



Whistleblower Protection Policy Implementation Procedures

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| Responsible Official: | Associate Chancellor |
| Responsible Office: | Office of Campus Climate and Compliance |
| Issuance Date: | June 27, 2018 |
| Effective Date: | June 27, 2018 |
| Summary: | Campus procedures to implement the University Whistleblower Protection Policy and assure an appropriate response to any known or suspected allegations of retaliation for making a protected disclosure or refusing to obey an illegal order. |
| Scope: | These procedures apply to all University employees and applicants for University employment. |

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| Contact: | Luanna Putney, Associate Chancellor & Locally Designated Official |
| Email: | lputney@ucmerced.edu |
| Phone: | (209) 201-3491 |

I. REFERENCES AND RESOURCES

California State Law:

- [California Whistleblower Protection Act](#) (Government Code sections 8547-8547.12)

University of California Policies:

- [Whistleblower Policy \(Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities\)](#)
- [Whistleblower Protection Policy](#)

II. POLICY/PROCEDURE SUMMARY & SCOPE

Campus procedures for implementing the University's Whistleblower Policy and Whistleblower Protection Policy in compliance with the California Whistleblower Protection Act (Government Code sections 8547-8547.12).

These procedures apply to all University employees, as well as applicants for University employment, students, vendors and contractors.

III. DEFINITIONS

Terms used in this policy are defined in the University of California [Whistleblower Policy](#) and [Whistleblower Protection Policy](#).

Adverse Personnel Action: A management action that affects the Complainant's existing terms and conditions of employment in a material and negative way, including, but not limited to, failure to hire, corrective action (including written warning, corrective salary decrease, demotion, suspension), and termination.

Clear and Convincing Evidence: An evidentiary standard that is higher than the Preponderance of the Evidence standard. It is satisfied when the evidence demonstrates that it is highly probable that the allegations in question are true.

Complainant: An employee or applicant for employment who submits a complaint under this policy. For purposes of this policy, "employee" includes a current University employee or a former University employee who was employed at the time the relevant events occurred and includes academic appointees.

Illegal Order: A directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an 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.

Improper Governmental Activity: Any activity undertaken by the University or by a University employee that is undertaken in the performance of the employee's duties, whether or not that activity 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 government property (including University property), fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property (including University property and facilities), or willful omission to perform duty, or (2) is economically wasteful or involves gross misconduct, gross incompetence, or gross inefficiency.

Interference: Direct or indirect use or attempted Use of Official Authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command an individual for the purpose of obstructing an individual's right to make a Protected Disclosure.

Preponderance of the Evidence: An evidentiary standard that is satisfied when the evidence demonstrates that the allegations in question are more likely true than not true.

Protected Disclosure: A good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence either (1) an Improper Governmental Activity or (2) a 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. A Protected Disclosure may be made internally to the Complainant's supervisor, to the LDO, or to any University official identified in the University's Whistleblower Policy for that purpose. A Protected Disclosure also includes a good faith communication to the California State Auditor's Office or the Office of the Attorney

General alleging an Improper Governmental Activity and any evidence delivered to the either of those offices in support of such allegation.

Retaliation Complaint: A written complaint filed under this policy that includes a Sworn Statement and alleges that a University employee retaliated by taking an Adverse Personnel Action against the Complainant because the Complainant (1) made a Protected Disclosure or (2) refused to obey an Illegal Order.

Sworn Statement: A statement signed by the Complainant and made under penalty of perjury that states that the contents of the complaint are true or are believed by the Complainant to be true. A complaint submitted without a Sworn Statement will not be processed under this policy.

Use of 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, termination, suspension, or other disciplinary action.

IV. SUMMARY OF POLICIES

- A. Employees and other persons are encouraged to disclose improper governmental activities. An improper governmental activity is any activity undertaken by the University or by a University employee that is undertaken in the performance of the employee's duties, whether or not that activity 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 government property (including University property), fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property (including 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. University employee may not use his or her authority to interfere with the right of an employee or applicant for employment to make a protected disclosure of improper governmental activity under the University's Whistleblower Policy.
- C. The University will investigate alleged improper governmental activities under the UC Whistleblower Policy (Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities) and will investigate retaliation under the UC Whistleblower Protection Policy.
- D. The Whistleblower Protection Policy protects employees or applicants for employment who report or attempt to report improper governmental activities or who refuse to obey an illegal order from retaliation for doing so. If the reported conduct would, if substantiated, constitute an improper governmental activity, the employee or applicant is protected by the Whistleblower Protection Policy, even if the report is ultimately not substantiated.

