

THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR

May 23, 2002

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POMONA

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

SAN FRANCISCO

SAN JOSE

SAN LUIS OBISPO

SAN MARCOS

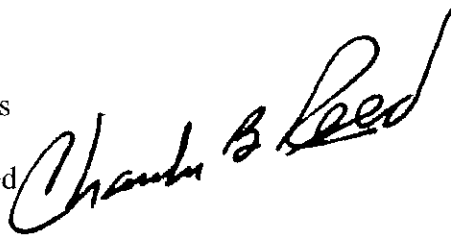
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**MEMORANDUM**

**TO:** CSU Presidents

**FROM:** Charles B. Reed  
Chancellor



**SUBJECT:** Revised Complaint Procedure for Allegations of Retaliation for Disclosure under the California Whistleblower Protection Act

Attached is a copy of Executive Order No. 822, which revises the complaint procedure for allegations of retaliation for making a protected disclosure of improper governmental activities or significant threat to health or safety.

In accordance with policy of the California State University, the campus president has the responsibility for implementing executive orders where applicable and for maintaining the campus repository and index for all executive orders.

CBR:ea

Attachment

cc: Chancellor's Office Staff

**THE CALIFORNIA STATE UNIVERSITY**  
**Office of the Chancellor**  
**401 Golden Shore**  
**Long Beach, California 90802-4210**  
**(562) 951-4455**

**Executive Order No. 822**

**Title:** Revised Complaint Procedure for Allegations of Retaliation under the California Whistleblower Protection Act

**Effective Date:** May 23, 2002

**Supersedes:** Executive Order 664

This executive order is established to fulfill the requirements of Section 8547.12(c) of the Government Code, a part of the California Whistleblower Protection Act. It establishes a procedure for responding to complaints filed with the Office of the Chancellor or CSU campuses by employees or applicants for employment who allege they have been retaliated against for having engaged in a protected disclosure under the California Whistleblower Protection Act. The purpose of this executive order is to provide a timely and effective procedure for the resolution of such complaints. If the provisions of this executive order are in conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3560, et seq., the memorandum of understanding shall be controlling.

The vice chancellor of human resources is the chancellor's designee to receive and to make determinations with respect to written complaints made under this order and will be responsible for evaluating compliance with this order.

**I. Reporting Improper Activities or Significant Threats to Health or Safety**

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.

**II. Campus Procedures**

Under section 8547.12(a) of the Government Code, employees and applicants for employment may file a written complaint alleging retaliation for having made a protected disclosure with their supervisor or manager or with the chancellor's designee. A complaint filed with a campus supervisor or manager must include all of the information required under Section IV.C.2-6 below. All such complaints filed on a campus must promptly be referred to the vice chancellor of human resources in the Chancellor's Office. Each campus president is responsible for developing and issuing a campus directive implementing this requirement.

### III. Definitions

- A. "Employee" refers to any person employed by the CSU.
- B. "Applicant for employment" refers to an individual who has completed and submitted the application form for a specific, available position at a CSU campus or at the Chancellor's Office.
- C. "Complainant" means an employee or applicant for employment who files a complaint of retaliation under this executive order.
- D. All written communications between a complainant and the CSU pursuant to this executive order 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 executive order is the date of personal delivery. If sent by certified mail, the date on which 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 four (4) working days.
- E. "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 "protected disclosure," as that term is defined in the Act and in this executive order. "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, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.
- F. "Improper governmental activity" means any activity by a CSU 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 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, or involves gross misconduct, incompetence, or inefficiency.
- G. "Protected disclosure" means any good faith communication that (1) discloses or demonstrates an intent to disclose information that may evidence (a) an improper government activity, or (b) 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 and (2) was filed pursuant to E.O. 821 or with the State Auditor.

- H. "Working days" means Monday through Friday excluding all officially recognized university holidays or closure of the campus where the complaint originated.

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

- A. All time limits refer to working days.
- B. Time limits set forth in this executive order may be extended by mutual agreement in writing between the complainant and the vice chancellor of human resources. If the complainant, the vice chancellor, or any material witness to the investigation is on approved leave of three (3) days or more, the time limits shall be extended by the length of the leave; provided, however, that an investigation of a written complaint must be completed no later than sixty (60) days prior to the expiration of eighteen (18) months from the date the complaint was filed, and the chancellor's designee must issue a letter of determination with respect to the complaint no later than eighteen (18) months from the date the complaint was filed.
- C. A complainant may withdraw a complaint at any time. Once the complaint is withdrawn, the complainant may not file a subsequent complaint on the same alleged act of retaliation.
- D. Failure of the complainant to comply with the time limitations of this procedure shall render the complaint void and bar subsequent re-filing of the complaint by the complainant.
- F. Complaints, responses and investigations under this executive order shall be shared only with individuals who have a legitimate business reason to know.

#### **V. Complaint Process**

- A. An employee or applicant for employment must file a written complaint under this executive order within twelve (12) months of the alleged act of retaliation.
- B. The complaint shall be made on a form developed by the vice chancellor of human resources and attached hereto as "Attachment 1." However, any written complaint that falls within the scope of this executive order that clearly indicates the intent to file a complaint of retaliation for a protected disclosure or specifically references this executive order will be addressed in accordance with this procedure.
- C. The written complaint must include all of the following information, or may be rejected as inadequate:
  - 1. Be addressed or directed to the vice chancellor of human resources.
  - 2. 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.

