

UCR Policies and Procedures

Whistleblower and Whistleblower Protection – Local Procedures

Responsible Officer:	Locally Designated Official
Responsible Office:	Chief Compliance Office
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TABLE OF CONTENTS

- I. Introduction and Purpose
- II. Definitions
- III. Retaliation, Confidentiality and Duty to Cooperate
 - A. Retaliation
 - B. Confidentiality and Anonymity
 - C. Duty to Cooperate; Investigation Interference Prohibited
- IV. Whistleblower Procedure for Reporting an Improper Governmental Activity and Report Assessment and Response
 - A. Scope and Purpose of the Whistleblower Policy
 - B. Filing a Report and Management Responsibilities
 - C. Initial Assessment of Reports
 - D. Intake and Interim Measures
 - E. LDO Reporting (to UCOP or External)
 - F. Investigations
 - G. Remedial and Corrective Action
 - H. Case Management and Records
- V. Whistleblower Protection Procedure for Reporting Retaliation and Complaint Assessment and Investigation
 - A. Scope and Purpose of WPP
 - B. Filing a Complaint and Determination of Eligibility
 - C. Investigation Process
 - D. Chancellor’s Determination
- VI. Appendices, Forms and Related Policies
- VII. Approval, Revision and Review History

I. Introduction and Purpose

The University of California, Riverside (UCR) is committed to operating in good faith, with integrity and accountability. When people report concerns (“blow the whistle”) it helps UCR fulfill this commitment, by alerting the campus to potential illegal or unethical acts so that they may be addressed. This UCR local procedure implements the University of California (UC) whistleblower policies—the UC [Whistleblower Policy](#) (Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities) and the [Whistleblower Protection Policy \(the WPP\)](#)—and provides campus procedures under which whistleblower and whistleblower protection complaints are reviewed and investigations conducted. Nothing contained in these local implementing procedures should be read or interpreted to contradict the underlying UC Whistleblower Policy.

Generally, the Whistleblower Policy is a framework for the university to address reported or suspected illegal or unethical activities by university employees or agents, and the WPP is a grievance procedure for employees who have experienced certain types of retaliation for whistleblower activities.¹

II. Definitions

Adverse Action: An action that would deter or dissuade a reasonable person from filing a complaint or engaging in another Protected Activity—if the action is taken because of the Protected Activity. An Adverse Personnel Action is a form of Adverse Action. See Appendix A for further definition.

Adverse Personnel Action: As defined in the WPP, 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.

Illegal Order: As defined in the UC Whistleblower Policy and the WPP, 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.

Improper Governmental Activity (IGA): As defined in the UC Whistleblower Policy, any activity by a state agency or by an employee that is undertaken in the performance of the employee’s duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is in violation of an Executive order of the Governor, a California Rule of Court or State Contracting Manual, or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency.

¹ The WPP is designed to be consistent with the California Whistleblower Protection Act. (See Section III(A) of the WPP). The California Whistleblower Protection Act does not apply to students (unless they are employees); the WPP is consistent with this and therefore is not available to students (unless they are also employees).

Investigations Group: The Investigations Group is established in compliance with the UC Whistleblower Policy, to advise the LDO and provide oversight of investigations:

- Assists the LDO with initial assessment of reports and in deciding on the appropriate investigation channel
- Helps ensure that campus officials with a need-to-know are informed of investigation matters
- Addresses any conflict of interest of any party involved in an investigation
- Assists the LDO in monitoring investigations to ensure timeliness
- May advise or facilitate corrective and remedial action that may be initiated in response to investigation findings.

Additional information regarding the Investigations Group is provided in Appendix B.

Protected Activity: An action that you are protected from retaliation for, such as

- making a Protected Disclosure;
- refusing to obey an Illegal Order;
- generally, filing a good-faith report or complaint of serious misconduct by a member of the UCR community under a campus, UC or external process;
- assisting others in filing a complaint or participating in an investigation process; or
- participating in a campus investigation or adjudicative proceeding.

Protected Disclosure: As defined in the WPP, a good faith² communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence either (1) an IGA 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.

Retaliation: Retaliation is an Adverse Action taken against someone because they engaged in a Protected Activity. Certain types of retaliation that include an Adverse Personnel Action against an employee or applicant of employment may be grieved through the WPP; see Section V.

Subject: A person who is the focus of investigative fact finding either by virtue of an allegation made or evidence gathered during the course of an investigation.

III. Retaliation, Confidentiality and Duty to Cooperate

UCR encourages and supports whistleblowing as part of its ethics and compliance program. UCR employees are expected to respect whistleblowing and other Protected Activities, and to avoid any retaliation. UCR respects confidentiality and requests for anonymity, as required by law and policy, in order to help avoid retaliation and to preserve the rights of those involved in reports and investigations. All employees are expected to cooperate with whistleblower investigations.

² If the whistleblower made a good faith report that disclosed or demonstrated an intention to report an improper governmental activity, it is a "protected disclosure" under the policy. While the motivation of the whistleblower is irrelevant to the consideration of the validity of the allegations, the intentional filing of a false report is itself considered an improper governmental activity that the university has the right to act upon. <https://www.ucop.edu/uc-whistleblower/faqs/faq-subject-of-whistleblower-investigation.html>.

A. Retaliation

UCR prohibits retaliation and encourages people to speak up without fear of retribution.

Retaliation protections under this procedure are available to people who engage in Protected Activities. This includes whistleblowers and witnesses as well as someone who assists a whistleblower in their Protected Activity or participates in a whistleblower investigation or proceeding. In addition, those associated with someone who engaged in a Protected Activity are protected from retaliation. For example, retaliating against an employee by disciplining their spouse, who is also a UCR employee, is prohibited.

Certain types of retaliation against an employee or applicant of employment may be grieved through the WPP procedure (see Section V). Other forms of retaliation—such as retaliation that occurs against someone who is not covered by the WPP (e.g., students) or that did not include an Adverse Personnel Action—may be addressed under this Whistleblower Procedure (see Section IV) and/or through other appropriate complaint or disciplinary processes.³ See Appendix A FAQs about retaliation.

Under the Whistleblower Policy, all reports of retaliation will be carefully considered and appropriate action taken. In some instances, the appropriate response will be management action to stop the alleged retaliation. In other cases, particularly with more serious allegations, fact-finding is required in order to determine whether retaliation occurred. In these more serious cases, an investigation or adjudicative process (such as a hearing) generally will seek to establish whether a Protected Activity and Adverse Action(s) occurred and, if so, whether there is sufficient evidence to conclude that the Adverse Action was taken because of the Protected Activity—or if there was a legitimate, non-retaliatory reason for the Adverse Action.⁴

B. Confidentiality and Anonymity.

1. Confidentiality. UCR will protect the confidentiality of whistleblowers and participants in whistleblower investigations to the extent required by law and by University policies and procedures.
 - Whistleblowers should be cautioned that their identities might become known for reasons outside the control of the investigators or university administrators. Should the whistleblower's identity be self-disclosed, UCR will no longer be obligated to maintain such confidentiality.

³ Whether and what other process(es) are available to address retaliation depends on the identity of the people involved (for example, certain employees may file complaints under PPSM-70) and the nature of the retaliation. Potential complaint options include: PPSM-70, UCR Policy 650-75, APM 140, Senate Bylaws 335 and 336, grievance options under collective bargaining agreements, and the student code of conduct (PACAOS). In addition, management, particularly in instances alleging less severe retaliatory acts, may be able to address reported retaliation through performance management or other supervisory actions, for example by directing the person to cease the alleged activity.

