

Whistleblower Policy and Implementation

For Supervisors



Agenda

- **Policies**
 - **Whistleblower**
 - **Whistleblower Protection**
- **Supervisor's Roles and Responsibilities**
- **Resources**

Today I'm going to tell you about new UC policies concerned with people who report what are called "improper governmental activities"—in other words, with people who "blow the whistle" on what they see as on-the-job shenanigans. There's a policy that explains the procedure for filing and addressing these whistleblower complaints, and there is a second policy aimed at protecting those who do come forward and blow the whistle from reprisals from the alleged culprit, the department, division, or anyone at UC.

The policies have special implications for supervisors. After all, you may very well be a whistleblower's first point of contact, so we'll talk about your roles and responsibilities.

Finally, we'll look at some whistleblower resources. For instance, did you know there is a website exclusively devoted to UC whistleblower policies? It is called, appropriately enough: ucwhistleblower.ucop.edu

Why Does UC Need Whistleblower Policies?

- UC values ethical and lawful conduct
- Policies designed to:
 - Encourage timely, safe, and honest reporting of alleged wrongs
 - Ensure consistent and timely institutional response
- The President and the Regents don't want to be surprised!

Why does the University need whistleblower policies?

UC recognizes its responsibility to conduct its business ethically and lawfully. The purpose of policies is to create (1) an environment in which suspected improprieties are brought forward timely and without fear of retaliation and (2) a process that ensures an appropriate, consistent, and timely institutional response to all reports of suspected improprieties. Truth is, most people are honest; that's why society works. But there are always a few who do unethical or illegal things. These people are bad for the department they work in (and steal from), of course, and they are bad for the University as a whole. They damage the prestige, mission, ability of UC to raise money, etc., and they increase scrutiny and control by outsiders.

What Is a “Whistleblower”?

- **Anyone who makes a good faith effort to disclose information about**
 - “Improper governmental activities” or
 - Significant threats to public health and safety
- **Disclosure may be oral or written**

So what’s the definition of a whistleblower? A whistleblower is anyone who makes a good faith effort to disclose information about “improper governmental activities” or about significant threats to public health and safety. Whistleblowers can be faculty or staff, applicants for employment, students, patients, vendors, contractors, and the general public.

“Improper Governmental Activities”

- **Actions that violate “any state or federal law or regulation,” including but not limited to:**
 - **Corruption**
 - **Bribery**
 - **Theft or misuse of UC property**
 - **Fraud**
 - **Coercion**
 - **Willful omission**

What’s the definition of “improper governmental activities”? There are two kinds of actions that fit the definition. First, actions that violate “any state or federal law or regulation,” including, but not limited to: corruption, bribery, theft or misuse of University property, fraudulent claims, fraud, coercion, willful omission to perform duty.

“Improper Governmental Activities”

- Economic waste;
- Gross misconduct, gross incompetence, or gross inefficiency
- **Not** limited to misuse of money. Also applies to:
 - Sexual harassment
 - Scientific misconduct
 - Improper use of authority
 - etc.

The second kind of activity is economic waste; or gross misconduct, gross incompetence or gross inefficiency. Note that an “improper governmental activity” is not limited to misuse of money. So in this it is unlike the old G-29 policy. The new policy encompasses any violation of federal or state law and thus might include, for instance, sexual harassment, scientific misconduct, improper use of authority, and so on.

“Improper Governmental Activities”

**Must directly involve the University
either as victim or as perpetrator**

An “improper governmental activity” has to directly involve the University as either the victim of the improper activity or the perpetrator of the improper activity via the action of an employee.

Roles and Responsibilities of the Supervisor

If someone on your staff comes to you with an allegation:

- **Ask questions. Get as much detail as you can from the whistleblower**
- **Encourage the whistleblower to make a written report**
- **If whistleblower won't put it in writing, you should document your conversation in detail**

So what does all this have to do with you as a supervisor?

Well, you might find yourself in the position of being the first person a whistleblower talks to. The whistleblower policy recognizes this and devotes a section to the supervisor's responsibilities.

What do you do if someone you supervise comes in and says they think So-and-so is engaging in an improper governmental activity? The first thing you have to recognize is that the mere act of coming to see you counts as a report. According to state and UC policy, a report does not have to be written. Why is this significant? Because now even an oral report of an IGA ("improper governmental activity") means you have certain responsibilities. You have to respond somehow. Try to get the whistleblower to make a written report with as much detail as possible. If you cannot persuade the whistleblower to do this, then you should document the oral report in writing and in as much detail as you can.

By the way, the same rules apply if someone you do *not* supervise approaches you with a similar allegation. As a UC supervisor, you must respond.

Roles and Responsibilities of the Supervisor

If your whistleblower wants to be anonymous:

- Advise him/her that confidentiality will be maintained to the extent possible,
- *But* within
 - Limitations of law and policy
 - Need to conduct a competent investigation

If the whistleblower wants to remain anonymous, you should advise him or her that the intent of the Whistleblower Policy is to keep his or her identity confidential, and that his or her confidentiality will be maintained to the extent possible within the limitations of law and policy and the need to conduct a competent investigation.

Roles and Responsibilities of the Supervisor

If you think the alleged act—if true— might be an improper governmental activity:

- **Consult with and/or report it to**
 - **Your supervisor,**
 - **Appropriate UC manager (HR, Audit, etc.), or**
 - **Locally Designated Official (LDO is charged with overseeing whistleblower process on each campus)**
- **If you suspect a crime has been committed, notify the UC police!**

If you think that what the whistleblower tells you—if true—is or might be an improper governmental activity, then you should report it up the ladder—to your supervisor or to an appropriate UC manager (internal audit, HR, etc.), or to your campus's Locally Designated Official (every campus has an LDO, whose job is to oversee the whistleblower process.). If you suspect a crime has been committed, notify the police!

Roles and Responsibilities of the Supervisor

Policy says you should “exercise appropriate judgment” in deciding whether to refer to a higher level of management

- **Tries to balance your need to manage with the University’s need to know**
- **Encourages you to err on the side of upward reporting**

As a supervisor, you are charged with exercising appropriate judgment in determining which matters can be reviewed under your own authority and which matters must be referred to a higher level of management or the LDO. Consulting with supervisors, the LDO or other appropriate University management is encouraged and the exercise of judgment should err on the side of upward reporting. In exercising your judgment, remember that you will be held accountable for your decision not to pass the report on.

Reporting to the LDO, your supervisor, etc. is good for a number of reasons. Brings their expertise into it, so you’re not left on your own; it protects you; it provides information that can be reported up to the Regents. The Regents don’t like to read this kind of stuff in the paper: Bad enough that the headline says: Someone at UC is stealing. Worse if it says: I told them that someone was stealing and they ignored me. Worse yet: I told them someone was stealing and they fired me.

Roles and Responsibilities of the Supervisor

Policy says you **must** refer to the LDO if alleged act:

- Results from an internal control or policy deficiency likely to exist elsewhere at UC
- Is likely to receive media attention
- Involves potentially large amounts of money
- Involves possible crimes
- Involves a significant threat to health and safety
- Is significant or sensitive for other reasons

So use your discretion, but err on the side of reporting up. Now there are circumstances where the policy **requires** you to report to the Locally Designated Official. You must report it if it:

- Is the result of a significant internal control or policy deficiency that is likely to exist in other units within the institution or across the University system
- Is likely to receive media or other public attention
- Involves the misuse of University resources or creates exposure to a liability in potentially significant amount
- Involves allegations or events that have a significant possibility of being the result of a criminal activity (such as disappearance of cash). Remember, if you suspect a crime, contact the UC police.
- Involves a significant threat to the health and safety of employees and/or members of the public
- Is significant or sensitive for other reasons

If the alleged act involves sexual harassment, for instance, you should notify the LDO and also notify the Title IX officer. In other words, telling the LDO doesn't mean you can't also talk directly to the appropriate UC office.

Roles and Responsibilities of the Supervisor

You are a supervisor, not an investigator!

- OK to perform oversight, analysis, review, etc., within the normal scope of your job, but
- Do *not* launch your own investigation

One more important point: Your responsibility is to report allegations of improper activities. It is not to investigate the allegations yourself. Leave that to the investigators—they are experts. You'd hate to inadvertently destroy evidence or tip your hand or—heaven forbid—subject yourself to an unfair labor practice or worse. So let the investigators investigate. You can, however, exercise your normal duties as a supervisor. If part of your job is to periodically examine the accounts, then you can do that. But don't start prying open drawers, going through garbage cans, etc. etc.

Roles and Responsibilities of the Supervisor

If an employee tells you that s/he is being retaliated against for blowing the whistle:

- **Try to resolve the issue informally**
- **Formal complaints should go, in writing, to Human Resources, Academic Personnel, or the LDO**
- **Always send a copy of a written complaint to LDO**

If you know a simple fact that may defuse the issue, then go ahead and try to resolve it. For instance, suppose someone comes to you and tells you that her supervisor has retaliated against her by moving her out of her office. And let's say you know that her supervisor had nothing to do with the decision. In fact, the decision came from the Department Head, who has decided to reconfigure the space so it can be used as a printing/faxing/media center. Explaining this may resolve the issue. If not, advise the employee that formal complaints should go in writing to HR, AP or the LDO. A formal complaint consists of a written allegation of retaliation and a sworn statement, made under penalty of perjury, that the complaint is true or believed to be true by the complainant.

Resources

- Your LDO
- Human Resources or Academic Personnel Office
- Internal Audit
- UC Police Department
- UC Whistleblower website:
<http://ucwhistleblower.ucop.edu>

You should modify the first four bullets on this slide to the particulars of your own location.