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SANTA BARBARA • SANTA CRUZ

OFFICE OF THE VICE PROVOST -
ACADEMIC PERSONNEL AND PROGRAMS

OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

September 29, 2014

COUNCIL OF VICE CHANCELLORS
LABORATORY DIRECTOR ALIVISATOS
ACADEMIC COUNCIL CHAIR GILLY
ANR VICE PRESIDENT ALLEN-DIAZ

Re: Final Review of Proposed Revised University of California Policy on the Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints, (Whistleblower Protection Policy) and Academic Personnel Manual (APM) Section 190, (APM - 190), Appendix A-2

Dear Colleagues:

Enclosed for Final Review is draft policy which has been reviewed during Systemwide Review and includes amended language proposed in response to reviewers' comments. The Office of Ethics, Compliance and Audit Services proposes draft language to implement policy requirements mandated by an amendment to the California Whistleblower Protection Act that became effective January 1, 2011. The proposed revisions are intended to ensure that complaints filed under the Whistleblower Protection Policy are addressed within 18 months and to provide a more linear explanation of the whistleblower retaliation complaint process. The enclosed letter from the Office of General Counsel (OGC) provides additional context and explains the review process already undertaken on a systemwide basis.

Language and issues resolved based on comments received during Systemwide Review include the following:

- Provisions were added to ensure that the complainant is kept informed during the process.
- Language was modified to clarify the deadline for filing a complaint under the policy.
- Provisions were added to ensure that the accused employee is provided with a meaningful opportunity to comment on the allegations of retaliation related to him/her and the documents the investigator plans to use to reach findings.

No comments were received on the recommendation to revise two appendices in the APM so that—in each case—a Presidential policy is accessed in a single place, on the Presidential policy web site and not also in the APM. This recommendation will be implemented upon issuance of the final policy. A draft of new APM -190, Appendix A is enclosed as Attachment E.

I have enclosed both clean and redline versions of the Final Review draft policy based on feedback received during Systemwide Review plus a redline version comparing the latest draft with the draft distributed for Systemwide Review. Final Review is intended to advise the results of Systemwide Review and how language has been refined. We do not anticipate substantive matters to be raised during Final Review. Instead this stage of consultation is intended to address a few remaining details.

This letter and enclosures anticipate that you will submit comments no later than **October 31, 2014.** Please send comments on the proposed policy to ADV-VPCARLSON-SA@ucop.edu.

Sincerely,

Susan L. Carlson
Vice Provost
Academic Personnel and Programs

Enclosures:
Attachment A - Letter from the Office of General Counsel
Attachment B – Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (clean copy)
Attachment C – Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (redline)
Attachment D - Proposed Revised Draft UC Whistleblower Protection Policy (WPP) (redline comparing latest draft to the systemwide review draft)
Attachment E – Proposed New Draft APM -190, Appendix A

cc:
President Napolitano
Chancellors
Provost and Executive Vice President for Academic Affairs Dorr
Senior Vice President Vacca
Vice President Duckett
Vice Provosts of Academic Personnel/Academic Affairs
Academic Personnel Directors
Executive Director Baxter
Executive Director Fox
Executive Director Rodrigues
Executive Director Tanaka
Chief Deputy General Counsel Petrulakis
Deputy General Counsel Drown
Senior Counsel Leider
Senior Counsel Van Houten
Chief of Staff Grossman

Deputy/UCOP Compliance Officer Lane
Director Chester
Director Jennings
Director Lohse
Manager Lockwood
Policy and Compensation Analyst Flinker
Policy Coordinator Trifonov
Human Resources Policy Analyst Bello
Senior Administrative Analyst Rupert

Attachment A

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL

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Charles F. Robinson
VICE PRESIDENT AND GENERAL COUNSEL

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September 23, 2014

Susan Carlson
Vice Provost
Department of Academic Personnel
Office of the President
University of California
1111 Franklin, 11th Floor
Oakland, CA 94607

Re: Proposed Revisions to the Whistleblower Protection Policy

Dear Susan:

Thank you for forwarding the feedback that the Academic Senate and Academic Personnel provided during the Systemwide Review of the proposed draft of the University of California Policy for Protection of Whistleblowers from Retaliation and Guidelines for Reviewing Retaliation Complaints (Whistleblower Protection Policy or WPP) earlier this year. The comments provided were instrumental in the development of important revisions to the draft policy, which we are now submitting for final review.

In addition to this letter, which summarizes the substantive revisions that have been made since the last draft you circulated, we are providing the following:

1. A clean copy of the latest draft of the policy.
2. A redline that compares the latest draft of the policy with the current policy.
3. A redline that compares the latest draft of the policy with the one reviewed earlier this year by the Academic Senate and Academic Personnel.

The latest revisions were made as a result of the feedback provided by the Academic Senate and Academic Personnel, as well as feedback received from the Locally Designated Officials (LDOs) at the campuses and medical centers and further legal review by the Office of the General Counsel. Many of these revisions were made to further improve clarity and transparency, to

ensure that the Complainant is kept informed of the status of the WPP process, and to ensure that the accused employee has a meaningful opportunity to comment on the allegations against him/her and the documentary evidence on which the investigator plans to rely in reaching findings.

Ethics, Compliance and Audit Services will be soliciting further feedback regarding the latest draft of the policy from staff at the same time that the Academic Senate is conducting its final review. The goal is to have the policy finalized for issuance in January 2015.

Notable Revisions Made Since the Review by the Academic Senate and Academic Personnel

In addition to the revisions discussed below, minor language changes were made throughout the draft policy to improve clarity, as reflected in Attachment 3, the redline that compares the latest draft of the policy with the one previously reviewed by the Academic Senate and Academic Personnel.

A. Section I. – Policy Summary.
   1. The first paragraph was modified to indicate that a decision will be issued within 18 months of the filing of the complaint *absent extenuating circumstances.* This change was made in recognition of the fact that there may be instances when the resolution of the complaint may take longer than 18 months, although every effort will be made to resolve complaints within that time frame. The same change was made to Section III.F. (Decision by the Chancellor).
   2. The first paragraph was also modified to clarify that a complaint under the WPP may be filed with the LDO *or with the Complainant's supervisor* to maintain consistency with the Whistleblower Protection Act.
   3. A sentence was added to the second paragraph to clarify that a complaint alleging interference as well as retaliation will be processed under the WPP.

B. Section II. – Definitions.
   1. A proposed addition to the definition of Protected Disclosure regarding the good faith requirement has been deleted because it would have expanded the definition of Protected Disclosure beyond the definition set forth in the Whistleblower Protection Act. A new sentence was added to the definition to explain that a Protected Disclosure may be made to the Complainant's supervisor, to the LDO, or to any University official identified in the Whistleblower Policy for that purpose. This addition was made to improve coordination between the Whistleblower Policy and the WPP.

C. Section III.B. – Authority and Responsibilities.
   1. Subsection III.B.4. (Retaliation Complaint Officer (RCO)) now states that the LDO may decide to serve as the RCO. This was added at the request of the LDOs and reflects current practice at some locations.

2. The proposed subsection regarding the Investigations Workgroup was eliminated because the Investigation Workgroup plays a less prominent role under the WPP than the Whistleblower Policy. However, the fact that the LDO may choose to consult the location's Investigations Workgroup when determining whether a complaint contains the required allegations is still reflected in Section III.D.1.c.

D. Section III.C. – Filing a Retaliation Complaint (Where, When and How to File).
   1. The first paragraph of this section was revised to clarify that the deadline to file a complaint under the WPP is within 12 months of the Adverse Personnel Action that the Complainant believes was taken in retaliation for the Complainant having made a Protected Disclosure or having refused to obey an Illegal Order.
   2. Revisions were made to Section III.C.1. (Required Allegations) to more clearly outline the essential information that needs to be included in a complaint filed under the WPP.