⁴ In some instances, there may be evidence of legitimate and retaliatory reasons for an Adverse Action. For example, an employee disciplined for tardiness may have in fact been tardy (a legitimate reason), but targeted for discipline under a previously-unenforced policy. In these situations, retaliation could be found to have occurred unless the evidence shows that the Adverse Action would have been taken/occurred regardless of the Protected Activity.

- Some information-sharing is necessary to conduct an investigation and to avoid retaliation and investigation interference. In formal investigations involving faculty or staff, information is typically shared with the supervisor and/or unit head of the unit(s) in which the parties are employed.

Specific expectations as to confidentiality and information sharing may be established and communicated to parties, witnesses, or others, on a case-by-case basis. See also Section IV(F)(6) below regarding confidentiality and sharing of whistleblower investigation reports.

2. **Anonymity.** Reports under the Whistleblower Policy may be filed anonymously. See Section IV(B) below for reporting options. In order to assist with the initial assessment process and for the commencement of an investigation, anonymous whistleblowers must provide sufficient corroborating evidence. Because investigators are unable to interview anonymous whistleblowers, it may be more difficult to evaluate the credibility of the allegations and thus less likely for an inquiry or investigation to be initiated.

Complaints under the WPP may **not** be anonymous.

Complainants and witnesses may also request that their identity be protected, to be treated as an anonymous reporter/witness. These requests will be honored to the extent consistent with the campus's obligations to conduct a thorough investigation (or otherwise respond to the report) and with the rights of subjects.⁵

C. Duty to Cooperate; Investigation Interference Prohibited

Persons reporting an IGA should be prepared to be interviewed by investigators. Whistleblowers have the responsibility to be candid to those whom they make a report and to set forth all known information⁶ regarding any alleged IGAs. However, whistleblowers are "reporting parties" not investigators. They are not to act on their own in conducting any investigative activities, nor do they have a right to participate in any investigative activities other than as requested by investigators.

UCR employees who are interviewed, asked to provide information or otherwise participate in a whistleblower investigation have a duty to fully cooperate with the investigator. (See Section IV(F)(1) of the UC Whistleblower Policy and Section III(D)(4)(c) of the WPP).

UCR employees must respect the rights and responsibilities afforded by the UC Whistleblower Policy and WPP, including preserving evidence and abiding by any interim measures and admonitions and instructions provided by the LDO or investigator. Refusing to provide, destroying or spoiling evidence is prohibited. Coaching, pressuring, or attempting to influence witnesses is prohibited.

Failure to cooperate or investigation interference will be considered misconduct and referred for disciplinary action as appropriate.

⁵ A subject's right to receive information is heightened in situations where disciplinary action is/may be pursued.

⁶ Whistleblowers, however, shall refrain from obtaining evidence for which they do not have a right of access. Such improper access may itself be considered an IGA in accordance with Section IV(E)(2) of the Whistleblower Policy.

IV. Whistleblower Procedure for Reporting an Improper Governmental Activity and Report Assessment and Response

This local procedure establishes the protocols used by the campus in addressing whistleblower reports. This procedure may also be used to conduct non-whistleblower investigations, at the discretion of the responsible investigative unit and with modifications as appropriate.

The whistleblower process is administered by the Locally Designated Official (LDO), who at UCR is the Chief Compliance Officer, with support and advice from the Investigations Group. Capitalized terms used in this procedure and not defined have the meanings given in Section II of the UC Whistleblower Policy.

Whistleblower reports and investigations are vital to the campus's ability to identify and address IGAs.

The intentional filing of a false report, whether orally or in writing is considered an IGA, which may be acted upon (see Section IV(E)(1) of the UC Whistleblower Policy).

A. Scope and Purpose of the Whistleblower Policy

The whistleblower process **is**:

- Designed to ensure unbiased, professional review of reports, complaints and other information of suspected IGAs. For examples of IGAs, see Appendix A.
- An important means for the campus to detect and remedy illegal or unethical acts, and to mitigate risk to the campus.

The whistleblower process **is not**:

- A disciplinary process. If actionable misconduct is detected through the whistleblower process, it will be referred to the appropriate campus office or process to be addressed.
- A way to address common workplace disputes or disagreements. Employees are encouraged to raise workplace concerns and complaints with their supervisors or other established channels.
- A right to an investigation. Investigations are one method by which reported IGAs may be addressed; other options include referral to management, non-investigative remedial action, and internal controls improvements, in the discretion of the LDO.

B. Filing a Report and Management Responsibilities

- Who May File A Whistleblower Report? Anyone may file a whistleblower report—a reporter does not need to be a UCR student or employee.

- Where and How Do You File a Whistleblower Report? Written reports with as much specific factual information as possible are preferred. UCR encourages whistleblowers to file reports using the EthicsPoint reporting system, which allows people to report online or by phone, anonymously or using their names. EthicsPoint is a third-party managed system used by the entire University of California system. EthicsPoint also allows whistleblowers to report directly to the UC Office of the President, in cases where the alleged IGA involves UCR's Chancellor or the LDO (Section III(1)(A)(4)).

You may also file your report using the UC Whistleblower Hotline at 800-403-4744 or with UCR's LDO ldo@ucr.edu, via EthicsPoint at universityofcalifornia.edu/hotline or by contacting the LDO office at 951-827-6223. See help.ucr.edu for other reporting options (depending on the nature of the report, e.g., financial fraud).

- Reports may also be made to the California State Auditor at 800-952-5665 or www.auditor.ca.gov/hotline.
- Employees have additional reporting options: You may report to your supervisor or a more senior administrator in your organization (for example, your supervisor's supervisor or the head of your department). If there is a conflict of interest in reporting to your supervisor or other administrator in your unit, or confidentiality or other problems in reporting within your unit, you may make a report to another campus official who has responsibility (1) for the unit or (2) for the employee you believe to be engaging in the IGA.
- What Does a Report Need to Include? Reports need to provide enough information for the LDO to assess it and determine the appropriate course of action. If a report does not have enough detail to be actionable, the LDO typically will attempt to contact the reporter to request additional information (see Section III(1)(A)(2) of the UC Whistleblower Policy).
- I am a UCR Supervisor -What Are My Whistleblower Responsibilities?
 - The Whistleblower Policy encourages all UC employees, particularly supervisors, to be aware of and alert to any communication (written, oral, formal or informal) that may be a report of an IGA (see Section III(1)(A)(6) of the UC Whistleblower Policy). Although the campus encourages people to file their reports directly with the LDO or via EthicsPoint, the goal is to identify IGAs—not to set up technical barriers to reporting.
 - When you receive a report or complaint, or information indicating an IGA, review it carefully to identify the issues raised. In some cases, you are required to report the matter to another office, or to make some type of notification as described in the following [Reporting Obligations](#) chart:

