s) taken against the complainant and state whether the action was taken because:
  - a. s/he filed a report or made a protected disclosure alleging improper governmental activities pursuant to current University policy; or
  - b. s/he was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper governmental activities; or
  - c. s/he refused to obey an illegal order.
3. The LDO shall determine whether the complaint may also be filed under University grievance or complaint resolution procedures available to the complainant (as noted in Section V above) and whether or not such notification has been provided to the complainant.

If the complaint is eligible for review under an existing grievance or complaint resolution procedure and the complainant also elects to file under the applicable grievance or complaint resolution procedure, the LDO will hold the retaliation complaint in abeyance until all of the steps preceding hearing, arbitration, or factfinding have been completed. At that point in the review process, the retaliation complaint will be joined with the applicable procedure and referred to the Retaliation Complaint Officer (RCO) for handling as described in Sections VIII and IX below.

If a complaint received by the LDO is eligible for review under an existing grievance or complaint resolution procedure but the complainant elects not to file, the complaint will be referred to the RCO for investigation at the end of the grievance or complaint filing period.

4. The LDO may consult with the Campus Investigations Workgroup in determining whether the alleged disclosure is a protected disclosure, and in determining whether an alleged order was an illegal order if the complaint is otherwise eligible for review.
5. If the complaint does not provide the required information and/or sufficient detail, the LDO will notify the complainant that he or she has 15 calendar days to amend the complaint to correct the insufficiencies. If the complainant is unable to sufficiently amend the complaint or does not respond by the deadline, the complaint will not qualify for review.

#### **B. Appeal of Dismissal of Complaint**

An employee may appeal the LDO's decision to dismiss the complaint only on the basis that the complaint was ineligible for processing because it was untimely filed and/or the complaint did not qualify for review under the scope of this policy. The complainants appeal may be filed as follows:

1. If the complainant is a current employee in a staff or management position or applicant for a staff or management position, he or she may file with the Senior Vice President – Business and Finance, Office of the President.
2. If the complainant is a current appointee in or applicant for an academic position, he or she may file with the Provost and Senior Vice President – Academic Affairs, Office of the President.

#### **VI. Filing with the Office of the President**

When it is alleged that the Chancellor or the LDO interfered or took the retaliatory action, the complainant may file with the LDO or directly with the appropriate designated official at the Office of the President in accordance with the Whistleblower Protection Policy. If the complaint is filed with the LDO, the complaint will be forwarded to the appropriate official, as indicated below.

- A. If the complainant is a current employee in a staff or management position or applicant for a staff or management position, the complaint may be filed with the Senior Vice President – Business and Finance, Office of the President.
- B. If the complainant is a current appointee in or applicant for an academic position, the complaint may be filed with the Provost and Senior Vice President – Academic Affairs, Office of the President.

## **VII. Complaints Investigated by the Retaliation Complaint Officer (RCO)**

The LDO shall refer a complaint to the RCO for investigation under the following conditions:

- A. The RCO will conduct an investigation when no University grievance or complaint resolution procedure is available to the complainant, in the following instances:
  - 1. The complaint is not within the scope of or filed within the time limits of the complaint resolution procedure available to the complainant under applicable University personnel policies, collective bargaining agreements, or procedures established by the Academic Senate; or
  - 2. The employee does not have a complaint resolution procedure available for some other reason (for example, the alleged retaliatory act cannot be grieved under the respective collective bargaining agreement); or
  - 3. The complainant is an applicant for employment.
- B. When an employee files a grievance or personnel policy complaint, which contains an eligible allegation of retaliation, the RCO shall review or investigate the allegation of retaliation or interference in accordance with Section V.D. above.

## **VIII. Investigation, Reporting and Decision**

- A. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chancellor or designee within 120 days from the date on which the complaint was assigned to the RCO. The RCO may request an extension from the LDO. The decision to approve an extension is at the discretion of the LDO.
- B. Before findings are reached, the RCO (or factfinder, if the RCO has delegated conducting the investigation to a factfinder) shall provide a copy of the complaint and any documents on which the RCO (or factfinder) intends to rely in reaching findings to the person accused of interference or retaliation. That person shall have 15 calendar days to respond to the complaint and file a written statement which the RCO (or factfinder) will make part of the record submitted to the Chancellor or designee. The respondent may request an extension from the RCO. The decision to approve an extension is at the discretion of the RCO.

- C. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chancellor or designee who shall render a decision in the matter consistent with the standard of proof specified in Appendix I. The Chancellor or designee may remand the findings to the RCO if further investigation is needed before making a decision. The Chancellor or designee will communicate the decision in writing to the complainant and to the person or persons accused of violating the University's Whistleblower Protection Policy.
- D. The Chancellor or designee's written decision shall include relief for the complainant, if appropriate. The Chancellor or designee's decision will not describe any corrective action that may need to be taken.
- E. The Chancellor or designee may communicate the decision and findings to the appropriate administrator or members of the appropriate Senate Committee, for Academic Senate cases, for the purpose of initiating any appropriate action against a University employee who is found to have retaliated against or interfered with an employee's or applicant's right to make a protected disclosure or to refuse an illegal order. Such action shall be in accordance with the applicable personnel policy or collective bargaining agreement. For a member of the Academic Senate, disciplinary proceedings are in accordance with academic personnel policies and procedures established by the Academic Senate.

## **APPENDIX**

### **Evidentiary Standards of Proof for Administrative Proceedings**

#### **I. Evidentiary Standards of Proof**

- A. Pursuant to California Government Code Section 8547.10(e) an arbitrator, University or non-University hearing officer, or University committee that hears a retaliation complaint shall be instructed that once the complainant demonstrates by a preponderance of the evidence that he or she engaged in activity protected by the University's Whistleblower Policy and that such activity was a contributing factor in the alleged retaliation, the burden of proof shall be on the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged retaliatory action would have occurred independent of the employee's engagement in a protected disclosure or refusal of an illegal order. If the complaint is investigated by a factfinder, the factfinder shall find facts concerning the burden of proof so that the Chancellor is able to make this determination. If the University fails to meet this burden, the employee or applicant for employment shall

have a complete affirmative defense to the adverse action that was the subject of the complaint.

- B. However, pursuant to California Government Code Section 8547.10(d), a manager or supervisor is not prevented from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any employee or applicant for employment if the manager or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

## **II. Special Evidentiary Standards for Health Care Workers**

Pursuant to Section 1278.5 of the California Health and Safety Code, discriminatory treatment (as defined in the Section) of a health care worker for having presented a grievance or complaint, or having initiated, participated, or cooperated in any investigation or proceeding against the health facility on issues relating to care, services or condition of the health facility, if the health facility had knowledge of such action, shall raise a rebuttable presumption that discriminatory action was taken in retaliation, if the discriminatory action occurs within 120 days of the filing of the grievance or complaint.