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Area: [Human Resources](#)
Codes: [EO 1115](#)

Complaint Procedures for Protected Disclosure of Improper Governmental Activities and/or Significant Threats to Health or Safety

This executive order (EO 1115) implements the intent of the California Legislature as stated in the California Whistleblower Protection Act (Govt. Code §8547 et seq.) and the California State University (CSU) Investigation of Reported Improper Governmental Activities Act (Educ. Code § 89570 et seq.). The scope of the Complaint procedure under EO 929 had been limited to CSU Employees and applicants for CSU employment. The CSU has expanded the scope of this EO beyond its statutory obligations under the Government Code and Education Code by including Third Parties. This EO revises the Complaint procedure and timelines for Employees and Third Parties to make Protected Disclosures of Improper Governmental Activity and/or Significant Threats to Health or Safety¹. The EO provides instructions to the campuses, which includes the Chancellor's Office (CO), for processing such Protected Disclosures.

I. Scope of Procedure

The Complaint procedure is for Employees and Third Parties who wish to submit a Complaint that alleges Improper Governmental Activity and/or Significant Threat to Health or Safety has occurred or is occurring at the CSU.

II. Definitions

- A. **Appropriate Administrator** means the Management Personnel Plan (MPP) Employee designated by the President or Chancellor to administer this EO. For the CO, the "Appropriate Administrator" shall be the Vice Chancellor of Human Resources or designee.
- B. **Complainant** (or **Whistleblower**) means an Employee or Third Party who uses the established procedure of the CSU as set forth in this EO to make a Complaint.
- C. **Complaint** refers to the allegation(s) of Improper Governmental Activity made or submitted to the Appropriate Administrator under this EO.
- D. **Employee** refers to any person employed by the CSU.
- E. **Filing Date** means the date that the Complaint was received by the Appropriate Administrator.
- F. **Illegal Order**² refers to a directive to violate or assist in violating a federal, state, or local law, rule, or regulation, or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of Employees or the public.

- G. **Improper Governmental Activity**³ means any activity by the CSU, a CSU department or Employee that is undertaken in the performance of the Employee's duties, undertaken inside a CSU office, or if undertaken outside a CSU office by the Employee, directly relates to the CSU, whether or not that action is within the scope of employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency. For the purposes of this policy, "Improper Governmental Activity" includes Significant Threats to Health or Safety and Illegal Order(s).
- H. **Investigator** means the CSU representative authorized to analyze the allegation(s), investigate, and conduct fact finding related to cases of alleged Improper Governmental Activities. The Appropriate Administrator may be the Investigator for a particular Complaint, or may delegate that function as appropriate.
- I. **Preliminary Review** is the initial analysis conducted by the Appropriate Administrator to assess whether sufficient evidence is presented in the Complaint to initiate an investigation.
- J. **Preponderance of the Evidence** means the greater weight of the evidence; i.e., that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The Preponderance of the Evidence is the applicable standard for demonstrating facts and reaching conclusions in an investigation conducted pursuant to this EO.
- K. **Protected Disclosure**⁴ means good faith communication, including a communication based on, or when carrying out, job duties that discloses or demonstrates an intention to disclose information that may evidence (1) an Improper Governmental Activity, or (2) a condition that may significantly threaten the health or safety of Employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- L. **Respondent** means the CSU, a CSU department or an Employee who is alleged to have committed an Improper Governmental Activity as defined under this EO.
- M. **Significant Threats to Health or Safety**⁵ means working condition(s) which the Complainant reasonably and in good faith believes constitute a substantial hazard to his/her own health and safety or the health and safety of others.
- N. **Third Party** or **Third Parties** refers to a person other than an Employee. Examples include applicants for CSU employment, students, former Employees, union representatives, employees of auxiliary organizations, volunteers, independent contractors, vendors and their employees, visitors, and the general public.
- O. **Vice Chancellor** means the Vice Chancellor of Human Resources at the CSU, designated by the Chancellor as the "Appropriate Administrator" for Complaints submitted to and/or investigated at the CO. For the purposes of this policy, the term "Vice Chancellor" may also include a designee.
- P. **Working Days** are defined as Monday through Friday, excluding all official holidays or closures at the campus where the Complaint originated or at the CO where the Complaint is reviewed.