Your Position & Matter Reported	Required Action
<p>If (1) you are a manager, supervisor, faculty, UCPD officer, or HR or AP administrator or Title IX professional, and (2) you learn that anyone affiliated with UCR may have experienced conduct prohibited by the UC Policy on Sexual Violence and Sexual Harassment (SVSH Policy) or the UCR Discrimination, Harassment and Retaliation Complaint and Resolution Policy,</p>	<p>then (3) you must promptly contact UCR's Office of Title IX, Equal Opportunity & Affirmative Action (Title IX/EOAA).^[1] Filing a report online is encouraged.</p>
<p>(1) Unless you are a Confidential Resource, if (2) you learn that a student may have experienced Prohibited Conduct under the SVSH Policy,^[2]</p>	<p>then (3) you are required to promptly notify the Title IX Officer. Please complete the online report form or email titleix@ucr.edu.</p>
<p>If (1) you are a Campus Security Authority (CSA) and (2) you become aware of a report or allegation that a Clery Act crime is alleged to have occurred on UCR's Clery Act geography,</p>	<p>then (3) you are required to notify UCPD or the Clery Act Coordinator. See UCR's Clery Act web page for further guidance.</p>
<p>If (1) you are a Mandated Reporter under CANRA and (2) you become aware of actual, reported or suspected child abuse or neglect occurring on UCR's campus or at an official UCR activity or program,</p>	<p>then (3) you are required to (a) make a verbal <i>external</i> report to any of the following: local law enforcement, child protective services, or county welfare departments; (b) no later than 36 hours after the verbal report, fill-out Form SS 8572 and submit it to the agency with whom a verbal report was made; and (c) make an <i>internal</i>* report (may be anonymous) to a supervisor or through the University Compliance Hotline at (800) 403-4744 or http://www.universityofcalifornia.edu/hotline/ (See UCR CANRA Reporting Requirements for more details)</p>
<p>If you receive or are aware of (1) violence in the workplace,</p>	<p>Then (2) any perceived violations of the policy are to be reported to the next-in-line supervisor or to an academic administrator. See Section V of the Violence Prevention in the UCR Community policy.</p>

^[1] The reporting obligation arises if the employee learns, in the course of employment, that Prohibited Conduct may have occurred. Certain exceptions apply. See Section II(C)(7), *Responsible Employee*, of the [SVSH Policy](#) and Section VIII, *Responsible Employees*, of the [Discrimination Policy](#). Note that under the Discrimination Policy, Resident Assistants and Graduate Teaching Assistants are also required to report in these situations.

^[2] See Section II(C)(7) of the [SVSH Policy](#) for the Responsible Employee reporting obligation, and Section II(B) for definitions of the various forms of Prohibited Conduct.

<p>If (1) you are a supervisor and/or department management and (2) you become aware of a serious injury (amputation, concussion, fracture, injury with significant bleeding, severe burn, and/or any injury requiring overnight hospitalization),</p>	<p>Then (3) you must (a) immediately get first aid and call 911; (b) report the incident using the Report and Incident, Injury, or Safety Concern form; and (c) report and provide details of the serious injury to EH&S within 24 hours at (951) 827-5528 during business hours or (951) 827-5222, if after hours.</p>
<p>If (1) you receive a report or information that alleges an IGA,</p>	<p>Then (2) you must elevate it to the LDO if:</p> <ul style="list-style-type: none"> ➤ The reported IGA results from a significant internal control or policy weakness likely to exist elsewhere on campus or in the system ➤ Media or public attention is likely ➤ The matter involves misuse of UC resources ➤ There is potentially significant liability ➤ There is a significant possibility of a criminal act (such as disappearance of cash) ➤ There is a significant threat to the health and safety of employee or the public. <p>When in doubt, refer the matter to the LDO so that it can be assessed. (See Section C below for a full discussion of the possible outcomes of LDO assessment.)</p>

- Help prevent retaliation and protect the integrity of the investigation (if relevant). See Sections II and IV of this procedure, and Appendix A (FAQs).
- What Are Other Ways That the LDO Receives a Whistleblower Report? Reports are referred by other campus units and officers who have investigative responsibilities, who receive complaints or information regarding IGAs, or who have responsibilities for addressing matters that may constitute an IGA, such as Human Resources (particularly Employee & Labor Relations), Audit & Advisory Services, the Academic Personnel Office, the Privilege and Tenure Committee⁷, and Title IX/EOAA. These offices will refer reports or confer with the LDO when they become aware of a potential IGA, including through the Investigations Group as described in Appendix B. In addition, managers and other employees may elevate to the LDO matters that they observe or receive information about, when they identify it as involving a potential IGA.

C. Initial Assessment of Reports

Upon receipt of a report the LDO conducts an initial assessment. The initial assessment often involves consultation with the Investigations Group or appropriate members thereof, and may include other consultation or information gathering⁸ (See Appendix B).

⁷ Upon receipt of a written grievance that includes allegations of IGAs and/or allegations of retaliation for reporting IGAs, the Privilege and Tenure Committee shall report these allegations to the LDO. [Academic Senate Bylaw 335.](#)

⁸ Section IV(C) of the Whistleblower Policy provides that the LDO is responsible for determining the need for consultation with the Investigations Group, select members thereof or other subject matter experts when initiating an investigation, and that “procedures guiding the initiation of investigations should not impede prompt action by the LDO or investigators when warranted.”

The assessment first determines whether the report, on its face, plausibly alleges an IGA, and if not, refers or dismisses the matter as appropriate. In some cases, data collection or limited inquiry is necessary in order to determine whether it alleges an IGA, which office the report should be referred to, where the matter should be escalated, or other initial assessment outcomes. Each report is reviewed and assessed on a case-by-case basis, however, there are common responses to certain types of allegations; see Appendix A. For reports that contain multiple allegations, the assessment applies to each allegation, and different actions may be taken for different allegations (for example, certain allegations may be dismissed, others referred, and another accepted for investigation under this procedure):

1. If a Report Does Not Allege an IGA, the LDO typically will dismiss (close) the matter or may refer it for management attention or to a different complaint or grievance process, if applicable.
2. If a Report Alleges an IGA:
 - a. but is required to be handled by another office or through a dedicated grievance/complaint procedure, the LDO will re-direct the reporter or directly refer the matter (or, if multiple issues are raised, certain allegation(s)), as appropriate. For example, allegations of research misconduct (i.e., fabrication, plagiarism, or falsification are addressed under the UCR Policies and Procedures for Responding to Allegations of Research Misconduct, Policy 529-900).
 - b. for which a full investigation does not appear necessary⁹ or feasible¹⁰, the LDO may refer the matter to management or take other steps to address any internal control weaknesses or other issues presented by the report. If information-gathering is needed to inform management response, the LDO may conduct or oversee additional assessment or inquiry as provided in Section IV(C)(3), below.
 - c. for which a fact-finding investigation appears necessary to inform campus response, the LDO will consult with the Investigations Group or appropriate members thereof to determine the most appropriate investigative body or process. This may result in referral to an established grievance or complaint process, or an investigation may be initiated. (See Section IV(F) regarding the investigation process.) The UC Whistleblower Policy provides that investigations should be launched only after preliminary assessment establishes that the report is accompanied by information specific enough to be investigated, or directly points to corroborating testimonial or documentary evidence that can be pursued.

Whenever a matter is referred, precautions will be taken as appropriate to protect anonymity and prevent retaliation, such as summarizing or redacting the report and providing admonitions or guidance to the receiving entity.

⁹ An investigation is most likely necessary where extensive evidence collection or formal fact-finding is required in order for the campus to stop or prevent recurrence of misconduct, or to address the internal control weakness or health or safety risk.