- E. Nothing contained in these local implementing procedures should be read or interpreted to contradict the underlying University of California Whistleblower Protection Policy.

V. PROCEDURES

A. Reporting whistleblower retaliation complaints

1. To be covered by the retaliation provisions of the California Whistleblower Protection Act, **the retaliation complaint must be accompanied by a sworn statement made under penalty of perjury** attesting that its contents are true or are believed to be true. [Appendix 1](#) (UCM Whistleblower Retaliation Complaint Form) may be used for this purpose.
2. Whistleblower retaliation complaints may be filed by completing the [Whistleblower Retaliation Complaint form](#) and submitting it to the LDO using any of the methods outlined below:
 - a. By Mail:

University of California, Merced
Associate Chancellor, Luanna Putney
5200 North Lake Road
Merced, CA 95343
 - b. By email: lputney@ucmerced.edu
 - c. In person: Luanna Putney, 767 E. Yosemite Ave., Ste. C #116, Merced, CA 95340
 - d. With a supervisor by completing the [Whistleblower Retaliation Complaint form](#) and submitting it to the supervisor or another University administrator.
 - e. Through any other formal grievance or complaint resolution process by submitting the [Whistleblower Retaliation Complaint form](#) to the LDO.
3. Regardless of how the whistleblower retaliation complaint is filed, the LDO will coordinate the process for reviewing the complaint and the process will follow the procedures set forth in the UC Whistleblower Protection Policy.
4. Reports under the Whistleblower Protection Policy must be filed within 12 months of the alleged retaliation or interference.

B. Processing allegations of whistleblower retaliation are set forth in the Whistleblower Protection Policy and include:

1. LDO will ensure complainants include a sworn statement with their retaliation complaint.
2. LDO will determine whether the complaint contains all required allegations and documentation and notify the complainant in writing of this initial determination.

3. Complaints will be processed and investigated timely in accordance with policy and complainant and the accused employee will be notified in writing as appropriate.
4. The complainant, accused employee and witnesses have a duty to cooperate with the investigator and not interfere with the investigation.
5. LDO will present the investigation report to the Chancellor, who will render a decision about retaliation or interference by applying the evidentiary standards set forth in the Whistleblower Protection Policy.
6. Processing of allegations of whistleblower retaliation complaints against the Chancellor, Provost and Executive Vice Chancellor, LDO, Audit Director, or Chief Campus Counsel will be referred to the system-wide LDO at the Office of the President.

VI. ROLES & RESPONSIBILITIES

A. Chancellor

1. The Chancellor is responsible for establishing local implementing procedures in accordance with this policy. For retaliation claims, the Chancellor renders a decision after reviewing the investigation report. When there is a finding of retaliation, the Chancellor determines the appropriate action(s) to be taken against the employee who violated this policy. The Chancellor is responsible for appointing the LDO who will carry out this policy.

B. Associate Chancellor/Campus Compliance Officer

1. The Associate Chancellor/Campus Compliance Officer serves as the Locally Designated Official (LDO) and Retaliation Complaint Officer (RCO). LDO carries out policy, appoints all members to the investigations workgroup (Case Management Team) through delegation by the Chancellor and chairs the Case Management Team.

C. Managers, administrators, and employees in supervisory roles

1. Managers, administrators, and employees in supervisory roles who receive written reports of alleged improper governmental activities or whistleblower retaliation or interference must forward the report to the LDO as soon as practicably possible.
2. Oral reports should be documented and reported to the LDO.

VII. POLICY OR PROCEDURE REVISION HISTORY

| Date | Action / Summary of Changes |
|-------------------|---|
| June 27, 2018 | Issued Interim Whistleblower Protection Policy Implementation Procedures |
| February 25, 2019 | Issued Finalized Whistleblower Protection Policy Implementation Procedures (No Changes) |

VIII. APPENDICES

APPENDIX 1 - UNIVERSITY OF CALIFORNIA, MERCED WHISTLEBLOWER RETALIATION COMPLAINT FORM

University of California, Merced UCM Whistleblower Retaliation Complaint Form

This form is intended for use by an individual who believes he/she has been retaliated against in his/her role as a UCM employee or applicant for UCM employment, in violation of the University of California's Whistleblower Protection Policy.

The UC Whistleblower Protection Policy is available at <http://policy.ucop.edu/doc/1100563/WPP>

Instructions: If you are alleging that you were subjected to retaliation for making a Protected Disclosure, fill out Part A and the Sworn Statement. If you are alleging that you were subjected to retaliation for refusing to obey an Illegal Order, fill out Part B and the Sworn Statement. Please refer to the Whistleblower Protection Policy's definitions of the following terms when completing this Complaint: Protected Disclosure, Adverse Personnel Action, and Illegal Order.

