



# Quick Poll Help Us Analyze Our Audience



# Survey: Who is in the audience?

- Human Resources Professionals
- Risk Management Professionals
- Finance Professionals
- Campus Directors, Managers and Supervisors
- Other

# Agenda and Learning Outcomes

- What Are Whistleblower and Whistleblower Retaliation Complaints, Who Can File and Who Responds
- Why Is It Important That Campuses Manage This
- Why It Can't Be a Stand Alone Mission
- How Can We Partner For Good Outcomes Going Forward
- Q & A

# What Are Whistleblower Complaints, Who Can File Them And Who Responds?

# Whistleblower and Whistleblower Retaliation Statutes and Policies

## Statutes

- Labor Code §1102.5
- CSU-Specific Statutes
  - Education Code § 89570, et seq.
  - Government Code §§ 8547, et seq.

## Policies

- Executive Order No. 1115
- Executive Order No. 1116



# Whistleblower -Defined

## Labor Code §1102.5

- Employee who discloses info to government or person with authority or testifies to public body
- Reasonable belief that info discloses violation of statute or government rule or regulation

## Ed Code §89570/Gov't Code §8547/EO 1115 and 1116

- Employee or applicant who makes “protected disclosure”
- “Protected disclosure” = good faith communication intended to disclose “improper government activity” or significant threat to health or safety of employees or public
- “Improper government activity” = (1) violation of law (2) economically wasteful, or involves gross misconduct, incompetence, or inefficiency, or (3) significant threat to health or safety



# Whistleblower Retaliation

- Employee makes protected disclosure or activity
- Material adverse action or attempted adverse action against employee
- Because of or for having made protected disclosure (causal connection)

## Defenses:

- Legitimate business reason
- Intervening events





# Adverse Action - Examples

- Dismissal, non-retention or rejection during probation
- Suspension
- Demotion
- Significant reassignment, especially if results in loss of pay, benefits or title
- Negative evaluation if likely to affect employment in tangible way
- Denying overtime
- Exclusion from meetings if it affects ability to participate or succeed
- Failure to respond to complaints
- Ostracism (maybe)
- Loss of reputation (maybe)



# Other Factors

- Protects employees “regardless of whether disclosing the information is part of the employee’s job duties”
- Internal personnel matters, including routine job site disagreements and communications, not generally protected disclosures
- Matters already known are not generally disclosures
- Good faith belief interpreted broadly

# How easy is it to allege protected conduct

- HR officer claimed retaliation for disclosing wage and hour violations
  - No, because information was known and protected by attorney-client privilege
- Female BB Coach alleged TIX violations
  - Appeared to be routine gripes, but...
  - Held to be protected: media guide, camps for HS players, game day set up, locker room employee, travel sweats
- Disclosures aren't always apparent, i.e., casual emails, observations that aren't stated as complaints, chronic complainers

# Complaint Process

1. Complaint is filed with appropriate Campus Administrator;
2. Campus Administrator reviews and determines if investigation is warranted;
3. If a Vice President or President are named in the complaint, the Campus Administrator has the option of escalating the investigation to the Chancellor's Office;
4. If the complaint is controversial for other reasons, the Campus Administrator has the option of engaging third-party investigator;
5. Launch Investigation (*must be completed within 90 working days of above determination*);
6. Issue formal response to complainant that includes summary of allegations, details the investigation process, outlines the preponderance of evidence standard used, states the evidence considered, and states the findings and any actions taken.

**Why is important to take these seriously?**

# Statistics re Whistleblower Retaliation Complaints

*(Last 3 Years)*

- Number of campuses: 12
- Number of retaliation complaints: 18
- Total paid out in settlements: \$3,286,191
- Total paid out in fees and costs: \$2,238,808
- Grand Total of \$5,524,999





# Trends in EEOC Charges

- In 2018, 51% of charges filed with the EEOC included retaliation
- Increase from 48.8% in 2017.

# Unquantifiable costs

- Lost Productivity
- Emotional Turmoil and Employee Morale
- Campus Climate
- Reputation
- Systemwide Ramifications
  - Risk pool goes up and issue could manifest at other campuses

*Systemwide  
Ramifications*

# Why it's Important to Work Together...



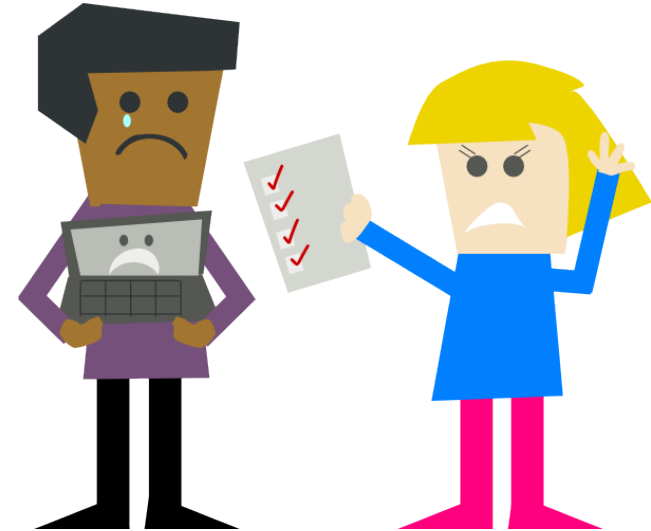
# What makes employees feel disgruntled?

- Wage stagnation, lack of career growth, promotional concerns (i.e., fair process for job opportunities, assignments, projects, etc.)
  - Systemwide
  - Campus-wide
  - Department level
- Poorly Orchestrated Organizational Change
- Unclear Roles and Responsibilities
  - *Is there a clear job description in place, org chart, scope, etc.?*



# What makes employees feel disgruntled?

- Poor Management
  - Style
  - Ignoring complaints or suggestions
  - Poor Communications
  - Surprises



Ask: What kind of environment do you prefer?

**What can we do?**



# Collaboration & Communication

- Be a Good Partner – Don't Work in Isolation
- Be Smart When it Comes to Budget
- Be Fair and Consistent with New/Promotional Opportunities
  - Don't play favorites
- Watch for Trends and Take Action
- Don't Believe Everything You Hear



# And It Goes Without Saying...

- Good Hiring Practices: Background and Reference Checks
  - Use probationary periods wisely
- Effective Training for Leaders and Non-Leaders
- Treat Employees with Respect and Dignity – Involve, Value, Listen
- If Someone Has an Issue – LISTEN AND ACT
- Recognize Signs and Get Involved



# Take-Aways

- Remember, a good lawyer can spin an unfair act into an unlawful act
- Poor Performers, Injured Workers/Workers' Compensation, ADA and FMLA are like the Bermuda Triangle of Employment Law and frequently packaged together
- Training is Essential
- Don't use budget, equity adjustments, or organizational limitations as an excuse
- Partnering and talking to one another is the key



# Questions