¹⁰ The Whistleblower Policy provides that an investigation should be “launched only after preliminary consideration that establishes that...the allegation is accompanied by information specific enough to be investigated, or.... has or directly points to corroborating evidence that can be pursued.”

D. Intake and Interim Measures

The steps outlined in this section typically are reserved for matters assessed as warranting an investigation, although in some situations may be taken as part of initial assessment.

1. Intake. Intake refers to communications between the whistleblower (typically, or other person(s) reported to have direct knowledge of the IGA) and the investigative unit or other appropriate office. When an intake process is conducted the purpose is to share information, including regarding available campus resources, and gather information about the reported IGA. Intake process ranges from a single anonymous communication to lengthy series of meetings and discussions.
2. Interim Measures. Generally, interim measures are taken only if an investigation is to be conducted or as part of alternative dispute resolution. Interim measures are implemented when needed to stop the alleged misconduct, preserve evidence, protect the integrity of the investigation, prevent retaliation, or otherwise mitigate risk. Interim measures often require management approval or action.

E. LDO Reporting (to UCOP or External)

Certain IGA reports must be elevated to the systemwide LDO, under Section II(1)(C)(1) of the UC Whistleblower Policy. The relevant UCPD office shall be notified of such reports, if it appears that a crime may have been committed.

Certain IGAs must, either initially or, more commonly, after some investigation, be reported to an external agency, such as a funding entity. The LDO will consult with the relevant unit head and the systemwide Senior Vice President-Chief Compliance and Audit Officer in making such external reports.

F. Investigations

Investigations seek to make factual findings regarding the allegations. A fact-finding investigation collects evidence and makes findings as to whether alleged conduct occurred and whether the conduct violated policy or otherwise constituted an IGA, including by conducting credibility assessments if necessary. An investigation may be:

- Conducted by a UCR investigator (such as an investigator within the Chief Compliance Office)
- Conducted by an investigator employed at the University of California Office of the President
- Conducted by an external investigator, which is appropriate when the campus lacks the technical expertise to address the matter and the expertise cannot be obtained through consultation with subject-matter experts, when internal workload will result in undue delay, or when there is a conflict of interest. The Chancellor's Office approves the retention of external investigators for the LDO.

1. Investigation Charge and Scope. To initiate an investigation, the LDO charges the investigator, specifying the scope and purpose of the investigation and allegations. The allegations are identified by the LDO through the initial assessment process, and typically specify the incidents or conduct that are reported or suspected to have occurred, and may indicate the policies or other rules or principles at issue. The allegations generally are not identical to the complaint(s) filed; for example, the allegations may not include all issues raised by the reporter. Allegations may be revised over the course of the investigation, most commonly in response to new information received or events occurring over the course of the investigation (such as alleged retaliation).
2. Notification to Parties. Parties to an investigation typically are notified of the investigation at or near the outset of the investigation. When appropriate, the LDO will notify the whistleblower (reporter) of the allegations being investigated and, if applicable, the reasons why other allegations are not being investigated. The LDO or investigator also notifies the parties of their rights, protections, and obligations under the Whistleblower Policy. The LDO may delay notification to the Subject, in consultation with the investigator, to avoid spoilage of evidence, witness tampering, retaliation, or as otherwise deemed beneficial for the investigation process.

The Subject(s) of an investigation may provide the investigator with a written response to the allegations.

3. Interviews. The investigator will interview parties and witnesses deemed to have information relevant to the scope of the investigation. Parties and witnesses will be allowed a reasonable amount of paid time off from their University duties to participate in interviews conducted by the investigator.

The investigator will provide parties with the opportunity to suggest possible witnesses. The investigator will select witnesses for interview based on the investigator's professional judgment as to whether the witnesses are likely to have relevant evidence to provide. Character testimony is not considered relevant evidence.

- The investigator will provide interviewees with admonishments and information about their rights and responsibilities under the UC Whistleblower Policy or the WPP.¹¹
- When practicable, interviews will be conducted in person. Zoom or other video conferencing, telephonic interviewing or written interrogatories (questions and responses) may be used when deemed appropriate by the investigator.¹²
- The university does not permit parties, witnesses, or other participants to record interviews or meetings, except where required by law.¹³

¹¹ The policies provide information regarding the role of various parties in the investigation. See UC Whistleblower Policy Section II(E) and IV(E) regarding whistleblowers, Section IV(F) regarding witnesses and other participants and Section IV(G) regarding subjects and WPP Section III (D)(4)(c).

¹² The investigator will consider factors such as the nature of the information the witness is believed to have to offer and the feasibility of an in-person interview.

¹³ Public Safety Officers Procedural Bill of Rights Act, [California Government Code](#) § 3300 to § 3313.

4. Advisors. Parties are permitted to have an advisor who may accompany the party to interviews or other meetings. Parties shall notify the investigator of their advisor's identity in advance, so that the investigator can confirm that the advisor is not a witness or a supervisor/manager of a party.
5. Evidence Collection. The investigator will gather evidence relevant to the scope of the investigation and provide parties with an opportunity to share evidence they determine relevant. In instances where an investigator needs access to electronic evidence without a user's consent, authorization must be obtained in accordance with UCR Policy [400-31 Electronics Communications Policy \(ECP\) Overview and Implementation at UCR](#).

The investigator determines the relevance and weight of evidence based on their professional judgment, best practices, the issues in dispute, the scope of the investigation, and applicable policy.

The investigator will consult with administrators or others with subject matter expertise as needed, including in making determinations as to whether a policy violation occurred.

Before the conclusion of the investigation, the investigator will provide the Subject of the investigation the opportunity to respond to all the allegations and material evidence. Typically, this is done during an interview.

6. Investigation Report. An investigation report makes factual findings and may make determinations as to whether the alleged conduct violated UC policy or law. The format and content of the report will depend on the scope of the investigation. Generally, the report will document the scope and methodology of the investigation, the allegations and the relevant evidence collected, and the findings including credibility assessment where relevant. Before submitting the final report to the LDO, the investigator will provide the LDO with a draft of the investigation report for review. The LDO will review the investigation report for completeness and policy compliance, and may return the report for additional investigation or clarification. See paragraph (8) below regarding access to the report.
7. Investigation Closure. The LDO may conclude an investigation prior to its completion and production of an investigation report when further investigation is deemed unnecessary to address the reported IGA (for example, if the employee reported to have engaged in the misconduct is no longer a UC employee and internal controls were improved to prevent repetition of the misconduct), when a reporter withdraws the report, or when it is determined that further investigation is significantly unlikely to find sufficient relevant evidence to support a finding.
8. Determination of Investigation Outcome and Notifications. The LDO determines the investigation outcome, accepting or modifying the findings made by the investigator and determining whether any substantiated misconduct constituted an IGA. (See Appendix A for examples of IGAs.) The LDO notifies the parties of the determination and the investigation findings that relate to them. A redacted copy of the investigation report will be made available to investigation parties upon request or pursuant to the relevant disciplinary process, if applicable; however, the information provided may be limited to

information relevant to the person receiving the report.¹⁴ Parties shall be cautioned about the investigation report's sensitivity and that sharing the report may constitute or contribute to retaliation. UCR cannot and does not advise parties of the potential civil liability that could arise from disclosing the report or its contents more broadly.

9. No Right of Appeal. Investigation reports and LDO determinations are not subject to appeal or revision in response to party objections. If a report forms the basis of disciplinary action, the disciplinary process typically provides opportunity for the employee to respond and object.¹⁵
10. Accommodations and Interpretation. The university provides reasonable accommodations and interpreter services for parties as required by law.

G. Remedial and Corrective Action

If assessment or investigation of a whistleblower report reveals evidence of misconduct, internal control weaknesses, or other matters warranting management attention, the LDO or other UCR official will take appropriate action, which may include:

1. Recommendation of policy, procedure or internal control improvements or changes
2. Communication of risk or other issues to management
3. Education or training
4. Referral to Audit & Advisory Services
5. Initiation of disciplinary process by management.

The Whistleblower Policy provides that the Investigations Group may advise regarding “the corrective and remedial action that may be initiated in accordance with applicable faculty or staff conduct and disciplinary procedure.” Human Resources (for staff) or APO (non-Senate academic personnel) and the CCO may also provide advice to ensure that personnel processes are followed and that action taken “reinforce[s] individual accountability and responsibility for ensuring compliance to UC policies and/or regulatory obligations by the administration of equitable disciplinary actions commensurate with the severity of the infraction.”¹⁶ For Senate faculty, the matter may be referred to the Dean or other appropriate administrator, in consultation with the VPAR, for consideration in accordance with APM-015. (See Section VIB.)

¹⁴ Generally, when parties request information, they are entitled only to the final investigation report at the completion of the investigation, which the University may redact to protect the privacy of personal and confidential information regarding all individuals, and are not entitled to other investigation-related records. Non-parties' rights to records are as provided in applicable laws. Exhibits to the investigation report are not typically provided, unless the requester is entitled to them under the California Public Records Act or the Information Practices Act or to the extent that the investigation findings are used in a disciplinary process.

¹⁵ If material new evidence or information indicating a significant mistake or omission is uncovered in this process, typically this information should be considered in the disciplinary process, with consultation of the LDO/investigator to help assess the relevance of the information or evidence. In rare situations, supplemental investigation or modification of the LDO's findings may be warranted.

¹⁶ University of California Ethics and Compliance Program Plan.

H. Case Management and Records

The LDO office logs whistleblower reports and records key information regarding the disposition of each matter in case management systems, such as (i) whether the matter required notification to UCOP or any external entity, (ii) the disposition/outcome of the LDO assessment and, if an investigation was conducted, the investigation findings, and (iii) the remedial and corrective action taken, if applicable.

Investigations records are retained in accordance with the [UC Records Retention Schedule](#).

V. Whistleblower Protection Procedure for Reporting Retaliation, Complaint Review and Investigation

The [University of California Whistleblower Protection Policy](#) (WPP) is a grievance process available to employees (and certain other people, as described in Section A below) who believe they have been retaliated against for having made a Protected Disclosure (most commonly, a report of an IGA, or refused to obey an Illegal Order). This is the procedure used by UC Riverside to implement the WPP.¹⁷

Capitalized terms used in this procedure have the meanings given in the WPP (see Section II of the WPP). References to Sections are references to the WPP. In the event of any conflict between this procedure and the WPP, the WPP will govern.

A. Scope and Purpose of WPP

The WPP is a specialized grievance procedure designed to ensure compliance with the California Whistleblower Protection Act, a state law prohibiting certain forms of retaliation by a UC employee.

The WPP is:

- Designed to remedy certain instances of retaliation, specifically Adverse Personnel Actions taken against someone for refusing to obey an Illegal Order or making a Protected Disclosure.
- Available to employees, applicants for employment and former employees who experienced retaliation (as defined in the WPP) while they were employees.
- A process you can pursue even if you have initiated another complaint or grievance process.¹⁸

¹⁷ WPP Section III(B) and (J).

¹⁸ An employee can file a report under the WPP or other grievance processes available to them—or both. The employee has the option to choose the appropriate process(es). However, only the WPP process satisfies the administrative exhaustion requirement in the Whistleblower Protection Act. If retaliation is alleged under both the Whistleblower Policy and the WPP, and it is actionable under the WPP, it will be investigated under the WPP.

The WPP is not:

- A general or “catch-all” grievance or retaliation procedure. There are strict requirements for complaints to be eligible for processing under the WPP. For example, the following types of retaliation may not be eligible for processing under the WPP:
 - retaliation for reporting student misconduct. The WPP generally is focused on misconduct by the University, its employees, or agents.
 - retaliation for reporting actions that did not constitute an IGA or a serious threat to health or safety.
- The Whistleblower Procedure or other grievance or complaint mechanisms¹⁹ may be available to address complaints not eligible for processing under the WPP. See Section IV(A) of this procedure.
- Protection from disciplinary action or other personnel action justified by legitimate, non-retaliatory reasons (WPP Section III(E)(1)).

B. Filing a Complaint and Determination of Eligibility

The Locally Designated Official (LDO) is the campus official responsible for processing WPP complaints. The LDO reviews complaints to determine whether they are eligible for processing under the WPP and, if so, the allegations to be investigated. The UC Riverside LDO is the Associate Vice Chancellor/Chief Compliance Officer.

- Complaints should be filed using the [UC Riverside Whistleblower Retaliation Complaint Form](#). A complaint must include the allegations required by the WPP and must be filed timely. The Complainant must also provide a Sworn Statement, made under penalty of perjury, that the contents of the complaint are true or believed to be true by the Complainant (WPP Section III(C)).
- The LDO reviews the complaint to determine whether it is eligible for processing under the WPP (WPP Section III(D)(1)).
 - The LDO may consult with members of the Investigations Group and conduct other confidential inquiry or preliminary investigation, particularly to determine whether the Complainant has alleged a Protected Activity or experienced an Adverse Action (WPP Section III(D)(1)(c)).

¹⁹ Other internal policies and procedures that may be available:

- For members of the Academic Senate whose rights or privileges as a faculty member have been violated, the Senate grievance process.
- For non-represented employees, the PPSM-70 complaint process.
- For employees who have experienced discriminatory retaliation, the [Discrimination, Harassment, and Retaliation Complaint and Resolution Policy](#).
- For employees and students who have experienced retaliation for reporting conduct prohibited under the Sexual Violence and Sexual Harassment Policy, the [applicable adjudication procedure under that Policy](#).

- The LDO may request that the Complainant provide additional information or amend (“cure”) the complaint, for example if it is not clear from the information provided whether the Complainant made a Protected Disclosure (WPP Section III(D)(1)(c)).
- If a complaint (or parts of a complaint) are not accepted for processing under the WPP, the LDO notifies the Complainant in writing.
 - The Complainant has the opportunity to appeal to the UC System LDO (WPP Section III(I)).
 - The LDO will refer or investigate any allegation(s) not accepted under the WPP as appropriate under the UC Whistleblower Policy or other applicable policies and procedures. See Section IV.
- If an investigation is authorized, the LDO notifies the Complainant (WPP Section III(D)(1)(d)) and, at the appropriate time, the respondent(s)²⁰ (WPP Section III(D)(2)), that the complaint has been accepted and of the allegations to be investigated. (Allegations are discussed further under “Investigation Process” below.)
- Certain complaints may be referred to the Office of the President (WPP Section III(H)).

