

CAL POLY, SAN LUIS OBISPO

**PROCEDURE FOR PROTECTED DISCLOSURE OF
IMPROPER GOVERNMENTAL ACTIVITIES
IN ACCORDANCE WITH EXECUTIVE ORDER 929**

Purpose

This procedure is established to fulfill the requirements of the CSU Chancellor's Executive Order No. 929 and Section 8547.12 of the Government Code (Whistleblower Protection Act) concerning the Protected Disclosure of Improper Governmental Activities. The purpose of this University procedure is to provide employees or applicants for employment a timely and effective process for the filing of a protected disclosure of improper governmental activities on the Cal Poly campus.

CSU Executive Order 929 directs the President to establish procedures for employees and applicants for employment to make protected disclosures. The President's designee for implementing this procedure shall be the Associate Vice President for Administration who shall receive written complaints to be processed under this procedure; coordinate the assessment of the proper course of action for processing such complaints; and conduct internal investigations or coordinate investigations conducted for the campus by other internal or external investigators.

Definitions

- A. "Employee" refers to any person employed by Cal Poly.
- B. "Applicant for employment" refers to an individual who has completed and submitted an application for a specific, available position on the Cal Poly campus.
- C. "Complainant" means an employee or applicant for employment who files a written report and makes a protected disclosure in accordance with this procedure.
- D. "Improper governmental activity" means any activity by a university 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 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 or government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty; or
 - 2) is economically wasteful, or involves gross misconduct, incompetence, or inefficiency.

- E. "Protected disclosure" means any good faith communication that discloses or demonstrates an intent to disclose information that may evidence
- 1) an improper government activity, or
 - 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. "Working days" means Monday through Friday excluding all officially recognized university holidays or closure of the campus.

Protected Disclosure at Cal Poly

- A. An employee or applicant for employment may make a protected disclosure to the Associate Vice President for Administration no later than thirty (30) days after the event giving rise to the protected disclosure or no later than thirty days after the employee or applicant for employment knew or reasonably should have know of the event.
- B. The protected disclosure shall be in writing, preferably on the campus *Form for Allegation of Improper Governmental Activities*, which is available on the campus web site or in the Office of the Associate Vice President for Administration. Alternatively, the complainant may use any format that conforms to the requirements of this section. The disclosure **must** include the following information:
1. The name and mailing address of the complainant, the complainant's working title, or position applied for if the complainant was an applicant for employment.
 2. A detailed description of the specific actions that constituted the alleged improper governmental activity or condition that may significantly threaten the health and safety of employees or the public, including the names(s) and title(s) of the CSU employee(s) or official(s) allegedly engaged in the improper governmental activity or responsible for the health and safety condition.
 3. The date(s) the alleged improper activities occurred or the condition developed.
 4. Other potential witnesses to the alleged improper activities or condition.
 5. Any documentation that supports the allegations of improper activities or of a threatening condition.
 6. Descriptions of documents that support the allegations of improper activities or of a threatening condition, if the actual documents are not in the possession of the complainant.
 7. The protected disclosure must be signed, dated, and contain a sworn statement under penalty of perjury that its contents are believed to be true.

Response to Protected Disclosures Made to the Cal Poly Campus

- A. Within ten (10) days of receipt of the written protected disclosure, the Associate Vice President for Administration shall send to the complainant via certified mail a written acknowledgement of receipt.
- B. Upon receipt of a protected disclosure complying with the provisions of this procedure, the Associate Vice President for Administration will review the protected disclosure and determine whether the complaint has been properly filed under this procedure
- C. When the Associate Vice President for Administration finds that a complaint filed under this procedure does not meet the criteria of a Protected Disclosure of Improper Governmental Activities, the complainant shall be advised of alternative dispute resolution options; i.e., Grievance Procedures under the appropriate collective bargaining agreement, etc.

Complaint Investigation

- A. Upon receipt of a written complaint, the Associate Vice President for Administration shall consult with the Vice President for Administration and Finance, University legal counsel, appropriate vice president/s and others as appropriate in determining whether an investigation is warranted. In all instances, the University retains the prerogative to determine when circumstances warrant an investigation and the appropriate investigative process to be employed, including commissioning an external consultant to conduct the investigation. As appropriate, investigations may require consultation and coordination among other campus personnel and departments. The Associate Vice President for Administration shall assure that the appropriate division executive is apprised of the ongoing investigation.
- B. Upon completion of an investigation, the Associate Vice President for Administration shall report the findings and a recommendation to the Vice President for Administration and Finance. A determination shall be made as to whether there is reasonable cause to believe that improper governmental activity has occurred or that a condition which may significantly threaten the health or safety of employees or the public exists. This determination shall be communicated to the appropriate division executive. Should the allegation of misconduct involve the Vice President for Administration and Finance, the Associate Vice President for Administration shall report directly to the President on all matters involving the investigation.
- C. The Vice President for Administration and Finance and the appropriate division executive will determine what actions, if any, are necessary.
- D. Within ninety (90) days of receipt of the protected disclosure, the Vice President for Administration and Finance shall issue a written response, via certified mail, to the complainant that includes whether the allegations were sustained and what, if any, actions were taken. Care shall be taken to protect the privacy interests of those involved.

- E. The Vice President for Administration will notify the Vice Chancellor for Human Resources of all cases of actual or suspected fraud, theft, or other irregularity and shall also notify the California Department of Finance, Office of State Audits and Evaluation, and the Bureau of State Audits as required under Section IV.F of Executive Order 929.

General Provisions

- A. All time limits refer to working days.
- B. Time limits set forth in this procedure may be extended in writing by the Associate Vice President for Administration. Written notification of such a change in time limits must be provided to the complainant. If the complainant, the Associate Vice President for Administration or other assigned investigator, or any material witnesses to the investigation are on approved leave of three (3) days or more, the time limits shall be extended by the length of the leave.
- C. To the extent possible, and within the limitations of the law and the need to conduct a competent investigation, the confidentiality of the complainant will be maintained. Complaints, responses, and investigations under this procedure shall be shared only with those individuals who have a legitimate business reason to know. Persons accused of government misconduct as well as witnesses in the case will receive only that information essential for the conduct of the investigation. Details of the complaint will be revealed only if there is a clear need to know and if there is no danger of negative impact on the integrity of evidence in the case. Employees who are interviewed during the investigation shall be reminded of the importance of confidentiality of everything related to the investigation.
- D. To maintain the integrity of the process, the complainant is expected to keep confidential the issues raised in the complaint during the investigation.
- E. All employees of the University have a duty to cooperate with an investigation initiated under Executive Order 929 and this campus procedure. They also have the duty to refrain from interfering with or impeding the investigation in any way.
- F. All employees who are involved in any way in an investigation under this procedure shall be provided with a copy of this procedure and the campus procedures on retaliation and reminded of the importance of refraining from actual or apparent retaliatory acts against the complainant.