E. Section III.D. – Processing a Complaint.
   1. Subsection III.D.1 (Preliminary Review by the LDO) was modified to add that the LDO will promptly send the Complainant written acknowledgment of the complaint's receipt. This was added to ensure that the Complainant is kept informed during the WPP process and is particularly important when the complaint is filed with his/her supervisor rather than directly with the LDO.
   2. Subsection III.D.1.a. (Sworn Statement) was modified to state that the LDO may dismiss a complaint that lacks a Sworn Statement if the Complainant fails to correct this deficiency *within 15 days* of LDO's request.
   3. The subsection that previously addressed Timeliness and Required Allegations has been split into the following three subsections to improve clarity: Timeliness, Required Allegations, and Accepting the Retaliation Complaint.
   4. Subsection III.D.1.c. (Required Allegations) was modified to state that that the LDO may dismiss some or all of a complaint if the Complainant fails to correct deficiencies identified by the LDO *within 15 days.*
   5. The following changes were made to Subsection III.D.2. (Notification of the Accused Employee(s)):
      i. As an alternative to providing the complaint to the accused employee, the LDO may provide the accused employee with a summary of the allegations related to him/her. This addition was requested by the LDOs as some complaints can be unwieldy in length and may contain considerable information that is not relevant to the allegations of retaliation. Providing a summary of the allegations in those situations will keep the focus on what is relevant to the investigation.
      ii. An addition was made to indicate that the LDO will notify the accused employee that s/he has the option to submit a written response to the allegations within 30 days. As indicated later, in Section III.D.4.b. (The Accused Employee's Opportunity to Comment), that written statement will become part of the investigation report that is submitted to the Chancellor for decision. While the earlier draft of the policy also provided an opportunity for the accused to submit a written statement, no deadline for doing so was stated. Having this occur at the beginning of the investigation process

will enable the investigator to review the response prior to the interview of the accused employee, if the s/he elects to submit a response.

iii. An addition was made to indicate that the LDO will also advise the accused employee that s/he will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process. This was added to make clear that the option to submit a written response to the allegations would not replace the interview, which is a critical opportunity for the investigator to hear the accused employee's position firsthand.

6. Revisions were made to the Subsection III.D.4.b. (The Accused Employee's Opportunity to Comment) to respond to the concerns that the earlier draft had eliminated the provision in current policy that stated that the investigator would provide the accused employee with copies of the documents on which the investigator planned to rely before findings were reached. The new language indicates that the investigator will provide the accused employee with the opportunity to comment on the documents on which the investigator plans to rely in reaching findings. It further explains that this ordinarily occurs in the course of interviewing the accused employee. The new reflects current practice while also ensuring that the accused employee has a meaningful opportunity to comment on the documents that the investigator considers material.
7. Subsection III.D.4.c.iii. was added to make clear that the Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation. This mirrors an existing provision in the Whistleblower Policy and is equally important in the WPP context.
8. Subsection III.D.4.e. was modified to add that the LDO will notify the Complainant if any extensions of time are granted for the investigation. This will ensure that the Complainant is kept informed of the status of the WPP process.

F. Section III.F. – Decision by the Chancellor.
   1. Subsection F.1. was modified to reflect that the Chancellor may ask the investigator to clarify information in the investigation report before rendering a decision. This change is consistent with current practice.
   2. As noted above, Subsection F.3. was modified to indicate that the Chancellor will issue a decision within 18 months of the filing of the complaint *absent extenuating circumstances.*

G. Section III.H. – Referral of Complaints to the Office of the President.
   1. Subsection H.1. was modified to add that complaints alleging that the location's Audit Director or Chief Compliance Officer engaged in the retaliation will be referred to the Office of the President.

H. Section III.I. – Appeals.
   1. This section was modified to clarify that a remedy awarded under the policy cannot be appealed.

2. It was also modified to indicate that an appeal of a decision made by the Systemwide LDO will be considered by the Executive Vice President – Chief Operating Officer as that was not previously addressed.
3. A sentence was added to specify when an appeal would be considered "filed," borrowing the language from PPSM-70.

If you have any questions regarding the foregoing or the proposed revisions, please let me know.

Very truly yours,

Stephanie Leider

Attachments

cc: Sheryl Vacca, Senior Vice President – Chief Compliance and Audit Officer
Karen Petrulakis, Chief Deputy General Counsel

University of California Policy

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

Responsible Officer:	SVP - Chief Compliance & Audit Officer
Responsible Office:	EC - Ethics, Compliance & Audit Services
Issuance Date:	[Issuance Date]
Effective Date:	[Effective Date]
Scope:	This policy applies to all University employees, as well as applicants for University employment.

Contact:	John Lohse
Email:	john.lohse@ucop.edu
Phone #:	510-987-0480

I. POLICY SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made a Protected Disclosure or refused to obey an Illegal Order. Absent extenuating circumstances, a decision on all complaints that are not dismissed or withdrawn will be issued within 18 months of the filing of the complaint with the Locally Designated Official or the Complainant's supervisor.

Complaints alleging interference with an employee's or applicant's right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under this policy.

II. DEFINITIONS

The following definitions apply to this policy and procedures, as well as any local implementing procedures.

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.

Complainant: An employee or applicant for employment who files a complaint under this policy.

Employee: A current University employee or a former University employee who was employed at the time the relevant events occurred. The term "employee" includes academic appointees.

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.

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 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.

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. 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.

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 made under penalty of perjury that the contents of the complaint are true or are believed by the Complainant to be true. A complaint filed 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.

III. POLICY TEXT

A. Purpose of Policy

The University of California is committed to providing a work environment where employees are free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution and where employees can be candid and honest without reservation in conducting the University's business. This policy is a companion to the University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (the University's Whistleblower Policy). Consistent with the California Whistleblower Protection Act (Government Code Sections 8547-8547.12), a University employee may not: (1) retaliate against an employee or applicant for employment who has made a Protected Disclosure, (2) retaliate against an employee who has refused to obey an Illegal Order, or (3) directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with an employee's or applicant's right to make a Protected Disclosure. It is the intention of the University to investigate thoroughly any complaints filed, to provide relief to any employees harmed by violations of this policy, and to take appropriate action against employees who violate this policy.

B. Authority and Responsibilities

1. Local Procedures

The Chancellor will establish local complaint resolution procedures in accordance with this policy.

2. Locally Designated Official (LDO)

The Chancellor will appoint a Locally Designated Official (LDO) to receive Retaliation Complaints and to administer local implementing procedures. The LDO may be the same official designated to administer local procedures for investigating whistleblower complaints under the University's Whistleblower

Policy. The LDO (or designee) will determine whether a complaint is eligible for processing under this policy. The LDO is also responsible for ensuring that complaints are processed in a timely manner.

3. Systemwide LDO

The President will appoint an individual to serve as the Systemwide LDO. The Systemwide LDO (or designee) will receive complaints referred to the Office of the President under Section H. and determine whether such complaints will be processed at the Office of the President. The Systemwide LDO will also resolve appeals filed under Section I. In addition, the Systemwide LDO will serve as the LDO for the Office of the President. Whenever the Complainant is a current or former academic employee or an applicant for an academic position or where an accused employee is an academic employee, the duties of the Systemwide LDO under this policy will be the responsibility of the Provost and Executive Vice President—Academic Affairs.

4. Retaliation Complaint Officer (RCO)

The LDO may appoint one or more individuals to serve as Retaliation Complaint Officer(s) to oversee the investigation of complaints under this policy. The LDO may decide to serve as the RCO. The RCO may personally conduct the investigation or may delegate the factfinding, in whole or in part, to another investigator.

5. Chancellor

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, as set forth in Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority.

For purposes of this policy, authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Director for employees at Lawrence Berkeley National Laboratory, by the Systemwide LDO for employees at the Office of the President, and by the Vice President—Agriculture and Natural Resources for employees within the Division of Agriculture and Natural Resources.

C. Filing a Retaliation Complaint (Where, When and How to File)

A Retaliation Complaint must include a Sworn Statement and be filed with the LDO or with the Complainant's supervisor within 12 months of the Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having

made a Protected Disclosure or refusing to obey an Illegal Order. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an act of retaliation. Complaints filed with the Complainant's supervisor will be forwarded to the LDO.

1. Required Allegations

A Retaliation Complaint must include the allegations set forth below for the type of complaint being filed. The allegations should be as specific as possible.

a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:

i. Complainant made a Protected Disclosure. For purposes of this element, the Complainant must (a) describe what was disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, (c) specify the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant's belief that the Protected Disclosure was a contributing factor in the Adverse Personnel Action(s).

b. Required Allegations for a Retaliation Complaint alleging retaliation for having refused to obey an Illegal Order:

i. Complainant refused to obey an Illegal Order. For purposes of this element, the Complainant must (a) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or approximate date when the refusal occurred.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c)

specify the date or approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant's belief that refusing to obey the Illegal Order was a contributing factor in the Adverse Personnel Action(s).