C. Investigation Process

An investigation is conducted by an investigator from the Chief Compliance Office’s Fact-Finding Unit or an external investigator. The LDO may appoint someone to act as a Retaliation Complaint Officer (RCO), to oversee the investigation, or may themselves act as RCO. Similarly, the RCO may personally conduct the investigation or may delegate the fact-finding, in whole or in part, to an investigator (Section III(B)(4)). The investigation is a fact-finding process through which relevant evidence is collected and analyzed under the WPP and other applicable policies or laws.

1. Investigation Procedures. An investigation under the WPP follows generally the same investigatory procedures as the Whistleblower Policy, which is referenced above in Section IV(F) of this procedure, with some important differences described below.²¹
2. Investigation Report. The investigator produces a draft investigation report with findings of fact and the investigator’s conclusion as to whether retaliation (as defined by the WPP) occurred, applying the standards of proof specified in the WPP (Section III(E)). If the RCO did not conduct the investigation, the RCO reviews the draft report for completeness and policy compliance, and may return the report for additional investigation or clarification (WPP Section III(D)(4)(d)). The RCO delivers the final investigation report to the LDO²² (WPP Section III(D)(4)(e)).

²⁰ Referred to as the accused, in the WPP.

²¹ A WPP investigation may also address whistleblower complaints, particularly if the Protected Disclosure was a whistleblower complaint that has not been investigated or otherwise addressed. Any whistleblower allegations will be processed in accordance with the Whistleblower Policy.

²² For cases where the LDO is not serving as RCO.

The investigation report is then reviewed by the Chancellor or designee, who makes a final determination as described in the subsequent section (D). UCR strives to complete the investigation report within six months of the complaint being accepted under the WPP. Extensions may be made for good cause, generally not to exceed twelve months.²³

D. Chancellor's Determination

The LDO submits the report to the Chancellor or designee, who renders a final decision as to whether a violation occurred and determines relief as appropriate. The Chancellor's written decision will be issued within 18 months after the filing of the complaint, absent extenuating circumstances (WPP Section III(F)).

- The Chancellor may request further investigation or clarification in the report prior to making a decision.
- The Chancellor will issue a written decision, which will be provided to the Complainant and the Respondent(s).
 - If the Chancellor determines that retaliation occurred, the Chancellor will determine any appropriate relief or remedial measures.
 - If the Chancellor decides that an employee violated the WPP, disciplinary action may be taken in accordance with applicable policy or collective bargaining agreement (WPP Section III(G)).
- The Chancellor's decision is final and not subject to appeal (WPP Section III(I)).

VI. Appendices, Forms, and Related Policies

Appendices:

- A. Frequently Asked Questions
- B. Investigations Group

Form:

- [UC Riverside Whistleblower Retaliation Complaint Form](#)

Related Policies and Guidance:

- A. [UCOP FAQs](#) - Questions about WPP protections from retaliation for being a whistleblower
- B. [UC Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities](#) (Whistleblower Policy)
- C. [UC Whistleblower Protection Policy](#)
- D. [Child Abuse and Neglect Reporting Act \(CANRA\) Reporting Obligations](#)
- E. [Campus Security Authority \(CSA\) for Clery Act Reporting Obligations](#)

²³ Section III(D)(4)(e). Good cause may be shown by university closure(s), illness or other reasonable unavailability of necessary parties or witnesses, other proceedings (e.g., law enforcement investigation) or other circumstances beyond the requesting party's or administration's control.

VII. Approval, Revision and Review History

Section V of this procedure was approved by the Chancellor effective March 1, 2019, in accordance with Section II(B)(1) of the WPP. The procedure was expanded to add the local implementing procedure for the UC Whistleblower Policy, in amendments effective [____], 2022.

PROPOSED

Appendix A

Frequently Asked Questions

These FAQs accompany and provide guidance for the UCR Whistleblower and Whistleblower Protection Local Procedure; references are to sections of that procedure.

General Whistleblower FAQs

1. *I'm a manager or supervisor. What do I do if I receive a Whistleblower complaint?*

First, check whether you are required to refer the report or to inform someone about it. There are requirements to report or to inform particular bodies in particular situations, such as conduct prohibited by the SVSH or Discrimination, Harassment, and Retaliation Policy; violence in the workplace; or certain alleged IGAs (i.e., a criminal act or a significant threat to the health and safety of an employee or the public) (See Section IV(B)). If you do not elevate or refer the matter to another office, or if you have been asked to address the matter, you are responsible for addressing the report. This may mean conducting some inquiry and taking some corrective action (if warranted).

- In most cases, it is advisable to consult with your supervisor.
- Take precautions to prevent retaliation.
- It is good practice to document your actions.
- Be alert for information that you may become aware of in the course of your inquiry that changes your assessment as to whether the matter should be elevated to the LDO.
- You typically should notify the reporter of the outcome, while being mindful of privacy rights and other confidentiality concerns.

2. *Does a Whistleblower report always result in an investigation?*

Only some whistleblower reports result in a formal investigation. All reports are reviewed and assessed to determine the appropriate response; see FAQ #3 below. Some examples of situations in which a formal investigation may not be conducted are:

- if management is already aware of or taking steps to address the reported issue.
- if the report alleges misconduct that is deemed unlikely to continue or recur; for example, if the alleged subject is a person who is no longer a UCR employee or affiliate.
- a report without sufficient detail to determine appropriate response. (The LDO typically requests more information from the reporter in these situations, prior to closing the matter.)
- the report is not credible on its face.

3. *How is inquiry/assessment handled when a Whistleblower complaint is first received?*

In many cases, some information-gathering is needed to decide the appropriate response to a report. This inquiry/assessment typically is conducted confidentially (particularly without revealing to potential parties or witnesses the existence of a complaint or potential investigation), typically without interviews of witnesses or notification of subjects. Inquiry may include records collection and data analytics. Inquiry typically includes consultation with the Investigations Group (or members thereof). In some instances, such as where extensive relevant records exist, assessment/inquiry may be prolonged.

4. *What are some general practices for particular types of reports?*

Each report is reviewed and assessed on a case-by-case basis, however, there are common responses to certain types of reports:

- a. Ongoing Conduct, Discipline, or Performance Management Action – these reports generally will be directed to raise their concerns in that disciplinary or performance management process or in available appeal or grievance mechanisms. Campus processes are designed to provide due process and specifically to give individuals the opportunity to raise and have considered substantive and procedural objections; the Whistleblower Policy is not an appeal process.
- b. Completed Disciplinary Process - a report alleging an IGA in a completed disciplinary process may result in a document review of the case for procedural compliance.
- c. Discrimination or Harassment (Including Sexual Violence) - a report alleging a violation of the SVSH Policy or other University or campus non-discrimination policies will be referred to Title IX/EOAA.
- d. Poor Performing Employee/Department - a report alleging that an individual employee or department is performing poorly or is incompetent typically will be referred to management to address. The Whistleblower Policy is not a performance management process.
- e. Privacy - a report alleging a violation of privacy may be referred to the Registrar, if a FERPA-related allegation; the UCR School of Medicine Chief Compliance and Privacy Officer, if a HIPAA-related allegation, or the Campus Privacy Officer for other privacy violations.
- f. Criminal Activity or Suspected Loss - a report alleging criminal activity shall be reported to UCPD and a report alleging suspected losses of money, securities, or other property shall be reported to Risk Management as soon as discovered.

