

## **University Executive Directive 02-26** \*(changed to UED #14-39)

### **Complaint Procedure for Allegations of Retaliation for Disclosure of Improper Governmental Activities**

Effective Date: June 1, 2002 Supersedes: UED 97-21

Revised Date: September 23, 2014

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#### **I. Program**

This University Executive Directive (UED) is established to fulfill the requirements of Executive Order No. 1058 (Supersedes Executive Order No. 664) and Section 8547.12 of the Government Code concerning the Reporting of Improper Governmental Activities, a part of the California Whistleblower Protection Act. Executive Order 1058 prescribes guidelines for responding to complaints filed with the Office of the Chancellor by employees or applicants for employment who allege they have been retaliated against for having disclosed improper governmental activities. The purpose of this UED is to provide a timely and effective procedure for the resolution of complaints of retaliation for disclosure of improper governmental activities filed on campus by employees or applicants for employment.

If the provisions of this UED are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3560, et seq., the memorandum of understanding shall be controlling.

An employee or applicant for employment, who has made a protected disclosure regarding improper governmental activities under the California Whistleblower Protection Act and believes that he/she has been retaliated against for such disclosure, may file a written complaint pursuant to this UED with their supervisor, manager or the AVP for Human Resources, within 12 months of the alleged act of retaliation. The AVP for Human Resources is the President's designee to receive and act on written complaints made under this UED and will be responsible for evaluating compliance with this UED. The CSU Vice Chancellor of Human Resources shall be notified of all complaints filed on campus.

#### **II. Definitions**

A. As used herein, "employee" refers to any person employed by San Francisco State University (University).

B. As used herein, "applicant for employment" refers to an individual who has completed and submitted the campus application form for a specific, available position.

C. Complainant - The term "complainant" means an employee or applicant for employment who files a complaint of retaliation under this UED.

D. Respond and File - The terms "respond" and "file" as used herein refer to personal delivery or deposit in the U.S. Mail, certified with return receipt requested. If personal delivery is used, the calendar date of delivery shall establish the date of response or filing. If certified mail delivery is used, the postmark plus four (4) working days shall establish the date of response or filing.

E. Retaliation - The term "retaliation" refers to the direct or indirect 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 this UED. "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, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

F. Improper governmental activity - The term "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 government 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 - The term "protected disclosure" means any good faith communication that 1) discloses or demonstrates an intent to disclose information that may evidence (a) an improper governmental 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 UED 02-25 regarding reporting improper governmental activities.

H. Working Days - The term "working days" means Monday through Friday excluding all officially recognized university holidays or closure of the campus where the complaint originated.

### **III. General Provisions**

A. All time limits refer to working days.

B. Time limits set forth in this UED may be extended by mutual agreement in writing between the complainant and the AVP for Human Resources. If the complainant, the AVP for Human Resources, or any material witness to the investigation are on approved leave of three (3) days or more, the time limits shall be extended by the length of the leave; provided, however, that an investigation of a written complaint must be completed no later than sixty (60) days prior to the expiration of eighteen (18) months from the date the complaint was filed, and the AVP for Human Resources must issue a letter of determination with respect to the complaint no later than eighteen (18) months from the date the complaint was filed.

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 thereto pursuant to this UED shall be shared only with individuals who have a legitimate business reason to know.

#### **IV. Complaint Process**

A. An employee or applicant for employment must file a written complaint under this UED within twelve (12) months of the alleged act of retaliation.

B. The complaint may be made on the form "Complaint of Retaliation for Reporting Improper Governmental Activities" included in the UED and located on the Campus Website, <http://audit.sfsu.edu/ppg> or obtained in the Office of AVP for Human Resources. However, any written complaint that conforms to the requirements of this UED will be addressed.