D. Processing a Complaint

1. Preliminary Review by the LDO

After a complaint has been filed with or referred to the LDO, the LDO will promptly send the Complainant written acknowledgment of the complaint's receipt and determine whether the complaint is eligible for processing as a Retaliation Complaint.

a. Sworn Statement

When a complaint is filed without a Sworn Statement, the LDO will request that the Complainant correct this deficiency. If the Complainant fails to correct this deficiency within 15 days, the LDO will dismiss the complaint and notify the Complainant in writing of that decision. If the complaint is dismissed because a sworn statement is not provided within a reasonable time frame, the LDO will review the retaliation allegations to determine whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy.

b. Timeliness

The LDO will determine whether the complaint is timely. If it is not timely, the LDO will dismiss the complaint. If the complaint is dismissed as untimely, the LDO will review the allegations to determine whether whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy.

c. Required Allegations

The LDO will also determine whether the complaint contains the required allegations, as set forth above in Section C.1. When determining whether a complaint contains the required allegations, the LDO may consult with the location's Investigations Workgroup, as defined under the University's Whistleblower Policy, or an ad hoc workgroup, as needed. If the complaint is not specific or otherwise fails to provide sufficient information, the LDO may require that the Complainant amend the complaint to address the

deficiencies. If the Complainant does not amend the complaint or otherwise correct the deficiencies within 15 days, the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation Complaint

The LDO will notify the Complainant in writing when the complaint is accepted for processing as a Retaliation Complaint and is being assigned to the RCO for investigation. If only parts of the complaint are accepted, the LDO's written notice will advise the Complainant as to which parts of the complaint have been accepted, which have been dismissed, and the reason for the dismissal(s). Under Section I. below, a Complainant may appeal a decision dismissing a complaint, in whole or part, on the grounds that it is untimely or otherwise ineligible for processing.

2. Notification of the Accused Employee(s)

When the LDO accepts a Retaliation Complaint for processing, the LDO will provide the employee(s) accused of retaliation with a copy of the Retaliation Complaint or a summary of the allegations related to the accused employee and advise him or her that an investigation is being initiated. If the Retaliation Complaint contains allegations against more than one employee, the LDO will provide each of them with those allegations related to him or her. The LDO's notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

3. Referral to the RCO for Investigation

After the LDO accepts a Retaliation Complaint for processing, the LDO will refer the Retaliation Complaint to the RCO for investigation. If the RCO delegates any part of the investigation, the RCO retains responsibility for ensuring that the investigation is conducted in accordance with this policy.

4. Investigation

a. Investigation Process

The investigator will review the Retaliation Complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the accused employee(s). In addition, the investigator will interview any other

witnesses who the investigator believes are necessary in order to conduct a thorough investigation.

b. The Accused Employee's Opportunity to Comment

If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee.

c. Witnesses

i. The Complainant, the accused employee(s), and other witnesses will be allowed a reasonable amount of paid time off to participate in interviews conducted by the investigator.

ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator's questions honestly, and to provide documents and other materials requested by the investigator.

iii. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

iv. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

The investigator will prepare a written report containing findings of fact based on the evidence and the investigator's conclusion as to whether retaliation in violation of the policy occurred, using the applicable Evidentiary Standards set forth in Section E. below. The investigation report will provide sufficient detail to enable the Chancellor to make an independent determination as to whether a policy violation occurred. The investigation report will include the Retaliation Complaint, a list of witnesses interviewed, any accused

employee's response to the allegations (if submitted) , and any other documents on which the investigator has relied in reaching findings.

When the investigation report is completed, the RCO will deliver it to the LDO. If the RCO did not personally conduct the investigation, the RCO should first review the investigation report to confirm that it is complete; if the investigation report is incomplete, the RCO should ask the investigator to address the deficiencies before proceeding.

e. Time Frame for Investigation

The RCO is responsible for delivering the investigation report to the LDO within 6 months from the date on which the LDO notifies the Complainant that the Retaliation Complaint has been accepted for processing.

The LDO may extend the 6-month deadline upon receipt of a written request from the RCO that explains why the extension is needed. Additional extensions may be sought when appropriate. The LDO will respond in writing to such requests and will also notify the Complainant in writing of any extensions that are granted. The LDO generally will not provide an extension or extensions that increase the 6-month time frame beyond 12 months total.

E. Evidentiary Standards

1. Evidentiary Standards for Retaliation Complaints

Consistent with California Government Code Section 8547.10(e), a Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she either made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged Adverse Personnel Action. If the Complainant has met that standard, the burden of proof shifts to the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged Adverse Personnel Action would have occurred for legitimate, independent reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order. If that burden is not met, the employee shall have a complete affirmative defense to the Adverse Personnel Action that was the subject of the complaint.

Consistent with California Government Code Section 8547.10(d), nothing in this policy is intended to prevent a manager or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take an Adverse 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 or refused to obey an Illegal Order.

2. **Special Evidentiary Standard for Employees in the University's Health Facilities**

   When the Complainant is an employee of one of the University's inpatient health facilities (i.e., facilities to which persons are admitted for a 24-hour stay or longer) and brings a Retaliation Complaint, the LDO (or designee) will determine whether the special evidentiary standard set forth in Section 1278.5 of the California Health and Safety Code applies.

F. Decision by the Chancellor

1. The LDO will present the investigation report to the Chancellor, who will render a decision in the matter consistent with the Evidentiary Standards set forth in Section E. above. The Chancellor may request that the investigator conduct further investigation or clarify information in the investigation report before the Chancellor renders a decision. The Chancellor will issue a written decision and send it to the Complainant and to the accused employee(s).

2. If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor's written decision provided to the Complainant. However, the written decision will not describe any action that may need to be taken against any employee found to have violated this policy.

3. Absent extenuating circumstances, the Chancellor's written decision will be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

G. Consequences for a University Employee Who Violated the Policy

In those cases where the Chancellor has decided that an employee has violated this policy, the Chancellor, through the appropriate channels, will determine the appropriate action(s) to be initiated, which may include disciplinary action against that employee. If the employee is not a member of the Academic Senate, any disciplinary action will be in accordance with the applicable personnel policy or collective bargaining agreement. If the employee is a member of the Academic Senate, any disciplinary proceedings will be undertaken in accordance with the academic personnel policies and the procedures established by the Academic Senate.

H. Referral of Complaints to the Office of the President

1. When a complaint filed under this policy alleges that the Chancellor, the LDO, the LDO's supervisor, the location's Audit Director, the location's Chief Compliance Officer or the location's Chief Campus Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

2. In other special circumstances, the LDO may request that the Systemwide LDO accept a complaint for processing at the Office of the President. The request must state the reason(s) why it would be more appropriate to have the complaint processed at the Office of the President.

3. If the Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. In such circumstances, the RCO will present the findings of the investigation to the Systemwide LDO for a decision in accordance with Section F. above. If the Systemwide LDO concludes that an employee has violated this policy, the Systemwide LDO will refer the matter back to the appropriate official at the employee's location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.

I. Appeals

The Complainant has no right to appeal a decision on the merits of a complaint or any remedy that may be awarded. However, the Complainant may appeal a decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations. Such appeals must be made in writing and received by the Systemwide LDO (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the decision being appealed. The appeal must state why the decision should be overturned and must include copies of the complaint, the decision, and the documents and other evidence that support the appeal. An appeal is considered "filed" on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

J. Reporting Requirements

Each location will submit a copy of the local procedures implementing this policy to the Senior Vice President – Chief Compliance and Audit Officer. Additionally, each location will provide information regarding complaints filed under this policy and their status to the Senior Vice President – Chief Compliance and Audit Officer using the method established by him or her for this purpose.

IV. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

V. PROCEDURES

Applicable procedures are outlined throughout the policy text in Section III.

VI. RELATED INFORMATION

- University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) (referenced in Section I., Section III.A., Section III.B.2., Section III.D.1.a., Section III.D.1.b. and Section III.D.1.c.)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.

VIII. REVISION HISTORY

This policy was last revised on October 4, 2002.

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

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University of California Policy

Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

~~October 4, 2002~~

~~**UNIVERSITY OF CALIFORNIA**~~
~~**POLICY FOR PROTECTION OF WHISTLEBLOWERS FROM RETALIATION AND GUIDELINES FOR REVIEWING RETALIATION COMPLAINTS**~~
~~**(WHISTLEBLOWER PROTECTION POLICY)**~~

~~I. Policy~~

~~The University of California is committed to protecting employees and applicants for employment from interference with making a protected disclosure or retaliation for having made a protected disclosure or for having refused an illegal order as defined in this policy. This policy is derived from the California Whistleblower Protection Act (Government Code Sections 8547-8547.12). Pursuant to this code section, a University employee may not: (1) retaliate against an employee or applicant for employment who has made a protected disclosure or who has refused to obey an illegal order, nor (2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an applicant or an employee to make a protected disclosure to the University Auditor, the employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit, the locally designated University official as defined in the University's Whistleblower Policy, or the State of California Bureau of State Audits about matters within the scope of this policy. It is the intention of the University to take whatever action may be needed to prevent and correct activities that violate this policy.~~

~~II. Scope of Policy and Definitions~~

~~This policy applies to complaints of retaliation or interference filed by employees or applicants for employment who have made or attempted to make a protected disclosure ("whistleblowers") or refused to obey an illegal order, as defined below.~~

~~Local retaliation complaint resolution procedures shall incorporate the following definitions.~~

~~A.~~

Responsible Officer:	SVP - Chief Compliance & Audit Officer

University of California Policy
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

Responsible Office:	EC - Ethics, Compliance & Audit Services
Issuance Date:	[Issuance Date]
Effective Date:	[Effective Date]
Scope:	This policy applies to all University employees, as well as applicants for University employment.