3. A detailed description of the specific actions that constituted the alleged improper governmental activity or condition that may significantly threaten the health or safety of employees or the public, including the name(s) and title(s) of the CSU employee(s) or official(s) allegedly engaged in the improper governmental activity or responsible for the health or safety condition.
4. The name of the university official or other state employee(s) to whom the improper governmental activity or health or safety condition was reported, and the date and manner of the disclosure.
5. A description of the specific actions taken that constituted the alleged actual or attempted retaliation, including the date or dates of such actions, and the names and titles of the university officials who allegedly took the retaliatory actions, and an explanation of the reasons why the complainant believes 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 are believed by the complainant to be true, under penalty of perjury.

## **VI. Complaint Review**

- A. The vice chancellor of human resources will acknowledge to the complainant in writing having received the complaint, whether directly from the complainant or from a campus, within ten (10) days of its receipt by the vice chancellor. The acknowledgment may include a request for additional information.
- B. The vice chancellor for human resources will commission an investigation. This investigation may, at the vice chancellor's discretion, be conducted by a designee from the Chancellor's Office or from the campus, or by an external investigator. The external investigator shall be retained by the campus president, or by the chancellor if the complaint arises at the Chancellor's Office, in consultation with the Office of General Counsel and the vice chancellor of human resources.
- C. The complainant is required to fully cooperate with the investigator(s) including but not limited to meeting with the investigator(s) for an initial interview. The complainant shall be contacted by the designated investigator(s) in order to schedule this initial interview. This interview shall be scheduled no later than thirty (30) days from the receipt of the complaint unless it is delayed in conformity with section III.B above. In this initial interview the complainant shall be given the opportunity to present a list of witnesses and documentary evidence in support of the complaint. In the event that the complainant fails to fully cooperate with the investigator(s), including but not limited to failing or refusing to participate in a timely scheduled interview, the investigation will be completed based upon the information available, and the decision issued by the vice chancellor for human resources will be made on the merits based upon available evidence, notwithstanding the complainant's failure or refusal to participate.

- D. The investigator(s) shall conduct an investigation. This investigation shall include an interview with the complainant, a review of any supporting documentation supplied by the complainant, a review of any response to the complaint supplied by the campus or employees alleged to have taken retaliatory action, the interviewing of witnesses, and any other action deemed appropriate by the investigator(s) in order to complete the investigation.
- E. CSU employees are required to cooperate with the investigation and be completely honest in answering questions and providing information to the investigator(s).
- F. The investigator(s) shall transmit a written report to the vice chancellor for human resources within sixty (60) days of the filing of the complaint. The report shall include a summary of the investigation and a conclusion whether or not retaliation for a protected disclosure occurred.
- H. The vice chancellor for human resources shall transmit the summary and conclusion of the investigation to the complainant within ten (10) days of the vice chancellor's receipt of them from the investigator(s). The complainant may file a written response to the summary and conclusion with the vice chancellor within fourteen (14) days of receipt of the summary and conclusion
- I. The vice chancellor of human resources shall respond to the complainant with a letter of determination within fourteen (14) days of receipt of the complainant's written response or the expiration of the time limits for the complainant to file a response as outlined in paragraph H, whichever date is later. This letter of determination will constitute the final CSU decision regarding the complaint, pursuant to Government Code section 8547.12(c).

  
Charles B. Reed, Chancellor

Dated: May 23, 2001

**Complaint of Actual or Attempted Retaliation for Having Made a Protected Disclosure Under the California Whistleblower Protection Act**

Section 8547.12 of the Government Code forbids retaliation or attempted retaliation by any employee of the California State University against employees or applicants for employment for having made protected disclosures under that statute. Allegations of such retaliation may be filed with the Vice Chancellor of Human Resources, Office of the Chancellor, 401 Golden Shore, Long Beach, CA 90802-4210.

Please provide all requested information. Incomplete forms will not be reviewed.

Name: \_\_\_\_\_

Home Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Campus & Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Check One:

Employee

Title: \_\_\_\_\_

Applicant for employment

Position applied for: \_\_\_\_\_

Describe specifically and fully the alleged improper governmental activity or condition that may significantly threaten the health or safety of employees or the public (*use additional sheets of paper if necessary*).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

List all persons allegedly involved in the improper governmental activity or the health or safety condition and their involvement.

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Describe to whom the improper governmental activity or health or safety condition was reported; the date reported; and whether the report was oral or in writing (if in writing, attach a copy of the report).

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Describe the specific actions taken, by whom, and the dates of said actions that constitute the alleged actual or attempted retaliation.

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List all persons involved in the alleged actual or attempted retaliation and describe the actions that constituted the retaliation.

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Please attach any documentation in support of your charge. List all supporting documentation that is attached.

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I hereby swear under penalty of perjury that the contents of this written complaint are true, or are believed to be true.

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date: