



## **Complaint Procedures for Allegations of Retaliation under the California Whistleblower Protection Act and CSU Executive Order 822**

### **I. Purpose**

The Whistleblower Protection Act states that, “An employee may not directly or indirectly use or attempt to use the official authority or influence of the employee for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the rights conferred pursuant to this article”. It further states that any employee who violates subdivision (a) may be liable in an action for civil damages brought against the employee by the offended party.

CSU Executive Order 822 prescribes guidelines for responding to complaints filed with the California State University (“CSU”) Office of the Chancellor or the CSU campus by Employees or Applicants for Employment who allege they have been retaliated against for having disclosed Improper Governmental Activities. The purpose of this procedure is to provide a timely and effective procedure for the handling and resolution of complaints of Retaliation for Protected Disclosures filed at California State University Hayward (“CSUH”) by Employees or Applicants for Employment.

### **II. Definitions**

- A. Applicant for Employment:** an individual who has completed and submitted the application form for a specific, available position at CSU.
- B. Complainant:** an employee or applicant for employment who files a report of Retaliation under CSU Executive Order 822 (“E.O. 822”).
- C. Employee:** refers to any person employed by CSUH.
- D. Improper Governmental Activity:** any activity by a CSUH department or Employee that is undertaken in the performance of the Employee’s official duties, whether or not that action is within the scope of his/her employment, and that:
  - 1.** Violates 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 economically wasteful, or involves gross misconduct, incompetence, or inefficiency.

- E.** Protected Disclosure: any good faith communication that discloses information that may evidence that:
  - 1.** An Improper Governmental Activity.
  - 2.** Any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
- F.** Retaliation: refers to the direct or indirect use or attempted use by an Employee of his or her official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any Employee or Applicant for Employment for the purpose of interfering with that person's rights under the California Whistleblower Protection Act, including, but not limited to, any Protection Disclosure.
- G.** Use of his or her Official Authority or Influence: includes promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, transfer, assignment, performance evaluation, suspension, or other disciplinary action.
- H.** Working Days: Monday through Friday excluding all officially recognized CSU holidays or other closures of CSU or CSUH.

### **III. Requirements**

- A.** Employees and Applicants for Employment who have made a Protected Disclosure pursuant to E.O. 821, or directly with the State Auditor, and who believe they have been retaliated against for such a disclosure may file a complaint under this procedure.
- B.** All written communications between Complainant and CSUH pursuant to this procedure must be personally delivered or sent by certified mail through the U.S mail, return receipt requested. If personally served, the date on which the communication was filed, sent, transmitted and/or received for purposes of this procedure is the date of personal delivery. If sent by certified mail, the date when the communication was filed, sent or transmitted is the postmark date on the written communication; the date on which the communication was received is deemed to be the postmark date plus 4 working days.
- C.** Failure of Complainant to comply with the time limitations of this procedure shall render the complaint void and bar subsequent re-filing of the complaint by Complainant.

#### **IV. General Provisions**

- A.** All time limits refer to working days.
- B.** Complainant may withdraw a complaint at any time. Once the complaint is withdrawn, Complainant may not file a subsequent complaint on the same alleged act of Retaliation.
- C.** Complaints, responses, and investigations under this procedure shall be shared only with individuals who have a legitimate business or legal reason to know.
- D.** Employees and Applicants for Employment may also file a Complaint of Retaliation directly with the vice chancellor of Human Resources in the Chancellor's Office ("Vice Chancellor") at CSU. The procedure set forth herein is the same procedure used by the Vice Chancellor except that the Vice Chancellor shall substitute for the Associate Vice President and Director of Human Resources ("AVPHR") at CSUH.

#### **V. Complaint Procedure**

- A.** The Employee or Applicant for Employment must file a written complaint under E.O. 822 within 12 months of the alleged act of retaliation.
- B.** The complaint must be made on the *Complaint of Actual or Attempted Retaliation for Having Made a Protected Disclosure* form, which is available on the CSUH website at <http://www.aba.csuhayward.edu/HR/> or in the office of the AVPHR, or any format that clearly indicates the intent to file a complaint of Retaliation for a Protected Disclosure or specifically references E.O. 822.
- C.** The written complaint must contain the following information or it may be rejected as inadequate:
  - 1.** Addressed or directed to the AVPHR.
  - 2.** The name, mailing address of Complainant, and the Complainant's working title or position for which applied.
  - 3.** A detailed description of the specific actions that established the alleged Improper Governmental Activity or condition that may have significantly threatened the health or safety of the Employees or the public. This must include the name(s) and title(s) of the CSUH employee(s) or official(s) that are allegedly engaged in the Improper Governmental Activity or condition.
  - 4.** The name of the CSUH official or other state employee(s) that the Improper Governmental Activity or condition was reported and the date and the manner of the Protected Disclosure.

5. A description of the specific actions taken that constituted the alleged actual or attempted Retaliation, including dates of those actions, names and titles of the CSUH officials and/or Employees who allegedly participated in the Retaliatory actions, and an explanation of why Complainant believes that those actions were in retaliation for a Protected Disclosure.
6. The complaint must be signed, dated, and contain a sworn statement that the contents of the written complaint are true, or believed by Complainant to be true, under penalty of perjury.

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