III. General Provisions

- A. Complaints, responses, information obtained through investigation, and investigation reports under this EO shall be shared only with individuals who have a legitimate business reason to know, unless otherwise required by law.

- B. By law, the CSU cannot reveal the name of a Complainant without his or her permission, except to appropriate law enforcement personnel who are conducting a criminal investigation, to the California State Auditor, or as otherwise required by law.⁶
- C. It is the responsibility of each campus to adopt and implement the procedures set out in this EO for handling Complaints filed by Employees and Third Parties.
- D. The CSU will provide reasonable accommodations to qualified individuals with a disability. Reasonable accommodations will be determined by the Appropriate Administrator following an interactive process with those individuals to identify the nature and extent of the restrictions and the appropriate accommodation.
- E. It is the responsibility of each campus to notify the Vice Chancellor of all Protected Disclosures.

The above requirement is distinct from, and unrelated to, any reporting requirement related to EO 1104 and grievance or complaint tracking for Employee Relations or Labor Relations purposes. If, as a result of a Protected Disclosure, the CSU learns of cases of actual or suspected fraud, theft or other fiscal irregularities, the campus should also comply with EO 1104, *Campus Reporting of Fiscal Improprieties*, for reporting requirements and deadlines.

- F. It is the responsibility of each campus to accept and process Protected Disclosures that are forwarded to the CSU by the California State Auditor. For guidance, campuses should consult the Office of Audit and Advisory Services at the CO.
- G. When submitting a Complaint or issuing any notices required by this EO, personal delivery, electronic mail, overnight, certified or regular mail may be used. When using personal delivery or regular, overnight, or certified mail, the date of receipt by the Appropriate Administrator shall establish the Filing Date. Electronic communications must be sent to the designated CSU or campus e-mail address unless the intended recipient has specified a different address, and will be deemed received on the date sent.

IV. Timelines and Extensions

- A. Unless otherwise noted, all time limits refer to Working Days.
- B. Time periods set forth in this EO may be extended for good cause by the Appropriate Administrator, provided the Complainant is informed of the new time period in writing.

V. The Complaint

Any Employee or Third Party may submit a Complaint of suspected Improper Governmental Activities.

- A. Complaints of suspected Improper Governmental Activities are encouraged to be made to the Appropriate Administrator in writing to ensure a clear understanding of the issues raised, but may be made orally or anonymously to the Appropriate Administrator. These Complaints should be factual rather than speculative or conclusory, and contain as much specific information as possible to allow for proper assessment to determine if an investigation is warranted.
- B. An investigation is not warranted where the reported information and/or information that could be obtained by the Appropriate Administrator is insufficient. These determinations will be documented in writing by the Appropriate Administrator, and maintained in accordance with systemwide records retention policies.
- C. Complaints may be submitted at the campus level or at the CO. The Appropriate Administrator shall determine whether the Complaint should be processed through another campus office or procedure available to the Complainant. If appropriate, the Appropriate Administrator shall direct the Complainant to that procedure as soon as possible.