C. The written complaint must include all of the following information, or may be rejected as inadequate:

1. Be addressed or directed to the AVP for Human Resources or the employee's supervisor or manager.
2. 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.
3. A detailed description of the specific actions that constituted the alleged improper governmental activity or condition that may significantly threaten the health or safety of employees or the public, including the name(s) and title(s) of the University employee(s) allegedly engaged in the improper governmental activity.
4. The name of the University official or other state employee(s) to whom the improper governmental activity or condition that may significantly threaten the health and safety of employees or the public 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.
5. 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 "protected disclosure".
6. The complaint must be signed, dated, and contain a sworn statement that the contents of the written complaint are true, or are believed by the complainant to be true, under penalty of perjury.

#### **V. Complaint Review**

A. A complaint filed with the supervisor or manager will be forwarded to the AVP for Human Resources. The complaint will be acknowledged in writing by the AVP for Human Resources within ten (10) days of

receipt. The acknowledgment may include a request for additional information.

B. The AVP for Human Resources shall commission an investigation. This investigation may be conducted by a designee from the campus or the Chancellor's Office, or from another campus of The California State University, or may be an external investigator(s) retained by the AVP for Human Resources, in consultation with the Office of General Counsel and the Vice Chancellor for Human Resources.

C. The complainant is required to cooperate with the investigation and be completely honest in answering questions and providing information to the investigator(s). The complainant shall be contacted by the designated investigator(s) for an initial interview. The interview shall be scheduled no later than thirty (30) days from the receipt of the complaint unless it is delayed in conformity with section III.B. 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 AVP for Human Resources will be made on the merits based upon available evidence, notwithstanding the complainant's failure or refusal to participate.

D. University employees are required to cooperate with the investigation and be completely honest in answering questions and providing information to the investigator(s).

E. 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, a review of any response to the complaint 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 AVP for Human Resources that the complaint failed to present specific and credible evidence to support an allegation of retaliation for disclosure of improper governmental activities.

F. The investigator(s) shall forward a written report to the AVP for Human Resources 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 the reporting of a protected disclosure.

G. The AVP for Human Resources shall transmit the summary and conclusion of the investigation to the complainant within ten (10) days of receipt from the investigator(s). The complainant may file a written response to the summary and conclusion with the AVP for Human Resources within fourteen (14) days of receipt.

H. The AVP for Human Resources shall respond to the complaint 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 V.E., whichever date is later. This letter of determination will constitute the final SFSU decision regarding the complaint, pursuant to Government



Code section 8547.12.

**UED 02-26**

**Complaint of Actual or Attempted Retaliation for Having Made a Protected Disclosure under the California Whistleblower Protection Act**

Section 8547.12 of the Government Code forbids retaliation by any employee of the California State University against employees or applicants for employment for disclosing allegations of improper government activities. Allegations of such retaliation may be filed with the AVP for Human Resources, San Francisco State University, and 1600 Holloway Avenue, San Francisco, CA 94132

Please provide all requested information. Incomplete forms will not be reviewed.

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Campus Address: \_\_\_\_\_

Check One:

☐ Employee: \_\_\_\_\_

Title: \_\_\_\_\_

☐ Applicant for employment: \_\_\_\_\_

Position applied for: \_\_\_\_\_

Describe specifically and fully the alleged improper governmental activity or condition that may significantly threaten the health or safety of employees or the public: (Use additional sheets of paper if necessary.)

\_\_\_\_\_  
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List all persons allegedly involved in the improper governmental activity or the health or safety condition and their involvement:

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Describe to whom the improper governmental activity or health or safety condition was reported; the date reported; and whether the report was oral or in writing. (If in writing, attach a copy of the report).

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Describe the specific actions taken, by whom, and the dates of said actions that constitute the alleged actual or attempted retaliation.

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List all persons involved in the alleged actual or attempted retaliation and describe the actions that constituted the retaliation:

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Please attach any documentation in support of your charge. List all supporting documentation that is attached:

I hereby swear under penalty of perjury that the contents of this written complaint are true, or are believed to be true.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Revised: 09/23/2014