

CAL POLY

PROCEDURE FOR ALLEGATIONS OF RETALIATION FOR DISCLOSURE OF IMPROPER GOVERNMENTAL ACTIVITIES IN ACCORDANCE WITH EXECUTIVE ORDER 822

Purpose

This University procedure is established to fulfill the requirements of the Office of the Chancellor's Executive Order 822 and Sections 8547.3, 8547.8 and 8547.12 of the Government Code, which are part of the California Whistleblower Protection Act. Section 8547.3 (a) of the Whistleblower Protection Act states that, "An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee 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 rights conferred pursuant to this article". It further states that any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party. Section 8547.8 (b) states that, "any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year".

Executive Order 822 prescribes guidelines for responding to complaints filed with the Office of the Chancellor or the campus by employees or applicants for employment who allege they have been retaliated against for having disclosed improper governmental activities. The purpose of this University procedure is to provide a timely and effective procedure for the handling and resolution of complaints of retaliation for disclosure of improper governmental activities filed on campus by employees or applicants for employment.

The Associate Vice President for Administration is the campus designee to receive and forward written complaints made under Executive Order 822 and this procedure to the Vice Chancellor for Human Resources.

Definitions

- A. "*Retaliation*" refers to the direct or indirect use or attempted use by an employee of his or her official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any employee or applicant for employment for the purpose of interfering with that person's rights under the California Whistleblower Protection Act, including, but not limited to, any "protected disclosure" as that term is defined in the Act and in Executive Order 822.
- B. "*Complainant*" means an employee or applicant for employment who files a complaint of retaliation under Executive Order 822 and in accordance with this procedure.

- C. “Employee” refers to a person employed by Cal Poly.
- D. “*Applicant for employment*” refers to an individual who has completed an application for an advertised position at Cal Poly.
- E. “*Use of his or her official authority or influence*” includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, transfer, assignment, performance evaluation, suspension, or other disciplinary action.
- F. “*Improper governmental activity*” means any activity by a University department or 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 governmental property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.
- G. “*Protected disclosure*” means any good faith communication that (1) discloses or demonstrates an intent to disclose information that may evidence (a) an improper government activity, or (b) 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 and (2) was filed pursuant to Executive Order 929 or with the State Auditor.
- H. “Working days” means Monday through Friday, excluding all officially recognized university holidays or closure of the campus.

General Provisions

- A. All time limits refer to “working days”.
- B. Time limits set forth in this executive order may be extended by mutual agreement in writing between the complainant and the Vice Chancellor of Human Resources. If the complainant, the Vice Chancellor, or material witnesses to the investigation is on approved leave of three (3) days or more, the time limits shall be extended by the length of the leave.
- C. A complainant may withdraw a complaint at any time. Once the complaint is withdrawn, the complainant shall not file a subsequent complaint on the same alleged act of retaliation.
- D. Failure of the complainant to comply with the time limitations of this procedure shall render the complaint void and bar subsequent re-filing of the complaint.

- E. Complaints filed and responses and investigations under Executive Order 822 shall be shared only with those individuals who have a legitimate business reason to know.

Complaint Process

- A. An employee or applicant for employment who believes he or she has been retaliated against for disclosure of improper governmental activities by any University department or employee may file a written complaint **within twelve (12) months of the alleged act of retaliation.**
- B. The complaint should be made on the *Complaint of Retaliation for Reporting Improper Government Activities* form, which is available on the campus web site or in the office of the Associate Vice President for Administration, or any format that conforms to the requirements of this form.
- C. The complaint shall be addressed or directed to the Associate Vice President for Administration; Cal Poly; Administration Building, Room 116; San Luis Obispo, CA 93407-0100, or filed directly with the Vice Chancellor of Human Resources, 401 Golden Shore, Long Beach, California 90802.
- D. If any supervisor or manager receives a complaint of retaliation, they should forward it immediately to the Associate Vice President for Administration.
- E. Any complaint filed with the Associate Vice President for Administration will be promptly referred to the Vice Chancellor of Human Resources at the Chancellor's Office for investigation. A copy of the complaint will also be provided to the campus President and the Vice President for Administration & Finance.
- F. All written communications between the complainant and the CSU must be personally delivered or sent by certified mail through the U.S. mail, return receipt requested. If personally served, the date on which the communication was filed, sent, transmitted and/or received for purposes of Executive Order 822 is the date of personal delivery. If sent by certified mail, the date on which the communication was filed, sent or transmitted is the postmark date on the written communication. The date on which the communication was received is deemed to be the postmark date plus four (4) working days.
- G. The written complaint must include all of the following information, or may be rejected as inadequate:
 - 1. The name and mailing address of the complainant, the complainant's working title, or position applied for if the complainant was an applicant for employment.
 - 2. A detailed description of the specific actions that constituted the alleged improper governmental activity, including the name(s) and title(s) of the

Cal Poly employee(s) or official(s).

3. The name of the university official to whom the improper governmental activity was reported, and the date and manner of the disclosure. If the reporting was done in writing, a copy of the report should be enclosed with the complaint.
4. A description of the specific actions taken that constituted the alleged retaliation, including the date or dates of such actions, and the names and titles of the university officials who allegedly took the retaliatory actions, and an explanation of the reasons why the complainant believes those actions were in retaliation for the reporting of improper governmental activity.
5. A signed and dated sworn statement that the contents of the written complaint are true, or are believed by the complainant to be true, under penalty of perjury.

Complaint Review

- A. The complaint will be acknowledged in writing by the Vice Chancellor of Human Resources or his/her designee within ten (10) days of receipt by the Vice Chancellor. The acknowledgement may include a request for additional information.
- B. The Vice Chancellor of Human Resources shall commission an investigation. The designated investigator(s) may, at the Vice Chancellor's discretion, be conducted by a designee from the Chancellor's Office or from the campus, or by an external investigator. The external investigator shall be retained by the campus president in consultation with the Office of General Counsel and the Vice Chancellor of Human Resources.
- C. If the Vice Chancellor requests the campus to commission an investigation, copies of all relevant documents will be provided to the Vice President for Administration and Finance via the President. The Vice President, in consultation with the Office of General Counsel and the Vice Chancellor of Human Resources, will oversee selection of the investigator. The Vice President will also monitor progress on the investigation. Upon completion of the investigation, the Vice President will review the report with the investigator and forward it to the Vice Chancellor of Human Resources, who will handle the remaining steps in the process.
- D. The investigator(s) shall conduct an investigation. The investigation shall include an interview with the complainant, a review of any supporting documentation supplied by the complainant, any response to the complainant supplied by the campus or employees alleged to have taken retaliatory action, the interviewing of witnesses, and any other action deemed appropriate by the investigator(s) in order to complete the investigation. The investigator(s), upon review of the complaint and supporting documentation, may also determine and advise the Vice

Chancellor of Human Resources that the complaint failed to present specific and credible evidence to form an allegation of retaliation for disclosure of improper governmental activities.

- E. The complainant is required to fully cooperate with the investigation, including but not limited to meeting with the investigator(s) for an initial interview, which shall be scheduled no later than thirty (30) days from the receipt of the complaint unless it is delayed in conformity with section IV.B of Executive Order 822. In this initial interview the complainant shall be given the opportunity to present a list of witnesses and documentary evidence in support of the complaint. In the event that the complainant fails to fully cooperate with the investigator(s), including but not limited to failing or refusing to participate in a timely scheduled interview, the investigation will be completed based upon the information available, and the decision issued by the Vice Chancellor for Human Resources will be made on the merits based upon available evidence, notwithstanding the complainant's failure or refusal to participate.
- F. Employees are required to cooperate with the investigation and be completely honest in answering questions and providing information to the investigator(s). Employees shall in no way interfere with the investigation process. If confidential information is shared with them by the investigator(s) in the course of the investigation, they shall maintain that confidentiality.
- G. The complaint, any supporting documentation, any response by the campus, the conduct of the investigation, report of the investigator(s), the summary, the complainant's response, and the letter of determination shall be treated as confidential matters.
- H. The investigator(s) shall forward a written report to the Vice Chancellor of Human Resources and Operations within sixty (60) days of the filing of the complaint. The report shall include a summary of the investigation and a conclusion whether or not retaliation for a protected disclosure under Executive Order 929 occurred.
- I. The Vice Chancellor of Human Resources shall transmit the summary and conclusion of the investigation to the complainant within ten (10) days of the Vice Chancellor's receipt of them from the investigator(s). The complainant may file a written response to the summary and conclusion with the Vice Chancellor within fourteen (14) days of receipt of the summary and conclusion.
- J. The Vice Chancellor of Human Resources shall respond with a letter of determination within fourteen (14) days of receipt of the complainant's written response or the expiration of the time limits for the complainant to file a response as outlined in paragraph I, whichever date is later. This letter of determination will constitute the final CSU decision regarding the complaint.

- K. The Vice Chancellor of Human Resources will provide copies of the investigator's report, the complainant's response and the final letter of determination to the campus President.