

IMPORTANT INFORMATION ABOUT FILING WHISTLEBLOWER REPORTS

Whistleblower policy and procedures are mandated by California state law and updated when cases go through the California court system. For this reason filing a whistleblower report is different than talking with a campus representative from an office that hears concerns about workplace issues, harassment and/or discrimination, or wrongdoing. Whistleblower information can be found at <http://whistleblower.ucsc.edu>.

Frequently asked questions for employees thinking of filing a whistleblower report can be found at:

- Questions about being a whistleblower:
<http://www.ucop.edu/uc-whistleblower/faqs/faq-being-a-whistleblower.html>
- Questions about protection against retaliation for whistleblowing:
<http://www.ucop.edu/uc-whistleblower/faqs/faq-protection-from-retaliation.html>

What You Can Report

Any activity by UC or a UC employee that

- violates a state or federal law or regulation, such as:
 - corruption
 - malfeasance
 - bribery
 - theft or misuse of government property
 - fraud
 - coercion
 - conversion
- wastes money, or
- involves gross misconduct, gross incompetence, or gross inefficiency

Please note: per the University of California Policy On Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) section I:

“This policy does not fundamentally change the responsibility for conducting investigations but clarifies normal jurisdictional interests. Individual employee grievances and complaints regarding terms and conditions of employment will continue to be reviewed under the applicable academic and staff personnel policies or collective bargaining agreements. Any allegations of improper governmental activities that may result in subsequent actions bringing disciplinary charges against an academic or staff member shall be coordinated with the applicable academic or staff personnel conduct and disciplinary policies. In all instances, the University retains the prerogative to determine when circumstances warrant an investigation and, in conformity with this policy and applicable laws and regulations, the appropriate investigative process to be employed.”

Whistleblower

A “whistleblower” is defined as:

“A person or entity making a protected disclosure is commonly referred to as whistleblower. Whistleblowers may be University employees (academic or staff), applicants for employment, students, patients, vendors, contractors or the general public. The whistleblower’s role is as a reporting party. They are not investigators or finders of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.” (*UC Whistleblower Policy II.E*)

Whistleblower Reports

Some of the main differences between whistleblower reports and complaints/grievances that are important for you to understand are:

1. Thresholds for qualifying as a whistleblower report
2. How to make a whistleblower report
3. How whistleblower reports are reviewed

1. Thresholds for qualifying as a whistleblower report

For a report to meet the thresholds of qualifying as a whistleblower report the information must meet the definition of a “protected disclosure” as defined by the California Government Code. The California Government Code Section 8547.2 defines a protected disclosure as:

“a good faith communication that discloses or demonstrates an intention to disclose information that may evidence (1) an improper governmental 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.”

What is Improper Governmental Activity?

According to California Government Code Section 8547.2 (c), improper governmental activity (IGA) means:

“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, or (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.”

This definition is derived from State law. Not all instances of improper conduct will constitute IGA. For example, most violations of University policy will not amount to IGA unless the policy violation is also a violation of federal or State law.

As stated in the UCSC Whistleblower Policies and Procedures section III.C:

For a communication to qualify as a protected disclosure, as defined for the whistleblower policies, the whistleblower must submit “original information”. Such information must be derived from the whistleblower’s independent knowledge or independent analysis and must not be already known within the University of California or the University of California, Santa Cruz.

“Independent knowledge” means factual information in the whistleblower’s possession that is not derived from publicly available sources. The whistleblower may gain “independent knowledge” from experiences, communications, and observations in business and social situations.

“Independent analysis” means the whistleblower’s own analysis whether done alone or in combination with others. Analysis means the whistleblower’s examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.

2. How to make a whistleblower report

The best way to understand how to make a whistleblower report is to read the UCSC Whistleblower Policy at http://whistleblower.ucsc.edu/about/local_policy_english.pdf: particularly Section VII- Reporting Allegations of Suspected Improper Governmental Activities: A. Making a Whistleblower Report.

Please pay special attention to the following directions about making whistleblower reports:

- Whistleblower reports should be factual rather than speculative or conclusive, and contain as much specific information as possible to allow for a thorough assessment of the nature, extent, and urgency of a preliminary inquiry or investigation. (VII.A.2)
- Anonymous reports are also permitted; however, because investigators are unable to interview anonymous whistleblowers, it may be more difficult to evaluate the credibility of the allegations and therefore, less likely to cause an investigation to be initiated. (VII.A.1)
- Protection of a whistleblower's identity will be maintained to the extent possible within the legitimate needs of the law and the investigation. During a whistleblower investigation, it is also the intent of the University to keep confidential, to the extent possible, other details of whistleblower reports, including the identities of any witnesses and the subject(s) of the complaint. (VII.A.8)
- If the report lacks sufficient detail to initiate a review or investigation, the LDO will contact the reporting party using the contact information provided by the whistleblower (if possible). The reporting party will have 10 working days from the date of contact by the LDO to provide sufficient detail on the report. Failure of the whistleblower to comply with the time limits of this procedure shall render the report closed. (VII.A.10)

If you use the whistleblower hotline to make an anonymous report please be sure to write down your login & password given to you by the impartial third party hotline administrator because you will need to look at your report to see if we have posted follow-up questions that need to be answered before we will proceed with the report.

So that you fully understand your rights and responsibilities in the whistleblower process I encourage you to read the UC Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities (Whistleblower Policy) at <http://www.ucop.edu/ucophome/coordrev/policy/PP040208Policy.pdf>. Please be sure to review Section III- Reporting Allegations of Suspected Improper Governmental Activities: A. Filing a Report and Section VI- Roles, Rights and Responsibilities of Whistleblowers, Investigation Participants, Subjects, and Investigators: A. Whistleblowers.

3. How whistleblower reports are reviewed

All whistleblower reports are reviewed by the Locally Designated Official for Whistleblower Matters (LDO) who may consult with the Whistleblower Investigations Workgroup (I-Group). Please review items 1 through 4 below for information on how this review may be handled (*from the UCSC Whistleblower Policies and Procedures section VII.C*):

1. The LDO shall review the whistleblower report at the time it is received to determine whether the seriousness of the allegations makes it advisable to convene an ad hoc meeting of either the I-Group or of appropriate members of the I-Group for advice, or other jurisdictional experts on campus.
2. The LDO can act without consulting the I-Group if in his or her judgment there is a threat of immediate and serious harm to the University community. In those cases and if appropriate, the LDO may notify the I-Group of the actions taken and/or may convene the I-Group for advice on the planned course of action.

3. To determine whether an adequate basis exists for commencing an investigation, the LDO can consult with the IGroup to determine whether any reported allegations, if true, would constitute an improper governmental activity, and whether the report contains information specific enough to be investigated, or has or directly point to corroborating evidence that can be pursued. If so, the LDO can request advice from the I-Group on the procedure for the investigation.
4. If in the judgment of the LDO, the allegations do not constitute an improper governmental activity, or the report does not contain information specific enough to be investigated, or does not have or directly point to corroborating evidence that can be pursued, there will not be an investigation. In this case, the LDO should notify the whistleblower of its determination, and in situations where there was insufficient evidence to warrant an investigation, inform the individual that he or she may provide additional relevant information to the LDO for consideration.

If you have any questions or concerns about making a report please contact the Locally Designated Official for Whistleblower Matters (LDO), at wbreport@ucsc.edu.