5. *What is the role of an advisor in the Whistleblower process?*

The advisor may support and provide counsel to the party. The advisor is not permitted to answer questions for a party; parties are expected to speak for themselves. The investigator will provide the advisor with an opportunity to discuss the investigation process, ask questions or raise concerns. Interviews are not depositions or courtroom proceedings; legal objections are not appropriate. Advisors who disrupt the interview process may be asked to leave.

Retaliation FAQs

These FAQs explain (1) UCR's prohibition on retaliation, in keeping with our Principles of Community, the UC Standards of Ethical Conduct, the UCR Whistleblower and Whistleblower Retaliation – Local Procedure, and (2) what types of retaliation can be addressed under the Whistleblower Protection Policy (WPP). The FAQs do not fully communicate all provisions of all relevant laws and policies relating to discrimination; specific instances of retaliation will be handled as appropriate in accordance with relevant laws or policies.

1. *What is retaliation?*

Generally, someone who has filed a good-faith complaint, acted as a witness, or engaged in another form of Protected Activity experiences retaliation when they are subjected to an Adverse Action taken because they had engaged in the Protected Activity.

Under the WPP, the retaliation must include an Adverse Personnel Action that was taken against an employee or applicant of employment for making a Protected Disclosure or refusing to obey an Illegal Order (See FAQ #7 for more information). Other forms of retaliation are addressed under different policies and procedures.

2. *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.

Under the WPP, an employee or applicant of employment who makes a Protected Disclosure or refuses an Illegal Order is protected from an Adverse Personnel Action.

3. *What is a Protected Activity” under the Whistleblower Policy? (See FAQ #7 for what is protected under the WPP.)*

The most common Protected Activity is filing a good-faith report under a UC or campus complaint procedure. Other Protected Activities include assisting others in making such a report, participating in an investigation or proceeding as a witness, or refusing to obey an Illegal Order. Being the subject or respondent in an investigation is not a Protected Activity.¹

¹ If a subject of a report is harassed or subjected to abusive behavior, that harassment or abusive behavior may violate other campus policies.

3a. *What are some examples of activities that may warrant a good-faith report?*

Members of the UCR community are encouraged to report any unethical or unlawful activities, including those that constitute discrimination and harassment; sexual violence and sexual harassment; child abuse and neglect; unethical conduct; faculty misconduct; research misconduct; mistreatment of animals in research; circumstances of imminent danger to faculty, staff, students, or the public's health and/or safety; other violations of University policies or procedures or local, state, or federal laws or regulations; or any other IGA, as defined by the Whistleblower Policy (See Appendix B below).

4. *What is an Adverse Action and how is it different from an Adverse Personnel Action?*

Generally, an 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.

If an Adverse Action constitutes an Adverse Personnel Action, it may be eligible to be grieved under the WPP. An Adverse Personnel Action is a management action that affects the Complainant's existing terms and conditions of employment in a material and negative way. Examples of an Adverse Personnel Action under the WPP are failure to hire; corrective action (such as written warning, corrective salary decrease, demotion, suspension); or termination.

Generally, a negative performance evaluation is not considered an Adverse Personnel Action; if the performance evaluation results in disciplinary action or termination, that discipline or termination would constitute an Adverse Personnel Action.

4a. *What are some examples of Adverse Actions?*

Examples of Adverse Actions that, if taken because of a Protected Activity, could constitute retaliation include:

- decisions relating to one's work assignments, vacation, or promotion or advancement opportunities (whether employment-related or academic);
- denial of job benefits or reducing one's salary;
- warnings, reprimands, transfers, or giving a negative or lowered performance evaluation;
- terminating employment;
- removing supervisory responsibilities;
- increased and intrusive/oppressive monitoring or supervision;
- taking an Adverse Action against a close family member;
- engaging in abusive or harassing conduct; or
- threats to engage in any of the actions listed above.

5. *If I experience an Adverse Action after filing a report, is that retaliation?*

Not necessarily. There must be a link—a nexus—between the Adverse Action and the Protected Activity, in order for the adverse activity to be considered retaliatory. To put it another way, if there was a legitimate, non-retaliatory reason for the Adverse action, then it is not retaliation.

Investigations look for evidence to determine whether the action was taken because of Protected Activity, such as statements or, more commonly, suspicious timing. If management provides a legitimate reason for the retaliatory activity, the investigation will “test” the reason’s validity.

Filing a complaint or report does not provide a reporter with immunity for misconduct or poor performance, nor is the whistleblower process designed to shield employees from responsibility for having created a safety or health hazard.

6. *I am a manager or supervisor. What can I do to prevent retaliation?*

Investigations can be concerning and even disruptive to units. The job of supervisors and management is to reassure staff and avoid inflaming divisions that may exist.

In these cases, you should maintain confidentiality and protect the integrity of the investigation; reduce tensions and divisions; support staff in distress; be alert for retaliation; seek advice; and show support for the investigation process. You should not ask staff whether they have been interviewed; express an opinion as to the outcome of the investigation; suggest that participants are doing anything inappropriate in participating in the investigation; or cross the line from supporting your staff, to defending them.

Be sure that you follow applicable policy and procedure in whatever action you take. Be aware that disciplinary or performance management action that you take, if they negatively impact someone involved in the investigation, could be challenged as retaliatory, and seek advice from Human Resources or another appropriate campus resource.

7. *When can the Whistleblower Protection Policy be used?*

The Whistleblower Protection Policy (WPP) is a grievance procedure available to employees and applicants for employment who believe they have been subjected to retaliation as a result of making a Protected Disclosure, refusing to obey an Illegal Order, or interfering with an employee’s or applicant’s right to make a Protected Disclosure. A Protected Disclosure is a good faith communication that discloses or intends to disclose either an IGA or a condition that may significantly threaten the health or safety of employees or the public. The retaliation must include an Adverse Personnel Action, which is a management action that affects the Complainant’s existing terms and conditions of employment in a material and negative way (such as failure to hire, corrective action, or termination).

8. What is the difference between a Whistleblower Protection Policy (WPP) investigation and a Whistleblower Policy investigation?

The investigation processes are similar. Some important differences between the two are:

Type	WPP Investigation	Whistleblower Policy Investigation
Appeal to System	Under the WPP, the campus LDO decides whether an actionable complaint has been made. If the Complainant disagrees with this decision, they can appeal it to the Systemwide LDO.	This appeal process does not exist for whistleblower complaints.
Standard and Burden of Proof/Persuasion	Under the WPP, 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.	In a Whistleblower Policy investigation, only the Preponderance of the Evidence standard is used.
Decision-Maker	Under the WPP, the Chancellor (or designee) decides whether retaliation occurred.	Under the WP, the LDO decides whether an IGA occurred.
Remedy for Complainant	Under the WPP, if the Chancellor (or designee) determines that retaliation occurred and that the Complainant was harmed as a result, the WPP specifies that “the Chancellor will award any appropriate relief.”	This is not a provision in the whistleblower process.

Improper Governmental Activities (IGA) FAQs

1. What is an Improper Governmental Activity (IGA)?

California Government Code 8547.2(c) defines an improper governmental activity as “an activity by a state agency or by an employee that is undertaken in the performance of the employee's duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, (2) is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual, or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency.”

2. *What are some examples of activities that have previously been considered IGAs?*

These examples have been gathered from reports and examples published by the California State Auditor:

- a. Receiving compensation that you were not entitled to, sometimes called “time fraud” or “attendance abuse,” such as:
 - i. Failing to account for absences, resulting in receiving unearned overtime pay²
 - ii. Undercharging leave, such as by not recording partial-day absences if required to do so as a non-exempt employee³

- b. Serious dishonesty, such as—
 - i. Misrepresenting work experience in a hiring or promotion application⁴
 - ii. Dishonestly attempting to conceal one’s own misconduct.⁵

- c. Conflicts of interest that violate specific policies, statutes, or common-law prohibitions⁶, including:
 - i. Involvement in decisions regarding entering into agreements with a company that employed their spouse⁷
 - ii. Contacting previous employer in attempts to influence decisions on behalf of paying clients⁸
 - iii. Accepting gifts from a vendor that did business with the State⁹
 - iv. Failing to disclose income received from an outside professional activity.¹⁰

² The CSA recommended that the state hospital at which this IGA occurred remedy it through (a) discipline of the psychiatric technician who had failed to record absences, (b) recouping the overtime pay and (c) taking corrective action towards the shift lead and supervisor who failed to ensure appropriate recording of attendance. <https://www.auditor.ca.gov/reports/I2017-2/chapters.html#chapter1>

³ The nonexempt employee had been misinformed by her supervisors that she was an exempt employee, and was working fewer than 40 hours a week without using or recording leave. The CSA recommended that the department take steps to ensure she started accounting for partial day absences, and that management is knowledgeable about individual staff classifications and time reporting requirements.

⁴ A state agency employee made dishonest representations on his job application. He was required to reimburse all compensation resulting from his improper appointment. <https://www.auditor.ca.gov/reports/I2019-3/chapters.html#chapter2>

⁵ The auditor found that Cal State Fresno employees attempted to conceal time and attendance abuse by first taking actions to make it appear they spent more time performing their duties and then denying these actions to investigators even after being confronted with evidence to the contrary. <https://www.auditor.ca.gov/reports/I2018-1/chapters.html>

⁶ A CSA report noted that “common-law doctrines state that a public officer is bound to exercise the powers conferred on the officer with disinterested skill, zeal, and diligence, and primarily for the public’s benefit. Further, another judicial interpretation of common-law doctrine is that public officers are obligated to discharge their responsibilities with integrity and fidelity. According to the attorney general, where no conflict is found in statutory prohibitions, special situations still could constitute a conflict under the long-standing common-law doctrine. Therefore, situations that have the appearance of a financial conflict of interest may still be subject to common-law prohibitions.” <https://www.auditor.ca.gov/pdfs/reports/I2001-1.pdf>

⁷ <http://auditor.ca.gov/reports/I2016-2/chapters.html#chapter1>

⁸ <http://auditor.ca.gov/reports/I2016-2/chapters.html#chapter2>

⁹ <http://auditor.ca.gov/reports/I2016-2/chapters.html#chapter5>

¹⁰ <http://auditor.ca.gov/reports/I2016-1/chapters.html#chapter3>

- d. Failing to solicit competitive price quotes for goods when required.¹¹
- e. Incompatible activities—an employee engaging in activities incompatible with job duties, such as sending inappropriate emails during work hours or excessive internet access for non-work purposes.¹²
- f. Inadequate Management Supervision –
 - i. Failure to address employee misconduct or other IGAs, for example management failing to take adequate disciplinary measures against an employee¹³
 - ii. Inadequate supervision in the form of failing to monitor time and attendance or deliberate neglect of administrative duties.¹⁴
- g. Gross misconduct – “for the purposes of this report, gross misconduct is interpreted to mean glaringly noticeable mismanagement of governmental responsibilities, usually because of inexcusably bad or objectionable behavior.”¹⁵
- h. Retaliation, such as fostering a culture of fear in which employees feel compelled to sidestep rules or face potential retaliation¹⁶
- i. Misuse of State Resources, such as using a state vehicle for regular commute from home to work.¹⁷

3. *Can discrimination or sexual harassment be considered an IGA?*

Discrimination (including harassment) and violations of the SVSH Policy may constitute IGAs, but typically are addressed under dedicated complaint procedures.

¹¹ The employee stated that he was overwhelmed by workload and had not received sufficient training.

<https://www.auditor.ca.gov/pdfs/reports/I2009-1.pdf>

¹² <https://www.auditor.ca.gov/pdfs/reports/I2009-1.pdf>

¹³ The CSA found that management, despite being aware of continuing misconduct by an employee, continued to address the misconduct through written notices and discussions rather than progressive discipline. (After the finding, the agency suspended the employee for 30 days.) <https://www.auditor.ca.gov/pdfs/reports/I2009-1.pdf>

¹⁴ <https://www.auditor.ca.gov/reports/I2019-2/chapters.html#chapter3>

¹⁵ <https://www.auditor.ca.gov/pdfs/reports/I2019-1.pdf> A department director improperly swayed personnel decisions and actions to benefit her daughter’s employment status and her repeated improper actions benefited one particular employee (not her daughter) who now holds an executive position in the department. In each circumstance, the director involved her subordinates in helping her bypass established rules.

¹⁶ <http://auditor.ca.gov/reports/I2019-1/chapters.html#chapter4>

¹⁷ <https://www.auditor.ca.gov/reports/I2019-3/chapters.html#chapter3>

Appendix B

Investigations Group

Overview. The Investigations Group is a campus committee that:

- Advises the LDO in the review and investigation of whistleblower reports (reports of suspected IGAs), as detailed further below.
- Helps determine whether a matter should be investigated and if so, by who, including advising on whether an external investigator should be retained.
- Provides oversight and coordination of investigations to ensure that they are conducted in a timely fashion and that emerging issues or developments are appropriately addressed.
- Advises on investigative leave and on corrective and remedial action.

The Investigations Group comprises representatives of the campus investigative units and other units that have relevant subject-matter expertise or roles relating to complaint resolution. The wide representation in the Group helps coordinate campus efforts to address issues of concern and mitigate risks, including by avoiding competing or overlapping investigations or reviews.

Whistleblower Policy Requirements. “Each campus shall establish an Investigations Workgroup to ensure coordination and proper reporting of investigations.”

Pursuant to the Whistleblower Policy, the Investigations Group:

1. Consults with LDO in determining whether a matter should be reported to UCOP.
2. Assists LDO in assessing course of action including determining that an adequate basis exists for commencing an investigation.
4. Assists the LDO in assuring that the proper investigative channels are utilized. *This may include determinations as to whether to retain an external investigator.*
5. Assures that all appropriate administrative and senior officials are apprised of the allegations as necessary.
6. Addresses conflicts of interest of “any party involved in” an investigation.
7. Coordinates/facilitates communications across investigative channels.
8. Assists LDO in monitoring elements and progress of investigations to ensure timeliness.
9. Advises on “the corrective and remedial action” that may be initiated in accordance with applicable procedures.

Group Membership. The Investigations Group is comprised of campus administrators with subject-matter expertise or responsibilities relating to investigations, or who have a need-to-know regarding investigations. Current members include:

- Human Resources staff
- Legal Affairs staff
- Risk Manager
- Academic Personnel Office staff
- Vice Provost for Academic Resolution
- LDO (Chair)
- Title IX/EOAA
- UCPD
- School of Medicine Chief Compliance Officer
- Audit & Advisory Services Director and investigators
- Vice Chancellor for Student Affairs
- Chief Diversity Officer
- Associate Vice Chancellor for Business & Financial Services
- RED