What Happens After the Whistle Blows --- How UC Handles Whistleblower Complaints

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University of California Statistical Summary of Students and Staff

As of Fall 2012
• Employees – 194,293
  • 58,229 Academic Personnel
  • 132,669 Non-Academic Personnel
  • 3,395 Department of Energy | National Lab
• Students – 233,198
  • 183,498 Undergraduate
  • 49,700 Graduate
University of California Structure

- 10 Campuses
- 5 Medical Centers
- Office of the President
- 1 Department of Energy National Laboratory
- 16 Health Professional Schools
- 4 Law Schools
- California’s only public Veterinary School
- Agriculture & Natural Resources Division with Statewide Presence & Impact

Policy on Reporting & Investigating Allegations of Suspected Improper Governmental Activities

- California Government Code § 8547
- University of California Whistleblower Policy
- University of California Whistleblower Protection Policy
Policy Objectives

To adhere to the spirit of the state whistleblower statutes by creating

1. an environment in which suspected improprieties are brought forward without fear of retaliation

   and

2. mechanisms that ensure an appropriate institutional response to all suspected improprieties (not just whistleblower reports).

Definitions

Improper Governmental Activity:

Any activity by a state agency or by an 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 of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty ....

   or

2. is economically wasteful, involves gross misconduct, incompetence, or inefficiency.

3. May also include a serious violation of University policy.
Definitions

Protected Disclosure:

any good faith communication that discloses or demonstrates an intention to disclose information that may evidence

1. an improper act
   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.

Allegations by Type (FY 12-13)

<table>
<thead>
<tr>
<th>Allegations by Category (Systemwide)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conflict of Interest/Commitment</td>
<td>79</td>
</tr>
<tr>
<td>Discrimination/Harassment</td>
<td>122</td>
</tr>
<tr>
<td>Economic Waste/Misuse of Resources</td>
<td>98</td>
</tr>
<tr>
<td>Fraud, Theft or Embezzlement</td>
<td>90</td>
</tr>
<tr>
<td>Inquiry/Concern</td>
<td>159</td>
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<tr>
<td>Privacy Violations/Computer Security</td>
<td>47</td>
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<tr>
<td>Public/Environmental Health &amp; Safety</td>
<td>22</td>
</tr>
<tr>
<td>Research/Academic Misconduct</td>
<td>29</td>
</tr>
<tr>
<td>Retaliation or Retribution</td>
<td>62</td>
</tr>
<tr>
<td>Workplace Misconduct</td>
<td>238</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>946</strong></td>
</tr>
</tbody>
</table>
Allegations by Type (FY 12-13)

- Workplace Misconduct: 25%
- Inquiry/Concern: 17%
- Fraud, Theft or Embezzlement: 10%
- Privacy Violations/Computer Security: 5%
- Public/Environmental Health & Safety: 2%
- Retaliation or Retribution: 7%
- Research/Academic Misconduct: 3%
- Discrimination/Harassment: 11%
- Discrimination/Harassment: 13%
- Conflict of Interest/Commitment: 8%
- Workplace Misconduct: 25%

Anonymous vs. Identified Reporter

- Anonymous Reporter
- Identified Reporter
Processing Whistleblower Complaints

Key Players in the Whistleblower Process

- Whistleblower
- Respondent
- Locally Designated Official (LDO)
- Investigations Work Group (I Group)

Appropriate Institutional Response

- **Comprehensive** - All elements of the matter are addressed
- **Multiple Perspectives** - All parties with a natural interest or responsibility for the matters are involved in crafting the institution's response plan
- **Credible** - The requisite expertise and independence from internal or external resources are utilized
- **Demonstrable** - The University can defend its course of action and demonstrate, if challenged, that the matters were addressed as warranted
- **Communicated** - To all appropriate internal and external parties with a need to know
Processing Whistleblower Reports

• Factors to consider:
  – If the allegations were true, would it constitute an improper governmental activity (IGA)?
  – Do the allegations provide a sufficient basis to investigate?

• Requesting additional information from the Whistleblower in order to make this determination
  – But what if it was an anonymous report?

Investigations Policy Overview

• Reporting to Locally Designated Official (LDO)
  ➢ Triage Process by LDO and Investigations Work Group
    (Two pronged test—“If True” & Sufficient Basis)
  ✓ Investigation within natural jurisdiction
    OR
  ✓ Referral to Management*
  ➢ Communications, Coordination & Monitoring by LDO

• Reporting to Management, IGA source & others as appropriate

* If the two criteria are not met—“If True” test and “Probable Cause” Standard
Training

• Bullying
• Sexual assault investigations
• Workplace investigations
• Export control and security
• Cash Loss Investigations
• Conflict of Interest
• Clery Act

Best Practices

• Always conduct a timely, fair, objective and independent investigation
• Interview all relevant witnesses suggested by complainant/respondent
• In proper situations, interviewing the complainant again after all of the other interviews are completed
• Whistleblower policy provides that "Unless there are compelling reasons to the contrary, subject should be given the opportunity to respond to material points of evidence contained in an investigation report"
• Ensure the investigator has the necessary subject matter expertise or consult with an expert who does to assist in preparing questions and conclusions
• Maintain confidentiality
• Provide a thorough, impartial written report
• Remember the serious impact/consequences of your findings
Worst Practices

- Failing to respond at all or responding with an ineffective investigation
- Allowing bias or conflict of interest in the investigation process
- Failing to properly document the investigation
- Failing to interview all relevant potential witness
- Failing to interview opposite sex/race co-workers of the respondent
- Failing to prevent retaliation by omitting reminders about the University retaliation protection policy
- Failing to maintain confidentiality
- Failing to follow own policies/procedures

Case Studies

- Improper Use of University Funds
  - Nothing disappears from your computer - Forensic experts

- Proper investigation procedures
  - The whistleblower is not the investigator
Contact Information

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