- D. The Complainant is encouraged to include the following information in the Complaint (or use the attached Complaint form, which includes the criteria below):
1. The name and contact information of the Complainant (i.e., mailing address, email address, and phone number), the Complainant's CSU position title or relationship with the CSU (if Complainant is a Third Party).
 2. A detailed description of the alleged Improper Governmental Activities, as defined in this EO. The description should include the name(s) and title(s) of the Employee(s) or official(s) allegedly engaged in the Improper Governmental Activities (the "Respondent(s)").
 3. The date(s) the alleged Improper Governmental Activities occurred.
 4. Other potential witnesses to the alleged Improper Governmental Activities, the facts known by each, and if possible, their contact information.
 5. Any documentation that supports the allegations of Improper Governmental Activities. Individuals should not attempt to obtain documents they do not have the authority to access.
 6. Descriptions of documents that support the allegations of Improper Governmental Activities, if the actual documents are not in the possession of the Complainant.
- E. A Complainant shall proceed with a Complaint in good faith. An Employee who knowingly and intentionally files a false Complaint shall be subject to discipline, up to and including termination. Any CSU Respondent or witness who knowingly and intentionally provides false statements or information shall be subject to discipline, up to and including termination. Such disciplinary action shall not be deemed to be retaliation.

VI. Making Complaints

- A. Complaints should be made no later than twelve (12) calendar months after the Complainant knew or reasonably should have known of the event giving rise to the Protected Disclosure. Complainants may make a Complaint on the campus, or they may make a Complaint directly to the Vice Chancellor under this EO. For that purpose, each campus President shall appoint an Appropriate Administrator who will receive the Complaint and process them on the campus in accordance with the procedures in this EO.
- B. To make a Complaint to a campus, contact the specific campus to determine the identity of the Appropriate Administrator designated to receive Complaints. Visit <http://www.calstate.edu/hr/compliance/whistleblower/> for a list of the designated campus Appropriate Administrators authorized to accept Complaints under this EO.
- C. To make a Complaint to the CO, the Complaint must be submitted to the Vice Chancellor, should be marked "Confidential" and addressed to:

Vice Chancellor of Human Resources
Equal Opportunity and Whistleblower Compliance Unit
Systemwide Human Resources
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802

Complaints may also be sent via email to EO-TitleIX-Compliance@calstate.edu.

- D. The Appropriate Administrator or designee shall acknowledge receipt of the Complaint in writing within

ten (10) Working Days of the date the Complaint was received. The Filing Date is the date the Complaint was received by the Appropriate Administrator.

- E. The Appropriate Administrator shall initiate an investigation of the matter if the totality of circumstances suggest reasonable cause to investigate. See Section VII below for the Preliminary Review procedures. The decision must be made on a case by case basis.

VII. Preliminary Review

- A. To determine if the Complaint will be investigated, the Appropriate Administrator shall evaluate the allegation(s) by determining whether the totality of circumstances suggest reasonable cause to investigate. The totality of circumstances would lead a reasonable and prudent individual to believe an Improper Governmental Activity has occurred, is occurring, and/or will occur. This may require questioning the stated witness(es) and/or the Complainant. This Preliminary Review must not be performed in a manner that would reveal the purpose of the inquiry to the department or the Respondent(s).
- B. The allegations are also evaluated to determine whether the Complaint contains the following information and falls within the scope of this EO:
 - 1. The Complainant made a timely disclosure no later than twelve (12) calendar months after the event that gave rise to the Protected Disclosure or no later than 12 calendar months after the Complainant knew or reasonably should have known about the event;
 - 2. The allegations, if true, constitute an Improper Governmental Activity as covered under this EO;
 - 3. The allegations were accompanied by information specific enough to be investigated; and
 - 4. Corroborating evidence can be pursued. Such evidence may be in the form of witness testimony or documents.

An investigation should be conducted if it is established that the Complaint falls within the scope of this EO.

- C. During the Preliminary Review process, the Complainant (if known) may provide additional information and documents to support the initial Complaint. In providing information and documents, the Complainant must fully cooperate and comply with the imposed deadline requirements. The Appropriate Administrator has the discretion to set a final date for submission of additional information.
- D. If the Complainant raises any new allegations during the Preliminary Review process, the Appropriate Administrator shall decide whether to include new allegations as part of the existing Complaint, or treat the information as a new and separate Complaint. The Complainant may choose to initiate a separate inquiry by submitting a new Complaint.
- E. The Complainant is required to fully cooperate in the Preliminary Review process, to be honest, maintain confidentiality, and provide information to the Appropriate Administrator. In addition, the Complainant (if known) must participate in a timely intake interview. In the event that the Complainant does not cooperate, the Appropriate Administrator may end the investigation.
- F. The Preliminary Review process should be concluded, and the Complainant notified in writing of the outcome of this review, within thirty (30) Working Days of the Filing Date. If the results of the Preliminary Review determine that an investigation is warranted, a formal investigation will be initiated. If an investigation will not occur, the Appropriate Administrator will inform the Complainant (if known) that the Complaint will not be investigated and state the reasons.

VIII. Investigation and Outcome

- A. If an investigation is initiated, the Appropriate Administrator will manage the investigation, or may assign the Complaint to an Investigator. If the Appropriate Administrator delegates the responsibility for analysis, investigation, and/or fact finding, the Appropriate Administrator is still responsible for ensuring that the procedures in this EO are followed. Other CSU departments or staff may be consulted during the investigation based on their areas of oversight responsibility or expertise (e.g., risk management, environmental health and safety, academic affairs, finance, audit, and legal counsel). The Investigator shall complete the investigation within ninety (90) Working Days of the conclusion of the Preliminary Review process. The Preponderance of the Evidence standard shall be used to determine whether an Improper Governmental Activity has occurred.
- B. Investigators have a duty of fairness, objectivity, thoroughness, ethical behavior, and observance of legal and professional standards. If an actual or perceived conflict of interest is suggested, the Appropriate Administrator shall determine if the investigation needs to be reassigned.
- C. Employees and students of the CSU are required to cooperate with the investigation and other processes set forth in this EO, including but not limited to, attending meetings, being forthright and honest during the process, and keeping confidential the existence and details of the investigation. Nothing contained herein is intended or should be construed to interfere with an Employee's right to representation.
- D. If the Appropriate Administrator determines that an Improper Governmental Activity has occurred, the Appropriate Administrator shall report this information with a recommendation for appropriate action to the President (or the Chancellor for the CO). The President or Chancellor or designee shall determine what action, if any, is warranted.
- E. Within ninety (90) Working Days of the conclusion of the Preliminary Review process, the Appropriate Administrator shall issue a formal response to the Complainant that includes a summary of allegations, summary of the investigation, the Preponderance of the Evidence standard, a detailed description of the evidence considered, appropriate findings, and what actions, if any, are anticipated. The response shall be written in a manner that is consistent with the privacy interests of each person who is involved in the situation addressed by the response. This formal response is the final CSU decision.
- F. The records of all investigations will be kept confidential, except that the CSU may issue a report of any investigation that has substantiated an allegation, keeping confidential the identity of the individual(s) involved. The CSU may also release the findings resulting from investigations as deemed necessary to serve the interests of the State, and may release reports if otherwise required by law.⁷

IX. Retaliation

Retaliation against an Employee, former Employee, or applicant for CSU employment for exercising any rights under this EO is considered a separate issue and is covered under EO 1116, titled [Complaint Procedure for Allegations of Retaliation for Having Made a Protected Disclosure under the California Whistleblower Protection Act](#). Please refer to EO 1116 for additional details.

Supersedes

Executive Order 929

Issued by

Timothy P. White, Chancellor

¹ Key terms are capitalized and are defined at Article II of this EO. Terms contained within this policy and procedure are intended to be gender neutral.

² Government Code § 8547.2 (b)

³ Education Code § 89572 (d); Government Code § 8547.2 (c)

⁴ Education Code § 89572 (e); Government Code § 8547.2 (e)

⁵ Government Code § 8547.2(e)

⁶ Education Code § 89573(c)

⁷ Education Code § 89574

All revision dates:

9/12/2018

Attachments

[A: EO 1115 Complaint Form for Protected Disclosures of Improper Governmental Activities Transmittal Letter](#)

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