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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.

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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