

Policy 210

Whistleblower Policy

Section: 200 – Personnel

Responsible Executive: Executive Director

Responsible Department: Business Office

First Effective Date: October 29, 2010

Last Reviewed: March 2018

Updated: June 1, 2018

Next Scheduled Review: June 15, 2022

1.0 PURPOSE

The Cal Poly Corporation (“CPC”) is committed to providing a work environment where board members, employees, volunteers, and others are free to report suspected or actual occurrences of illegal, unethical or inappropriate activity without fear of retribution. This policy describes the complaint resolution process that is available to those who believe they have been subjected to retaliation as a result of having made a protected disclosure or refused to obey an illegal order.

2.0 BACKGROUND

- 2.1. It is the intent of Cal Poly Corporation to operate in accordance with all applicable laws, regulations, and policies of the CSU and Cal Poly State University. The purpose of this policy is to support the organization's goal of legal compliance with respect to CSU Executive Order No. 929, Cal Poly policy, and the California Whistleblower Protection Act. EO 929 prescribes guidelines for responding to disclosures filed by employees or applicants for employment who allege an improper governmental activity or conditions that may significantly threaten the health or safety of employees or the public and established a procedure for employees and applicants for employment to make protected disclosures.
- 2.2. This policy applies to any matter which is related to CPC’s business and does not relate to private acts of an individual not connected to the business of CPC. This policy is intended to supplement but not replace CPC’s unlawful harassment and discrimination policies and/or any other grievance procedure, and any applicable state and federal laws governing “Whistleblower Policy” applicable to nonprofit and charitable organizations.

3.0 DEFINITIONS

- 3.1. Complainant. The term “complainant” means an employee or applicant for employment who makes a protected disclosure under this policy.
- 3.2. Protected Disclosure. The term “protected disclosure” means any good faith communication that discloses information that may evidence [1] an improper activity as defined in Section 3.3, 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 or remedying that condition.
- 3.3. Improper Activity. The term “improper activity” means any action undertaken in the performance of the employee’s official duties, whether or not that action is within the scope of his/her employment, and that, [I] is in violation of any adopted policy of CPC, [II] is in violation of any state or federal law or regulation, including, but not limited to, bribery, theft, fraud, coercion, misuse of CPC property, or willful omission to perform duty, or [III] is economically wasteful, or involves gross misconduct, incompetence or inefficiency.
- 3.4. Employee. The term “employee” means any person employed by CPC and includes CPC volunteers.

- 3.5. Compliance Officer. The person designated to be responsible for ensuring that all issues under this policy are adequately investigated. Unless otherwise designated by the Executive Director, this person shall be the Human Resources Director.

4.0 PROCEDURES, GUIDELINES AND FORMS

- 4.1. The Human Resources Director, or his/her designee, is authorized to establish procedures, guidelines and forms consistent with and in implementation of this policy statement.

5.0 COMPLIANCE

- 5.1. All auxiliary units, departments and personnel and any authorized personnel that operate using funds from any account held by Corporation must comply with this policy.

6.0 POLICY

- 6.1. Making a Protected Disclosure at CPC.

- 6.1.1. An employee, applicant for employment, or volunteer, may make a protected disclosure no later than thirty (30) days after the event giving rise to the protected disclosure, or no later than thirty (30) days after the employee or applicant for employment knew or reasonably should have know of the improper activity.
- 6.1.2. The complainant should first report the suspected or actual event to his/her supervisor. If the complainant would be uncomfortable or otherwise reluctant to report to his/her supervisor, then the complainant could report the event to the next highest or another level of management, including to an appropriate board member or the compliance officer. The complainant can report the event with his/her identity or anonymously. Any supervisor, manager or board member who receives a report of a protected disclosure is required to notify the compliance officer of that report, except as provided in Section [6.1.3] with respect to a disclosure relating to conduct of the compliance officer.
- 6.1.3. In the event the compliance officer is suspected of having committed an improper activity, then the protected disclosure shall be reported to the [Associate Executive Director], who will assume the compliance officer's responsibilities related to that report of improper activity.
- 6.1.4. The protected disclosure should be made in writing and include the following information:
- 6.1.4.1. A detailed description of the specific actions that constituted the alleged improper 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 employee(s) or official(s) allegedly engaged in the improper activity or responsible for the health and safety condition.
 - 6.1.4.2. The date(s) the alleged improper activities occurred or the condition developed.
 - 6.1.4.3. Potential witnesses to the alleged improper activities or condition.
 - 6.1.4.4. Any documentation that supports the allegations of improper activities or of a threatening condition.
 - 6.1.4.5. 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.
 - 6.1.4.6. The protected disclosure must be dated, and contain a statement that its contents are believed in good faith to be true.
- 6.1.5. Improper activities that should be reported include, but are not limited to:
- 6.1.5.1. Stealing or misappropriation of CPC's funds, supplies or other assets;

