

## UCR DOES NOT TOLERATE RETALIATION

*These FAQs explain UCR's prohibition on retaliation, in keeping with our Principles of Community and the UC Standards of Ethical Conduct. The FAQs do not fully communicate all provisions of all relevant laws and policies relating to retaliation; specific instances of retaliation will be handled as appropriate in accordance with those laws or policies. These FAQs are drafted for people who have filed a complaint or engaged in another form of protected activity (defined below).*

### ***What is retaliation?***

Generally, someone who has filed a complaint, acted as a witness, or engaged in another form of **protected activity** experiences retaliation when they are subject to an **adverse action** taken because they had engaged in the protected activity.

### ***Who is protected from retaliation?***

Anyone who engages in a **protected activity** is protected from retaliation. They are protected not only from adverse action taken against them personally, but also adverse action against someone closely associated with them, such as a spouse.

### ***What is “protected activity”?***

The most common protected activity is filing a good-faith report under a UC or campus complaint procedure—reporting something that you reasonably believe to be misconduct, a policy violation, or otherwise a reportable event. Other protected activities include:

- Acting as a witness in an investigation or complaint process
- Filing a complaint with an external regulatory agency
- Requesting an accommodation for a disability or religious belief or observance
- Taking FMLA leave
- Refusing to obey an illegal order
- Opposing employment discrimination.

Being the subject or respondent in an investigation is *not* a protected activity.

### ***What is “adverse action”?***

Generally, adverse action is anything that would deter or dissuade a reasonable person (in the circumstances) from filing a complaint or engaging in other protected activity – if the action is taken because of the protected activity. Petty slights, minor annoyances, bad manners and trivial inconveniences do **not** count as adverse actions.

Some examples of possible adverse actions:

- A supervisor begins supervising an employee more closely and critically, because the employee participated in an investigation.
- Co-workers ostracize an employee because the employee filed a complaint against the department head, excluding the employee from meetings and discussions.
- A supervisor makes critical comments about an employee to the employee's co-workers, because the employee filed a complaint against the supervisor.
- Disciplinary actions such as suspensions or termination—if such actions are taken because of the protected activity.
- Revoking telecommuting privileges or an alternate work schedule of an employee who had acted as witness in an investigation, because of the employee's participation.

- A supervisor hides or makes inaccessible files, tools or equipment that an employee needs to do the job, because the supervisor resents a disability accommodation provided to the employee.
- Trying through your own investigation actions to discover the identity of an anonymous whistleblower, if not disclosed to you during the investigation process.

**\*\*Please note that some types of retaliation are governed by particular laws, regulations or policies that use a narrower definition of retaliation. In particular, the Whistleblower Protection Policy is a special grievance procedure that is available only for certain types of retaliation.\*\***

**What does it mean for adverse action to be “because of” protected activity? How do we know if something is retaliatory?**

Retaliation is not necessarily motivated by a desire to punish or injure someone, and investigations typically do not seek to prove that the respondent was “out to get” the complainant. For example, if Ryan reports that Andrew is harassing him and a supervisor transfers Ryan because the supervisor believes this would help him, this may still constitute retaliation, if the transfer would deter a reasonable person in Ryan’s circumstances. (Andrew’s intent would be relevant in deciding on discipline.)

Investigations are often necessary to figure out whether the adverse action was retaliatory, or whether it was taken for a legitimate, non-retaliatory reason. For example, is your supervisor monitoring you more closely because you filed a complaint, or because you started showing up for work late? A retaliation investigation might seek evidence relevant to determining whether an action was made because of protected activity, such as:

- Statements indicating that the action was taken because of the protected activity. *“No overtime for you after you pulled that stunt last year,” where the “stunt” was you filing a complaint.*
- Evidence that the rule for which an employee was disciplined had not been enforced previously.
- Shifting or inconsistent explanations given for the adverse action. *If the “story” changes as to why something was done, that may indicate that the reasons given are a pretext for retaliation.*
- Timing. If a negative action is taken shortly after the protected activity occurred, that often creates a presumption of retaliation. *If, however, the person who took the adverse action was unaware of your protected activity, that usually means that it was not retaliation.*
- Whether the action was consistent with applicable policy and procedure. *If the adverse action is non-selection for a job and review shows that the recruitment and selection process for that job were conducted in compliance with applicable policies and procedures, that would be evidence against retaliation.*
- Other evidence of a legitimate, non-retaliatory reason for the action. *For example, if the adverse action was you being counseled for unprofessional conduct, and there are records of students—who were unaware of your protected activity--complaining about your conduct.*

**Do retaliation protections mean I can’t be disciplined or get a negative performance evaluation?**

No. Filing a complaint does not give you a free pass to engage in misconduct or to perform poorly. What retaliation protections mean is that if anything negative happens to you, it may be questioned and scrutinized, to see whether it was retaliatory. If you believe you have been retaliated against, please contact the investigator, if an investigation is ongoing. Other reporting options exist, they vary depending on the type of employee that you are and the type of retaliation that you experienced. Visit <https://help.ucr.edu> for more options.