Contact:	John Lohse
Email:	john.lohse@ucop.edu
Phone #:	510-987-0480

I. POLICY SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made a Protected Disclosure or refused to obey an Illegal Order. Absent extenuating circumstances, a decision on all complaints that are not dismissed or withdrawn will be issued within 18 months of the filing of the complaint with the Locally Designated Official or the Complainant's supervisor.

Complaints alleging interference with an employee's or applicant's right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under this policy.

II. DEFINITIONS

The following definitions apply to this policy and procedures, as well as any local implementing procedures.

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.

Complainant: An employee or applicant for employment who files a complaint under this policy.

Employee: A current University employee or a former University employee who was employed at the time the relevant events occurred. The term "employee" includes academic appointees.

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.

~~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 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. Protected Disclosure~~

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.

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. 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.

~~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.**~~ **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 made under penalty of perjury that the contents of the complaint are true or are believed by the Complainant to be true. A complaint filed 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.

~~**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.~~

III. ~~III.~~ POLICY TEXT

A. Purpose of Policy

The University of California is committed to providing a work environment where employees are free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution and where employees can be candid and honest without reservation in conducting the University's business. This policy is a

companion to the University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (the University's Whistleblower Policy). Consistent with the California Whistleblower Protection Act (Government Code Sections 8547-8547.12), a University employee may not: (1) retaliate against an employee or applicant for employment who has made a Protected Disclosure, (2) retaliate against an employee who has refused to obey an Illegal Order, or (3) directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with an employee's or applicant's right to make a Protected Disclosure. It is the intention of the University to investigate thoroughly any complaints filed, to provide relief to any employees harmed by violations of this policy, and to take appropriate action against employees who violate this policy.

~~A.~~B. Authority and Responsibilities

1. ~~A.~~ Local Procedures

The Chancellor[1] ~~shall~~ will establish local ~~retaliation~~ complaint resolution procedures in accordance with this policy. ~~Authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Directors, the Senior Vice President – Business and Finance, and the Vice President – Agriculture and Natural Resources for employees within their respective jurisdictions.~~

[1] ~~For the purpose of this policy, the Chancellor also means the Laboratory Directors for the Lawrence Berkeley National Laboratory, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory; the Senior Vice President – Business and Finance; and the Vice President – Agriculture and Natural Resources.~~

2. ~~B.~~ Locally Designated Official (LDO)

~~The~~ The Chancellor ~~shall~~will appoint a Locally Designated Official (~~the~~ LDO) to receive ~~retaliation complaints~~Retaliation Complaints and to administer local implementing procedures. ~~The LDO (or designee) shall determine (1) whether a complaint is timely; (2) whether it sets forth the necessary facts to support a claim of retaliation for having made a protected disclosure, having disobeyed an illegal order, or interference with the right to make a protected disclosure; and (3) whether a complaint is eligible for processing under University grievance or complaint resolution procedures available to the complainant (as noted in Section IV.A. below).~~ The LDO may be the same official designated to administer local procedures for investigating whistleblower complaints~~.~~ under the University's Whistleblower Policy. The LDO (or designee) will determine whether a complaint is eligible for processing under this policy. The LDO is also responsible for ensuring that complaints are processed in a timely manner.

3. ~~C.~~ Systemwide LDO

The President will appoint an individual to serve as the Systemwide LDO. The Systemwide LDO (or designee) will receive complaints referred to the Office of the President under Section H. and determine whether such complaints will be processed at the Office of the President. The Systemwide LDO will also resolve appeals filed under Section I. In addition, the Systemwide LDO will serve as the LDO for the Office of the President. Whenever the Complainant is a current or former academic employee or an applicant for an academic position or where an accused employee is an academic employee, the duties of the Systemwide LDO under this policy will be the responsibility of the Provost and Executive Vice President~~—~~Academic Affairs.

~~3.~~4. Retaliation Complaint Officer (RCO)

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 ~~filed~~under this policy. The LDO may decide to serve as the RCO. The RCO may personally conduct the investigation or may delegate the factfinding, in whole or in part, to another investigator.

5. Chancellor

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, as set forth in

Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority.

For purposes of this policy, authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Director for employees ~~and applicants for employment alleging interference~~ at Lawrence Berkeley National Laboratory, by the Systemwide LDO for employees at the Office of the President, and by the Vice President—Agriculture and Natural Resources for employees within the Division of Agriculture and Natural Resources.

C. Filing a Retaliation Complaint (Where, When and How to File)

A Retaliation Complaint must include a Sworn Statement and be filed with ~~or retaliation for making a protected disclosure or for~~ the LDO or with the Complainant's supervisor within 12 months of the Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having made a Protected Disclosure or refusing to obey an ~~illegal order. The RCO may delegate conduct of the investigation, including any factfinding, to another~~ Illegal Order. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an act of retaliation. Complaints filed with the Complainant's supervisor will be forwarded to the LDO.

1. Required Allegations

A Retaliation Complaint must include the allegations set forth below for the type of complaint being filed. The allegations should be as specific as possible.

a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:

i. Complainant made a Protected Disclosure. For purposes of this element, the Complainant must (a) describe what was disclosed, (b) identify the person~~. The term "RCO" as used in this policy includes the person~~(s) to whom ~~the investigation may be delegated.~~each Protected Disclosure was made, (c) specify the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

~~**D. Chancellor**~~

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University

employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or approximate date on which each Adverse Personnel Action occurred.

iii. The ~~Chancellor renders a decision~~basis for Complainant's belief that the Protected Disclosure was a contributing factor in the Adverse Personnel Action(s).

b. Required Allegations for a Retaliation Complaint alleging retaliation for having refused to obey an Illegal Order:

i. Complainant refused to obey an Illegal Order. For purposes of this element, the Complainant must (a) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or approximate date when the refusal occurred.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant's belief that refusing to obey the Illegal Order was a contributing factor in the Adverse Personnel Action(s).

D. Processing a Complaint

1. Preliminary Review by the LDO

After a complaint has been filed with or referred to the LDO, the LDO will promptly send the Complainant written acknowledgment of the complaint's receipt and determine whether the complaint is eligible for processing as a Retaliation Complaint.

a. Sworn Statement

When a complaint is filed without a Sworn Statement, the LDO will request that the Complainant correct this deficiency. If the Complainant fails to correct this deficiency within 15 days, the LDO will dismiss the complaint and notify

the Complainant in writing of that decision. If the complaint is dismissed because a sworn statement is not provided within a reasonable time frame, the LDO will review the retaliation allegations to determine whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy.

b. Timeliness

The LDO will determine whether the complaint is timely. If it is not timely, the LDO will dismiss the complaint. If the complaint is dismissed as untimely, the LDO will review the allegations to determine whether whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry under the University's Whistleblower Policy.

c. Required Allegations

The LDO will also determine whether the complaint contains the required allegations, as set forth above in Section C.1. When determining whether a complaint contains the required allegations, the LDO may consult with the location's Investigations Workgroup, as defined under the University's Whistleblower Policy, or an ad hoc workgroup, as needed. If the complaint is not specific or otherwise fails to provide sufficient information, the LDO may require that the Complainant amend the complaint to address the deficiencies. If the Complainant does not amend the complaint or otherwise correct the deficiencies within 15 days, the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation Complaint

The LDO will notify the Complainant in writing when the complaint is accepted for processing as a Retaliation Complaint and is being assigned to the RCO ~~conducts an~~for investigation~~.~~. If only parts of the complaint are accepted, the LDO's written notice will advise the Complainant as to which parts of the complaint have been accepted, which have been dismissed, and the reason for the dismissal(s). Under Section I. below, a Complainant may appeal a decision dismissing a complaint, in whole or part, on the grounds that it is untimely or otherwise ineligible for processing.

~~and determines the appropriate corrective action, if any, as set forth in Section VII.C. below. The Chancellor may delegate his or her duties under this policy.~~

IV. Filing a Complaint

A retaliation complaint (grievance plus sworn statement) may be filed (A) under an applicable grievance or complaint resolution procedure, (B) with the LDO, or (C) with the employee's supervisor. Threshold requirements for filing a retaliation complaint are described in Section IV.D. below. Employees who elect to file a grievance unaccompanied by a sworn statement made under penalty of perjury that its contents are true or are believed to be true are not covered by the retaliation provisions of the California Whistleblower Protection Act.