The completed form and any supporting documentation should be marked "Confidential" and submitted via mail, personal delivery, fax, or email attachment to:

Luanna Putney
Locally Designated Official (LDO) at UC Merced
Associate Chancellor, Senior Advisor to the Chancellor
767 E. Yosemite Ave. Suite C #116, Merced, CA 95340
Cell: (209) 201-3491
lputney@ucmerced.edu

or

Alex Bustamante
Interim Systemwide Locally Designated Official
Senior Vice President and Chief Compliance and Audit Officer
111 Franklin Street, 5th Floor
Oakland, CA 94607
Phone: (510) 987-9090
Fax: (510) 287-3334
Alexander.Bustamante@ucop.edu

Alternatively, you may submit the completed Complaint to your supervisor, who will promptly deliver it to the LDO at UC Merced.

Complainant (person alleging retaliation against himself/herself)

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| Name: | Job Title: |
| Department: | Location: |
| Mailing Address: | Telephone: |

Complainant's Designated Representative (optional)

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| Name: | Job Title: |
| Department: | Location: |
| Mailing Address: | Telephone: |

Respondent(s) (person or persons alleged to have retaliated against Complainant)

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| Name(s): | Dept(s): | Relationship(s) to Complainant: |
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* If you are not a current or former UC employee, you may file a complaint under the Whistleblower Protection Policy if you were an applicant for UC employment and believe you were not hired because you made a Protected Disclosure or refused to obey an Illegal Order. If those are your circumstances, please identify the UC position(s) you applied for and approximately when you submitted your application(s):

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| Position: | Application Date: |
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Part A: Complaints alleging retaliation for having made a Protected Disclosure

1. Protected Disclosure(s) – please provide the following information for each Protected Disclosure you made.

- a. Describe what you disclosed:
- b. Identify the person(s) to whom you made each Protected Disclosure described above:
- c. Specify the date or approximate date of each Protected Disclosure described above:
- d. Specify how each Protected Disclosure was communicated (e.g., in person, by phone, via email, etc.)

2. Adverse Personnel Action(s) – please provide the following information for each Adverse Personnel Action you believe was taken in retaliation for your Protected Disclosure(s).

- a. Describe the Adverse Personnel Actions taken against you (e.g., failure to hire, correction action (including written warning, corrective salary decrease, demotion, suspension), or termination) as a result of your Protected Disclosure(s):
- b. Identify the University employee(s) responsible for taking each Adverse Personnel Action you have described above:
- c. Specify the date or approximate date on which each Adverse Personnel Action described above occurred:

3. Causal Connection between your Protected Disclosure(s) and the Adverse Personnel Action(s)

- a. Explain why you believe that the Protected Disclosure(s) described above were a contributing factor in the Adverse Personnel Actions described above:

Part B: Complaints alleging retaliation for having failed to obey an Illegal Order

1. Illegal Order(s) – please provide the following information for each Illegal Order you refused to obey.

- a. Describe the Illegal Order:
- b. Identify the University employee(s) who gave each Illegal Order you described above:
- c. Specify the date or approximate date on which each Illegal Order described above was given:
- d. Describe what you did in response to each Illegal Order described above that constituted a refusal to obey that Illegal Order:
- e. Specify the date or approximate date on which your refusal to obey occurred for each Illegal Order described above.

2. Adverse Personnel Action(s) – please provide the following information for each Adverse Personnel Action you believe was taken in retaliation for your Protected Disclosure(s).

- a. Describe the Adverse Personnel Actions taken against you (e.g., failure to hire, correction action (including written warning, corrective salary decrease, demotion, suspension), or termination) as a result of your refusal to obey an Illegal Order described above:
- b. Identify the University employee(s) responsible for taking each Adverse Personnel Action you have described above:
- c. Specify the date or approximate date on which each Adverse Personnel Action described above occurred:

3. Causal Connection between your refusal(s) to obey an Illegal Order and the Adverse Personnel Action(s)

- a. Explain why you believe that your refusal(s) to obey the Illegal Order(s) described above were a contributing factor in the Adverse Personnel Actions described above:

Sworn Statement

I swear under penalty of perjury under the laws of the State of California that the facts set forth in the statement of the complaint, and in any supporting information submitted with the complaint, are true and correct to the best of my knowledge and belief. I agree to cooperate in any investigation of this matter and declare that I have read, understand, and will comply with the confidentiality requirements stated above.

Complainant's Signature

Date

County Where Signed

U.S. State Where Signed