- 6.1.5.2. Fraud or deliberate error in the preparation, evaluation, review, or audit of any financial statement or accounting records of CPC;
 - 6.1.5.3. Deviation from full and fair reporting of CPC's financial condition;
 - 6.1.5.4. Deficiencies in or non-compliance with CPC's internal accounting controls;
 - 6.1.5.5. Authorizing or receiving compensation for goods not received or services not performed;
 - 6.1.5.6. Authorizing or receiving compensation for hours not worked, or failing to account for un-worked (but paid) hours as vacation, sick leave or other paid time off;
 - 6.1.5.7. Pursuit of a benefit or advantage in violation of CPC's conflict of interest policy; and
 - 6.1.5.8. Unauthorized alteration or manipulation of CPC's documents or computer files in violation of CPC's records management and retention policy.”
- 6.1.6. Crimes against person or property, such as assault, rape, burglary, etc., should immediately be reported to local law enforcement personnel.
- 6.2. Good faith. A complainant must act in good faith, without malice to CPC or any individual in CPC, and have reasonable grounds for belief that an improper activity has occurred. Any disclosure which, the complainant has made maliciously, or which the complainant has good reason to believe is false, will be viewed as a serious disciplinary offense.
- 6.3. No Retaliation.
- 6.3.1. Neither CPC, or any person acting on behalf of CPC, will retaliate against an employee who, in good faith, makes a protected disclosure, or who CPC believes made, or may make a protected disclosure.
 - 6.3.2. Neither CPC, or any person acting on behalf of CPC, will retaliate against an employee who discloses, or who is believed to have disclosed, or who threatens to disclose, information to a government or law enforcement agency, or to a person with authority over the employee, or another employee who has the authority to investigate, discover, or correct the violation or noncompliance.
 - 6.3.3. No employee or volunteer who in good faith, provides information to or testifies before any public body conducting an investigation, hearing, or inquiry, or who otherwise cooperates in the investigation of an improper activity shall suffer retaliation or adverse employment or volunteer consequences.
 - 6.3.4. Any employee of CPC who retaliates against another individual who in good faith makes a protected disclosure, or has cooperated in the investigation of an improper activity, may be subject to discipline, including termination of employment or volunteer status.
- 6.4. Prompt investigation.
- 6.4.1. The Compliance Officer, or his or her designee, is responsible for ensuring prompt investigation of all protected disclosures. Supervisors, managers and/or board members who receive protected disclosures, must promptly report the alleged improper activity to the compliance officer or the alternate, and must promptly act to investigate and/or resolve the issue.
 - 6.4.2. The Compliance Officer will notify the complainant and acknowledge receipt of a protected disclosure within ten (10) business days, but only to the extent that the complainant's identity is disclosed or a return address is provided. The complainant will also be notified about what actions will be taken, to the extent reasonably possible and consistent with any privacy or confidentiality limitations; if no further action or investigation is to follow, an explanation for the decision will be given to the complainant.
 - 6.4.3. The Executive Director or a designee is responsible for addressing all reported concerns or complaints of improper activities relating to corporate accounting practices, internal controls or auditing. Therefore, the compliance officer must immediately notify the Executive Director or his/her designee of any such concern or complaint.

6.4.4. The compliance officer will advise the Executive Director and the [chair_of bod?] of any reported improper activities, the current status of the investigation, and the outcome or corrective action taken at the conclusion of the investigation.

6.5. Confidentiality.

6.5.1. The Corporation encourages anyone making a protected disclosure to identify his or herself when making a report in order to facilitate the investigation of the improper activity. However, reports may be submitted on a confidential basis by the complainant or may be submitted anonymously by submitting a letter to the compliance officer through the mail or by drop off. The identity of the complainant, if known, shall remain confidential to those persons directly involved in applying this policy, unless the issue requires investigation by law enforcement, in which case members of the organization are subject to subpoena.

6.5.2. Reports of improper activities or suspected improper activities will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation, to comply with all applicable laws, and to cooperate with law enforcement authorities.

6.5.3. CPC will explore anonymous allegations to the fullest extent possible, but will weigh the prudence of continuing such investigations against the likelihood of confirming the alleged facts or circumstances from attributable sources.

7.0 REFERENCES AND RELATED POLICY

7.1. Government Code §8547.1 establishes procedural guidelines for employees and applicants for employment at CSU to file protected disclosures and provides instructions on how to handle such protected disclosures.

7.2. CSU Executive Order 929 mandates that all CSU campuses adopt and implement the procedures prescribed under EO 929 for handling protected disclosures.

7.3. California Labor Code §1102.5 states that employers may not retaliate against an employee for disclosing information to a government or law enforcement agency of a violation of state or federal statute or rule. (See Labor Code §§1100 et seq.)

7.4. California Labor Code §1106 state that "employee" includes any person employed by the state, local government, a public corporation, or the University of California.

7.5. California Labor Code §98.6 states that employer may not retaliate against any employee or applicant who takes action per Labor Code §1100 et seq., institutes any proceeding under the Labor Commissioner's jurisdiction, or is involved in any proceeding against the employer related to employment. (See Labor Code §§96 et seq, and Labor Code §2699.)

Technical and administrative change updates

7-26-12 for title and organization structure changes.

04-20-2018 – Extensive revision made to reflect regulatory updates, CSU and Cal Poly policy, and improve administration of complaints.