A. Filing Pursuant to an Applicable Grievance or Complaint Resolution Procedure

A retaliation complaint (grievance plus sworn statement) may be filed pursuant to the applicable personnel policy or collective bargaining agreement grievance or complaint resolution procedure. The individual designated locally to receive grievances (i.e., grievance liaison) pursuant to academic or staff personnel policies, or collective bargaining agreements, shall provide the LDO with a copy of the retaliation complaint. If the grievance is not accompanied by a sworn statement, but raises issues of retaliation covered by this policy, then the grievance liaison shall provide the LDO with a copy of the grievance. Campus procedures shall specify the individual responsible for advising the complainant of his or her rights to file a whistleblower retaliation complaint and the timeframe for filing. Local procedures shall refer to the following grievance and complaint resolution policies and/or their respective implementing procedures:

1. **Academic Personnel:** Academic personnel may file complaints alleging retaliation, if eligible, as follows:

a.	Members of the Academic Senate	Senate Bylaw 335
b.	Non-Senate Academic Personnel	APM - 140
c.	Exclusively Represented Academic Personnel	The applicable collective bargaining agreement

2. **Staff Personnel:** Staff personnel may file complaints alleging retaliation, if eligible, as follows:

a.	Senior Managers	PPSM II-70
b.	Managers and Senior Professionals, Salary Grades VIII and IX	PPSM-71

c.	Managers and Senior Professionals (except Salary Grades VIII and IX) and Professionals and Support Staff	PPSM 70
d.	Exclusively Represented Staff Personnel	The applicable collective bargaining agreement

B. Filing with

2. Notification of the Accused Employee(s)

When the LDO accepts a Retaliation Complaint for processing, the LDO will provide the employee(s) accused of retaliation with a copy of the Retaliation Complaint or a summary of the allegations related to the accused employee and advise him or her that an investigation is being initiated. If the Retaliation Complaint contains allegations against more than one employee, the LDO will provide each of them with those allegations related to him or her. The LDO's notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

3. Referral to the RCO for Investigation

After the LDO

A written retaliation complaint may be filed directly with accepts a Retaliation Complaint for processing, the LDO. A retaliation complaint filed with will refer the LDO 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.

1. If the complaint received by the LDO 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. (For example, under a collective bargaining agreement, the whistleblower retaliation complaint is joined with the grievance when the grievance advances to arbitration under the applicable procedure.) At that point in the review process, the retaliation complaint will be joined with

the applicable procedure and referred to the RCO for handling as described in Section VI.A.3. below.

2. 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 filing period.

3. The LDO shall refer a complaintRetaliation Complaint to the RCO for investigation under. If the following conditions:

a) The complaint is not within the scopeRCO delegates any part 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

b) 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

c) The complainant is an applicant for employment.

4. If a complaint that is normally eligible forthe investigation by, the RCO allegesretains responsibility for ensuring that the Chancellor, the LDO, or the LDO's supervisor interfered or took the retaliatory action, the LDO or designee shall request:

a) that the Senior Vice President – Business and Finance appoint a RCO when the complainant is a current employee in or applicant for a staff or management position; or

b) that the Provost and Senior Vice President – Academic Affairs appoint a RCO when the complainant is a current appointee in or applicant for an academic position.

C. Filing with a Supervisor

A written complaint filed with a supervisor shall be referred by the supervisor to the LDO and processedinvestigation is conducted in accordance with Section IV.B. above.this policy.

University of California Policy
Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

4.

~~D. Filing Requirements~~Investigation

a. Investigation Process

The investigator will review the Retaliation Complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the accused employee(s). In addition, the investigator will interview any other witnesses who the investigator believes are necessary in order to conduct a thorough investigation.

b. The Accused Employee's Opportunity to Comment

If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee.

c. Witnesses

i. The Complainant, the accused employee(s), and other witnesses will be allowed a reasonable amount of paid time off to participate in interviews conducted by the investigator.

ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator's questions honestly, and to provide documents and other materials requested by the investigator.

iii. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

iv. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

The investigator will prepare a written report containing findings of fact based on the evidence and the investigator's conclusion as to whether retaliation in violation of the policy occurred, using the applicable Evidentiary Standards set forth in Section E. below. ~~**and Thresholds**~~

~~The retaliation complaint filed~~The investigation report will provide sufficient detail to enable the Chancellor to make an independent determination as to whether a policy violation occurred. The investigation report will include the Retaliation Complaint, a list of witnesses interviewed, any accused employee's response to the allegations (if submitted) , and any other documents on which the investigator has relied in reaching findings.

When the investigation report is completed, the RCO will deliver it to the LDO. If the RCO did not personally conduct the investigation, the RCO should first review the investigation report to confirm that it is complete; if the investigation report is incomplete, the RCO should ask the investigator to address the deficiencies before proceeding.

e. Time Frame for Investigation

The RCO is responsible for delivering the investigation report to the LDO within 6 months from the date on which the LDO notifies the Complainant that the Retaliation Complaint has been accepted for processing.

The LDO may extend the 6-month deadline upon receipt of a written request from the RCO that explains why the extension is needed. Additional extensions may be sought when appropriate. The LDO will respond in writing to such requests and will also notify the Complainant in writing of any extensions that are granted. The LDO generally will not provide an extension or extensions that increase the 6-month time frame beyond 12 months total.

E. Evidentiary Standards

1. Evidentiary Standards for Retaliation Complaints

~~1.~~ Consistent with ~~the LDO or the supervisor must set forth in sufficient detail the necessary facts including dates and names of relevant persons. The complaint must contain facts supporting the filing thresholds as set forth below in Sections IV. D. 2. a) through c), the alleged retaliatory act(s), and the effects on the complainant of the alleged retaliatory acts.~~

The LDO may require the complainant to amend the complaint to provide sufficient detail. If the complainant does not amend the complaint to correct the insufficiencies identified by the LDO within a reasonable timeframe, as established in local procedures, the complaint may be dismissed by the LDO.

2. In order for a retaliation complaint to be accepted, the complainant must allege that:

a) he or she filed a report or made a protected disclosure alleging improper governmental activities pursuant to current University policy; or

b) he or she was threatened, coerced, commanded, or prevented by intimidation from filing a report of improper governmental activities; or

c) he or she refused to obey an illegal order.

3. The LDO may consult with the local 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.

V. Administrative Proceedings

A. Evidentiary Standards

1. 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 Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she engaged in activity protected by the University's Whistleblower Policyeither made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged retaliationAdverse Personnel Action. If the Complainant has met that

standard, the burden of proof ~~shall be on~~shifts to the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged ~~retaliatory action~~Adverse Personnel Action would have occurred for legitimate, independent ~~of~~reasons even if the ~~employee's engagement in~~Complainant had not made a ~~protected disclosure~~Protected Disclosure or ~~refusal of~~refused to obey an ~~illegal order.~~ Illegal Order. If ~~the complaint is investigated by a factfinder, the factfinder shall find facts concerning the~~that 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~~is not met, the employee shall have a complete affirmative defense to the ~~adverse action which~~ Adverse Personnel Action that was the subject of the complaint.

~~2. However, pursuant to~~ Consistent with California Government Code Section 8547.10(d), nothing in this policy is intended to prevent 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~~an Adverse 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~~Protected Disclosure or refused to obey an Illegal Order.

~~1.~~2. ~~**B.**~~ **Special Evidentiary ~~Standards~~Standard for Employees in the University's Health ~~Care Workers~~ Facilities**

~~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.~~

~~***VI. Complaints Investigated by the RCO***~~

~~A. When an employee files a complaint which contains an eligible allegation of retaliation under an existing University grievance or complaint resolution procedure, the RCO shall investigate the allegation of retaliation or interference as provided below:~~

~~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.

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. If the complaint is heard before an arbitrator, University or non-University hearing officer, or University committee, the RCO will receive a copy of that decision. 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.

B. When no University grievance or complaint resolution procedure is available to the complainant, the RCO will conduct the investigation.

C. Before findings are reached, the RCO (or factfinder, if the RCO has delegated conduct of the investigation) 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 be provided the opportunity, within locally established time limits, to respond to the complaint and to file a written statement which the RCO (or factfinder) will make part of the record submitted to the Chancellor.

D. The RCO shall present findings of fact based on the evidence and factual conclusions to the Chancellor within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the LDO.

E. 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 RCO shall review the decision. 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. If there is no finding of retaliation, the LDO shall request that the hearing officer, committee, or arbitrator reopen the case and apply the standard of proof specified in Section V. above, and if necessary, find additional facts for application of the standard. If the foregoing does not occur, the RCO shall find additional facts, if necessary, for application of the standard of proof specified in Section VWhen the Complainant is an employee of one of the University's inpatient health facilities (i.e., facilities to which persons are admitted for a 24-hour stay or longer) and brings a Retaliation Complaint, the LDO (or designee) will determine whether the special evidentiary standard set forth in Section 1278.5 of the California Health and Safety Code applies.

. above. The case shall then be forwarded to the Chancellor for a decision.

F. When it is alleged that the Chancellor, the LDO, or the LDO's supervisor interfered or took the retaliatory action, the Senior Vice President – Business and Finance or the Provost and Senior Vice President – Academic Affairs, whichever applies, shall appoint an RCO to undertake the investigation consistent with the provisions of Section VI.A. through E., above. The RCO shall present findings of fact based on the evidence and factual conclusions to the Senior Vice President – Business and Finance or the Provost and Senior Vice President – Academic Affairs, as appropriate, for a decision. The RCO's findings shall be presented within 120 days from the date on which the complaint was assigned to the RCO unless an extension is granted by the Senior Vice President – Business and Finance or Provost and Senior Vice President – Academic Affairs.

F. VII. Decision by the Chancellor

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

1. The RCO shall be provided 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. When there are findings that interference or retaliation has occurred, the RCOLDO will provide that information present the investigation report to the Chancellor. If the decision is final and binding, the Chancellor may not alter the decision in any way, but may through the appropriate channels initiate corrective action against the University employee, who interfered or retaliated based on the findings

in the decision.

B. Decision Based on Findings of an Investigation Conducted by the RCO

1. The RCO is to present findings of fact based on the evidence and factual conclusions to the Chancellor who shall will render a decision in the matter

1. consistent with the standard of proof specifiedEvidentiary Standards set forth in Section VE. above. The Chancellor may remandrequest that the findings to the RCO ifinvestigator conduct further investigation is needed before makingor clarify information in the investigation report before the Chancellor renders a decision. The Chancellor will issue a written decision. The Chancellor will communicate the decision in writing and send it to the complainantComplainant and to the person or persons accused of violating the University's Whistleblower Protection Policy.employee(s).

2. The If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor's written decision will include any appropriate relief for the complainant, butprovided to the Complainant. However, the written decision will not describe any corrective action whichthat may need to be taken.

C. Corrective Action of a University Employee

2. The Chancellor through the appropriate channel, or in the case of Academic Senate members the appropriate Senate Committee, determines the appropriate corrective action, if any, which will be initiated against a University employee who is against any employee 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 shallviolated this policy.

3. Absent extenuating circumstances, the Chancellor's written decision will be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

G. Consequences for a University Employee Who Violated the Policy

In those cases where the Chancellor has decided that an employee has violated this policy, the Chancellor, through the appropriate channels, will determine the appropriate action(s) to be initiated, which may include disciplinary action against that employee. If the employee is not a member of the Academic Senate, any disciplinary action will be in

accordance with the applicable personnel policy or collective bargaining agreement. ~~For~~If the employee is a member of the Academic Senate, any disciplinary proceedings ~~are~~will be undertaken in accordance with the academic personnel policies and the procedures established by the Academic Senate.

~~**D. Complaint Against the Chancellor, the LDO, or the LDO's Supervisor**~~

H. ~~With regard to complaints in which it is alleged~~**Referral of Complaints to the Office of the President**

1. When a complaint filed under this policy alleges that the Chancellor, the LDO, ~~or~~ the LDO's supervisor, the location's Audit Director, the location's Chief Compliance Officer or the location's Chief Campus Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

2. In other special circumstances, the LDO may request that the Systemwide LDO accept a complaint for processing at the Office of the President. The request must state the reason(s) why it would be more appropriate to have the complaint processed at the Office of the President.

~~1.~~3. If the Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. ~~interfered or took retaliatory action, the~~ In such circumstances, the RCO will present the findings of the investigation ~~shall be presented~~to the Systemwide LDO for a decision ~~to the Senior Vice President – Business and Finance or the Provost and Senior Vice President – Academic Affairs,~~ in accordance with Section ~~VI.~~F. above. ~~above~~If the Systemwide LDO concludes that an employee has violated this policy, the Systemwide LDO will refer the matter back to the appropriate official at the employee's location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.

~~***VIII. Appeal***~~

~~An employee may appeal the local decision 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 to:~~

~~A. the Senior Vice President – Business and Finance if the complainant is a current employee in or applicant for a staff or management position; or~~

~~B. the Provost and Senior Vice President – Academic Affairs if the complainant is a current appointee in or applicant for an academic position.~~

~~IX. Reports~~

I. Appeals

The Complainant has no right to appeal a decision on the merits of a complaint or any remedy that may be awarded. However, the Complainant may appeal a decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations. Such appeals must be made in writing and received by the Systemwide LDO (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the decision being appealed. The appeal must state why the decision should be overturned and must include copies of the complaint, the decision, and the documents and other evidence that support the appeal. An appeal is considered "filed" on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

J. Reporting Requirements

Each location ~~shall~~will submit a copy of the local procedures implementing this policy to the ~~Office of the~~ Senior Vice President ~~– Business~~ – Chief Compliance and ~~Finance.~~ Audit Officer. Additionally, ~~on July 31 of~~ each ~~year, each location shall submit to the Senior Vice President – Business and Finance a report summarizing the number of whistleblower retaliation~~ location will provide information regarding complaints filed ~~during the preceding fiscal year~~ under this policy and their ~~disposition. The Office of Human Resources and Benefits will provide a reporting format~~status to the Senior Vice President – Chief Compliance and Audit Officer using the method established by him or her for this purpose.

IV. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

V. PROCEDURES

Applicable procedures are outlined throughout the policy text in Section III.

VI. RELATED INFORMATION

- University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) (referenced

in Section I., Section III.A., Section III.B.2., Section III.D.1.a., Section III.D.1.b. and Section III.D.1.c.)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.

VIII. REVISION HISTORY

This policy was last revised on October 4, 2002.

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

University of California Policy

~~Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)~~ Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

Responsible Officer:	SVP - Chief Compliance & Audit Officer
Responsible Office:	EC - Ethics, Compliance & Audit Services
Issuance Date:	[Issuance Date]
Effective Date:	[Effective Date]
Scope:	This policy applies to all University employees, as well as applicants for University employment.

Contact:	John Lohse
Email:	john.lohse@ucop.edu
Phone #:	510-987-0480

I. POLICY SUMMARY

This policy describes the complaint resolution process that is available to employees or applicants for employment who believe they have been subjected to retaliation as a result of having made ~~making~~ a Protected Disclosure or refused ~~refusing~~ to obey an Illegal Order. Absent extenuating circumstances, a~~A~~ decision on all complaints that are not dismissed or withdrawn will be issued within 18 months of the filing of the complaint with the Locally Designated Official or the Complainant's supervisor.

Complaints alleging interference with an employee's or applicant's right to make a Protected Disclosure will be considered as a report of suspected improper governmental activity that may warrant further inquiry ~~processed~~ under the University's Whistleblower Policy rather than this policy. A complaint alleging interference as well as retaliation will be processed under this policy.

II. DEFINITIONS

The following definitions apply to this policy and procedures, as well as any local implementing procedures.

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.

Complainant: An employee or applicant for employment who files a complaint under this policy ~~or an applicant for employment who files a complaint under this policy~~.

Employee: A current University employee or a former University employee who was employed at the time the relevant events occurred. The term "employee" includes academic appointees.

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.

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 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.

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. 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.

The good faith requirement is satisfied if the employee had (1) a reasonable belief that the facts the employee disclosed or demonstrated an intention to disclose are true and (2) a reasonable belief that such facts, if true, would be an improper governmental activity or a condition that may significantly threaten the health or safety of employees or the public.

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) retaliated against the Complainant for having made a Protected Disclosure by taking an Adverse Personnel Action against the Complainant or (2) retaliated against the Complainant for having refused to obey an Illegal Order by taking an Adverse Personnel Action against the Complainant.

Sworn Statement: A statement made under penalty of perjury that the contents of the complaint are true or are believed by the Complainant to be true. A complaint filed 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.

III. POLICY TEXT

A. Purpose of Policy

The University of California is committed to providing a work environment where employees are free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution and where employees can be candid and honest without reservation in conducting the University's business. This policy is a companion to the University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (the University's Whistleblower Policy). Consistent with the California Whistleblower Protection Act (Government Code Sections 8547-8547.12), a University employee may not: (1) retaliate against an employee or applicant for employment who has made a Protected Disclosure, as defined below, (2) retaliate against an employee who has refused to obey an Illegal Order, as defined below, or (3) directly or indirectly use or attempt to use the official authority or influence of his or her position or office to interfere with an employee's or applicant's right to make a Protected Disclosure, as defined below. It is

the intention of the University to investigate thoroughly any complaints filed, to provide relief to any employees harmed by violations of this policy, and to take appropriate action against employees who violate this policy.

B. Authority and Responsibilities

1. Local Procedures

The Chancellor will establish local complaint resolution procedures in accordance with this policy.

2. Locally Designated Official (LDO)

The Chancellor will appoint a Locally Designated Official (LDO) to receive Retaliation Complaints and to administer local implementing procedures. The LDO may be the same official designated to administer local procedures for investigating whistleblower complaints under the University's Whistleblower Policy. The LDO (or designee) will determine whether a complaint is eligible for processing under this policy. The LDO is also responsible for ensuring that complaints are processed in a timely manner.

3. Systemwide LDO

The President will appoint an individual to serve as the Systemwide LDO. The Systemwide LDO (or designee) will receive complaints referred to the Office of the President under Section H. and determine whether such complaints will be processed at the Office of the President. The Systemwide LDO will also resolve appeals filed under Section I. In addition, the Systemwide LDO will serve as the LDO for the Office of the President. Whenever the Complainant is a current or former academic employee or an applicant for an academic position or where an accused employee is an academic employee, the duties of the Systemwide LDO under this policy will be the responsibility of the Provost and Executive Vice President—Academic Affairs.

4. Retaliation Complaint Officer (RCO)

The LDO may appoint one or more individuals to serve as Retaliation Complaint Officer(s) to oversee the investigation of complaints under this policy. The LDO may decide to serve as the RCO. The RCO may personally conduct the investigation or may delegate the factfinding, in whole or in part, to another investigator.

5. Chancellor

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, as set forth in Section G. below. The Chancellor may delegate any of his or her duties under this policy, including decision-making authority.

For purposes of this policy, authorities and responsibilities delegated to the Chancellor are assumed by the Laboratory Director for employees at Lawrence Berkeley National Laboratory, by the Systemwide LDO for employees at the Office of the President, and by the Vice President—Agriculture and Natural Resources for employees within the Division of Agriculture and Natural Resources.

~~**6. Investigations Workgroup**~~

~~An Investigations Workgroup typically includes representatives from various functional units at a location and assists the LDO, as needed, in determining whether a complaint is eligible for processing under this policy. It may be a standing workgroup or, alternatively, the LDO may assemble an ad hoc workgroup with relevant expertise to assist with one or more complaints.~~

C. Filing a Retaliation Complaint (Where, When and How to File)

A Retaliation Complaint must include a Sworn Statement and be filed with the LDO or with the Complainant's supervisor within 12 months of the Adverse Personnel Action that the Complainant believes was taken to retaliate against the Complainant for having made a Protected Disclosure or refusing to obey an Illegal Order~~alleged retaliation~~. If the Retaliation Complaint alleges a pattern of retaliation, it must be filed within 12 months of the most recent Adverse Personnel Action that the Complainant believes constituted an ~~alleged~~ act of retaliation. Complaints filed with the Complainant's supervisor will be forwarded to the LDO.

1. Required Allegations

A Retaliation Complaint must include the allegations set forth below for the type of complaint being filed. The allegations should be as specific as possible.

a. Required Allegations for a Retaliation Complaint alleging retaliation for having made a Protected Disclosure:

i. Complainant made a Protected Disclosure. For purposes of this element, the Complainant must (a) describe ~~include a summary of~~ what was

disclosed, (b) identify the person(s) to whom each Protected Disclosure was made, ~~and~~ (c) specify ~~identify~~ the date or approximate date of each Protected Disclosure, and (d) specify how each Protected Disclosure was communicated.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must ~~identify~~ (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or ~~the~~ approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant's belief that the Protected Disclosure was a contributing factor in the Adverse Personnel Action(s).

b. Required Allegations for a Retaliation Complaint alleging retaliation for having refused to obey an Illegal Order:

i. Complainant refused to obey an Illegal Order. For purposes of this element, the Complainant must ~~identify~~ (a) describe the Illegal Order, (b) identify the University employee(s) who gave the Illegal Order, (c) specify the date or ~~the~~ approximate date on which the Illegal Order was given, (d) describe what the Complainant did in response to the Illegal Order that constituted a refusal to obey, and (e) specify the date or ~~the~~ approximate date when the refusal occurred.

ii. One or more Adverse Personnel Actions were taken against the Complainant. For purposes of this element, the Complainant must ~~identify~~ (a) describe the Adverse Personnel Action(s), (b) identify the University employee(s) responsible for each Adverse Personnel Action, and (c) specify the date or ~~the~~ approximate date on which each Adverse Personnel Action occurred.

iii. The basis for Complainant's belief that refusing to obey the Illegal Order was a contributing factor in the Adverse Personnel Action(s).

D. Processing a Complaint

1. Preliminary Review by the LDO

After a complaint has been filed with or referred to the LDO, the LDO will promptly send the Complainant written acknowledgment of the complaint's

receipt and determine whether the complaint is eligible for processing as a Retaliation Complaint~~-~~.

a. Sworn Statement

When a complaint is filed without a Sworn Statement, the LDO will request that the Complainant correct this deficiency. If the Complainant fails to correct this deficiency within 15 days, ~~a reasonable time frame, as established in local procedures,~~ the LDO will dismiss the complaint and notify the Complainant in writing of ~~the~~ that decision ~~to dismiss~~. If the complaint is dismissed because a sworn statement is not provided within a reasonable time frame, the LDO will review the retaliation allegations to determine whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry ~~they should be processed~~ under the University's Whistleblower Policy.

b. Timeliness ~~and Required Allegations~~

The LDO will determine whether the complaint is timely. If it is not timely, the LDO will dismiss the complaint. If the complaint is dismissed as untimely, the LDO will review the allegations to determine whether whether the facts being alleged should be considered as a report of suspected improper governmental activity that may warrant further inquiry ~~they should be processed~~ under the University's Whistleblower Policy.

c. Required Allegations

The LDO will also determine whether the complaint contains the required allegations, as set forth above in Section C.1. When determining whether a complaint contains the required allegations, the LDO may consult with the location's ~~an~~ Investigations Workgroup, as defined under the University's Whistleblower Policy, or an ad hoc workgroup, as needed. If the complaint is not specific or otherwise fails to provide sufficient information, the LDO may require that the Complainant amend the complaint to address the deficiencies. If the Complainant does not amend the complaint or otherwise correct the deficiencies within 15 days, ~~a reasonable time frame, as established in local procedures,~~ the LDO may dismiss all or some of the complaint.

d. Accepting the Retaliation Complaint

The LDO will notify the Complainant in writing when the complaint is accepted for processing as a Retaliation Complaint and is being assigned to the RCO

for investigation. If only parts of the complaint are accepted, the LDO's written notice will advise the Complainant as to which parts of the complaint have been accepted, which have been dismissed, and the reason for the dismissal(s). Under Section I. below, a Complainant may appeal a decision dismissing a complaint, in whole or part, on the grounds that it is untimely or otherwise ineligible for processing.

2. Notification of the Accused Employee(s)

When the LDO accepts a Retaliation Complaint for processing, the LDO will provide the employee(s) accused of retaliation with a copy of the Retaliation Complaint or a summary of the allegations related to the accused employee and advise him or her that an investigation is being initiated. If the Retaliation Complaint contains allegations against more than one employee, the LDO will provide each of them with those ~~portions that contain~~ allegations related to ~~against~~ him or her. The LDO's notice will advise the accused employee of the option to submit a written response to the allegations within 30 days. The notice will also advise that the accused employee will be contacted to schedule an interview with the investigator and that an interview of the accused employee is an essential part of the investigatory process.

3. Referral to the RCO for Investigation

After the LDO accepts a Retaliation Complaint for processing, the LDO will refer the Retaliation Complaint to the RCO for investigation. If the RCO delegates any part of the investigation, the RCO retains responsibility for ensuring that the investigation is conducted in accordance with this policy.

4. Investigation

a. Investigation Process

The investigator will review the Retaliation Complaint and other relevant materials submitted by the Complainant. In addition, the investigator may request and review other documents and materials relevant to the allegations. The investigator will, whenever possible, interview the Complainant and the accused employee(s). In addition, the investigator will interview any other witnesses who the investigator believes are necessary in order to conduct a thorough investigation.

b. The Accused Employee's Opportunity to Comment

If the accused employee chose to submit a response to the allegations, as set forth in section D.2. above, the investigator will include that statement in the investigation report. During the course of the investigation, the investigator will also provide the accused employee with an opportunity to comment on the documents on which the investigator plans to rely in reaching findings. Ordinarily, the investigator will do this in the course of interviewing the accused employee. ~~Before findings are reached, the investigator will provide the accused employee(s) with an opportunity to respond to the Retaliation Complaint in a written statement. The investigator will advise the accused employee(s) when the statement needs to be submitted, making sure that a reasonable amount of time is provided for this purpose. The investigator will include any such statement in the record submitted to the Chancellor.~~

c. Witnesses

i. ~~Local procedures must allow the~~The Complainant, the accused employee(s), and other witnesses will be allowed a reasonable amount of paid time off to participate in interviews conducted by the investigator.

ii. The Complainant, the accused employee(s), and the other witnesses have a duty to cooperate with the investigator. This includes a duty to participate in interviews requested by the investigator, to answer the investigator's questions honestly, and to provide documents and other materials requested by the investigator.

~~ii.~~iii. The Complainant, the accused employee(s), and other witnesses have a responsibility not to interfere with the investigation and to adhere to admonitions from the investigator in this regard. Evidence shall not be withheld, destroyed or tampered with, and witnesses shall not be influenced, coached, or intimidated.

~~iii.~~iv. If the Complainant or any accused employee fails or refuses to be interviewed, the investigator will complete the investigation based upon the information available.

d. Investigation Report

The investigator will prepare a written report containing findings of fact based on the evidence and the investigator's conclusion as to whether retaliation in violation of the policy ~~a policy violation~~ occurred, using the applicable Evidentiary Standards set forth in Section E. below. The investigation report will provide sufficient detail to enable the Chancellor to make an independent determination as to whether a policy violation occurred. The investigation

report will include the Retaliation Complaint, a list of witnesses interviewed, any accused employee's response to the allegations (if submitted) ~~written statement submitted by the accused employee(s)~~, and any other documents on which the investigator has relied in reaching findings.

When the investigation report is completed, the RCO will deliver it to the LDO. If the RCO did not personally conduct the investigation, the RCO should first review the investigation report to confirm that it is complete; if the investigation report is incomplete, the RCO should ask the investigator to address the deficiencies before proceeding.

e. Time Frame for Investigation

The RCO is responsible for delivering the investigation report to the LDO within 6 months from the date on which the LDO notifies the Complainant that the Retaliation Complaint has been accepted for processing.

The LDO may extend the 6-month deadline upon receipt of a written request from the RCO that explains why the extension is needed. Additional extensions may be sought when appropriate. The LDO will respond in writing to such requests and will also notify the Complainant in writing of any extensions that are granted. The LDO generally will not provide an extension or extensions that increase the 6-month time frame beyond 12 months total.

E. Evidentiary Standards

1. Evidentiary Standards for Retaliation Complaints

Consistent with California Government Code Section 8547.10(e), a Complainant who brings a Retaliation Complaint must demonstrate by a preponderance of the evidence that he or she either made a Protected Disclosure or refused to obey an Illegal Order and that such activity was a contributing factor in the alleged Adverse Personnel Action. If the Complainant has met that standard, the burden of proof shifts to the supervisor, manager, or University to demonstrate by clear and convincing evidence that the alleged Adverse Personnel Action would have occurred for legitimate, independent reasons even if the Complainant had not made a Protected Disclosure or refused to obey an Illegal Order. If that burden is not met, the employee shall have a complete affirmative defense to the Adverse Personnel Action that was the subject of the complaint.

Consistent with California Government Code Section 8547.10(d), nothing in this policy is intended to prevent a manager or supervisor from taking, directing

others to take, recommending, or approving any personnel action or from taking or failing to take an Adverse 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 or refused to obey an Illegal Order.

2. **Special Evidentiary Standard for Employees in the University's Health Facilities**

   When the Complainant is an employee of one of the University's inpatient health facilities (i.e., facilities to which persons are admitted for a 24-hour stay or longer) and brings a Retaliation Complaint, the LDO (or designee) will determine whether the special evidentiary standard set forth in Section 1278.5 of the California Health and Safety Code applies.

F. Decision by the Chancellor

1. The LDO will present the investigation report to the Chancellor, who will render a decision in the matter consistent with the Evidentiary Standards set forth in Section E. above. The Chancellor may request that the investigator conduct further investigation or clarify information in the investigation report before the Chancellor renders a decision. ~~If the Chancellor needs more information in order to make a decision, the Chancellor may request further investigation.~~ The Chancellor will issue a written decision and send it to the Complainant and to the accused employee(s).

2. If the Chancellor determines that an employee or employees violated this policy and that the Complainant was harmed as a result of such violation, the Chancellor will award any appropriate relief, which will be identified in the Chancellor's written decision provided to the Complainant. However, the written decision will not describe any action that may need to be taken against any employee found to have violated this policy.

3. Absent extenuating ~~In all~~ circumstances, the Chancellor's written decision ~~must~~ will be issued and sent to the Complainant no later than 18 months after the complaint was initially filed.

G. Consequences for a University Employee Who Violated the Policy

In those cases where the Chancellor has decided that an employee has violated this policy, the Chancellor, through the appropriate channels, will determine the appropriate

action(s) to be initiated, which may include disciplinary action against that employee. If the employee is not ~~in~~ a member of the Academic Senate, any disciplinary action will be in accordance with the applicable personnel policy or collective bargaining agreement. If the employee is a member of the Academic Senate, any disciplinary proceedings will be undertaken in accordance with the academic personnel policies and the procedures established by the Academic Senate.

H. Referral of Complaints to the Office of the President

1. When a complaint filed under this policy alleges that the Chancellor, the LDO, the LDO's supervisor, the location's Audit Director, the location's Chief Compliance Officer or the location's Chief Campus Counsel engaged in the retaliation that is the subject of the complaint, the LDO (or designee) will request that the Systemwide LDO accept the complaint for processing by the Office of the President.

2. In other special circumstances, the LDO may request that the Systemwide LDO accept a complaint for processing at the Office of the President. The request must state the reason(s) why it would be more appropriate to have the complaint processed at the Office of the President.

3. If the Systemwide LDO decides to accept a complaint for processing at the Office of the President, the Systemwide LDO will conduct the preliminary review in accordance with D.1. and will refer complaints accepted for processing to an RCO for investigation in accordance with Section D.4. above. In such circumstances, the RCO will present the findings of the investigation to the Systemwide LDO for a decision in accordance with Section F. above. If the Systemwide LDO concludes that an employee has violated this policy, the Systemwide LDO will refer the matter back to the appropriate official at the employee's location to initiate appropriate action in accordance with Section G. above, except in cases where an adverse finding involves the Chancellor, in which case the Systemwide LDO will refer the matter to the President.

I. Appeals

The Complainant has no right to appeal a decision on the merits of a complaint or any remedy that may be awarded. However, the Complainant may appeal a ~~local~~ decision dismissing a complaint in whole or in part because it was untimely or lacked required allegations. Such appeals must be made in writing and received by the Systemwide LDO (or the Executive Vice President – Chief Operating Officer if the decision was made by the Systemwide LDO) within 30 calendar days of the date of the ~~local~~ decision being appealed. The appeal must state why the ~~local~~ decision should be overturned and must include copies of the complaint, the ~~local~~ decision, and the documents and other

evidence that support the appeal. An appeal is considered "filed" on the date it is postmarked, the date it is personally delivered, the date it is faxed, or the date it is emailed.

J. Reporting Requirements

Each location will submit a copy of the local procedures implementing this policy to the Senior Vice President~~/~~ – Chief Compliance and Audit Officer. Additionally, each location will provide information regarding complaints filed under this policy and their status to the Senior Vice President~~/~~ – Chief Compliance and Audit Officer using the method established by him or her for this purpose.

IV. COMPLIANCE / RESPONSIBILITIES

See Section III.J.

V. PROCEDURES

Applicable procedures are outlined throughout the policy text in Section III.

VI. RELATED INFORMATION

- University of California Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) (referenced in Section I., Section III.A., Section III.B.2., Section III.D.1.a., Section III.D.1.b., and Section III.D.1.c~~b~~.)

VII. FREQUENTLY ASKED QUESTIONS

Not applicable.

VIII. REVISION HISTORY

This policy was last revised on October 4, 2002.

~~Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)~~ Protection of Whistleblowers from Retaliation and Procedures for Reviewing Retaliation Complaints (Whistleblower Protection Policy)

Future revisions to this policy will be circulated under standard procedures for Presidential Policies; in the case of this policy, the review will include circulation under the standard Academic Personnel Manual (APM) process, with final authority resting with the President.

UNIVERSITY OF CALIFORNIA WHISTLEBLOWER AND WHISTLEBLOWER PROTECTION POLICIES

Academic personnel are covered by the University of California Whistleblower and Whistleblower Protections Policies, which are Presidential Policies covering all faculty and other academic appointees, student employees, and staff. Former APM - 190, Appendices A-1 and A-2 are replaced with Appendix A. These Presidential Policies are available at: http://www.policy.ucop.edu/specific-link-to-be-advised and http://www.policy.ucop.edu/specific-link-to-be-advised. Future revisions to these Policies will be circulated under standard procedures for Presidential Policies; the review will also include circulation under the standard APM review process, with final authority resting with the President.