

## **AP 7700 WHISTLEBLOWER PROTECTION**

### **References:**

Education Code Sections 87160-87164;  
Government Code Section 53296;  
Labor Code Section 1102.5;  
Private Attorney General Act of 2004 (Labor Code Section 2698);  
29 U.S. Code Section 218C (Affordable Care Act)

Individuals are encouraged to report suspected incidents of unlawful activities by District employees in the performance of their duties. Reports will be investigated promptly and appropriate remedies applied. Employees who, in good faith, report such activities and/or assist the district in the investigation will be protected from retaliation.

This procedure sets out the processes for responding to and investigating reports of unlawful activities, as defined in BP 7700 titled Whistleblower Protection, and addressing complaints of retaliation for making such reports.

### **Filing a Report of Suspected Unlawful Activities**

(Form AP 7700 Whistleblower Complaint)

Any person may report allegations of suspected unlawful activities. Knowledge or suspicion of such unlawful activities may originate from academic personnel, staff, or administrators carrying out their assigned duties, internal or external auditors, law enforcement, regulatory agencies, customers, vendors, students, or other third parties.

Anonymous reports will be investigated to the extent possible. However, employees are strongly encouraged not to report anonymously because doing so impedes the District's ability to thoroughly investigate the claim and take appropriate remedial measures. As set forth fully below, retaliation against individuals who report suspected unlawful activities will not be tolerated.

Normally, a report by a District employee of allegations of a suspected unlawful activity should be made to the reporting employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit. However, if the report involves or implicates the direct supervisor or others in the operating unit, the report may be made to any another District official whom the reporting employee believes to have either responsibility over the affected area or the authority to review the alleged unlawful activity on behalf of the District.

When the alleged unlawful activities involve a college president, the report should be made directly to the District Chancellor. When the alleged unlawful activity involves the District Chancellor, the report should be made to the President of the Board of Trustees. When the alleged unlawful activity involves the Board of Trustees or one of its members, the report should be made to the District Chancellor who will confer with the President of the Board of Trustees and/or legal counsel on how to proceed.

Allegations of suspected unlawful activities should be made in writing so as to assure a clear understanding of the issues raised, but may be made orally. Such reports should be factual and contain as much specific information as possible. The receiving supervisor or administrator should elicit as much information as possible. If the report is made orally, the receiving supervisor or administrator shall

reduce it to writing and make every attempt to get the reporter to confirm by his/her signature that it is accurate and complete.

Once the receiving supervisor or administrator has received and/or prepared a written report of the alleged unlawful activity, he/she must immediately forward to the president of the college where the alleged activity has occurred or to the District Chancellor if the activity involves the District office or is District-wide. However, if this process would require submitting the report to an employee implicated in the report, the receiving supervisor or administrator should follow the reporting options outlined, above. The high-level administrator or trustee who receives the written report pursuant to this paragraph is responsible for ensuring that a prompt and complete investigation is made by an individual with the competence and objectivity to conduct the investigation, and that the assistance of counsel and/or an outside investigator is secured if deemed necessary.

In the course of investigating allegations of unlawful conduct, all individuals who are contacted and/or interviewed shall be advised of the District's no-retaliation policy. Each individual shall be:

- a) warned that retaliation against the reporter(s) and/or others participating in the investigation will subject the employee to discipline up to and including termination; and
- b) advised that if he/she experiences retaliation for cooperating in the investigation, then it must be reported immediately.

In the event that an investigation into alleged unlawful activity determines that the allegations are accurate, prompt and appropriate corrective action shall be taken.

### **Protection from Retaliation**

When a person makes a good-faith report of suspected unlawful activities to an appropriate authority, the report is known as a protected disclosure. District employees and applicants for employment who make a protected disclosure are protected from retaliation.

Any employee who believes he/she has been (1) subjected to or affected by retaliatory conduct for reporting suspected unlawful activity, or (2) for refusing to engage in activity that would result in a violation of law, should report such conduct to the appropriate supervisory personnel (if such supervisory personnel is not the source of or otherwise involved in the retaliatory conduct). Any supervisory employee who receives such a report, or who otherwise is aware of retaliatory conduct, is required to advise their College President, the District Chancellor, or the District Chancellor's designee. If the allegations of retaliation, or the underlying allegations of unlawful conduct involve the College President or District Chancellor, the supervisor shall report to the highest level administrator and/or trustee who is not implicated in the reports of unlawful activity and retaliation.

All allegations of retaliation shall be investigated promptly and with discretion, and all information obtained will be handled on a "need to know" basis. At the conclusion of an investigation, as appropriate, remedial and/or disciplinary action will be taken where the allegations are verified and/or otherwise substantiated.

### **Whistleblower Contact Information**

Employees who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees should contact the California Community Colleges Chancellor's Office or the District's Board of Trustees. Employees can contact the State Personnel Board with

complaints of retaliation resulting from whistleblower activities. The State Personnel Board hotline is (916) 653-1403.

**Other Remedies and Appropriate Agencies**

In addition to the internal complaint process set forth above, any employee who has information concerning allegedly unlawful conduct may contact the appropriate government agency

# SAN JOSE/EVERGREEN COMMUNITY COLLEGE DISTRICT WHISTLEBLOWER COMPLAINT

Please Print:

COMPLAINANT (Name): \_\_\_\_\_  
Last First Middle Initial

Position title (If district employee): \_\_\_\_\_

Designation: \_\_\_\_\_ Student \_\_\_\_\_ Management \_\_\_\_\_ Faculty \_\_\_\_\_ Classified \_\_\_\_\_ Job Applicant  
\_\_\_\_\_ Other (Please Specify) \_\_\_\_\_

Work Location: \_\_\_\_\_ District Office \_\_\_\_\_ Evergreen Valley College \_\_\_\_\_ San Jose City College \_\_\_\_\_ Workforce Institute

COMPLAINT IS FILED AGAINST: \_\_\_\_\_  
Last Name First Name Middle Name Position Title

Address (if known): \_\_\_\_\_

E-mail Address (if known): \_\_\_\_\_

Identify date(s), person(s), college, specific location, activity or program in which alleged intentional or negligent violation of state or federal law, local ordinances or District policy occurred:

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BASIS OF VIOLATION: (Please check only those that apply)

\_\_\_\_\_ Intentional violation of state law, please specify: \_\_\_\_\_

\_\_\_\_\_ Negligent violation of state law, please specify: \_\_\_\_\_

\_\_\_\_\_ Intentional violation of federal law, please specify: \_\_\_\_\_

\_\_\_\_\_ Negligent violation of federal law, please specify: \_\_\_\_\_

\_\_\_\_\_ Intentional violation of local ordinance, please specify: \_\_\_\_\_

\_\_\_\_\_ Negligent violation of local ordinance, please specify: \_\_\_\_\_

\_\_\_\_\_ Intentional violation of District policy\*, please specify: \_\_\_\_\_

\_\_\_\_\_ Negligent violation of District policy\*, please specify: \_\_\_\_\_

\_\_\_\_\_ Retaliation\*\*, please specify: \_\_\_\_\_

\*Please note that this form may **not** be used to report complaints against the District that are already have alternative procedures and complaint forms, such as discrimination and harassment complaints under AP 3435.

Provide a written statement outlining the allegations in detail. \*\* If applicable, explain why you believe you were retaliated against for your filing, pursuit or assistance with a whistleblower complaint:

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What is the specific action you are requesting to resolve the matter? \_\_\_\_\_

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Have you previously had any prior communications with anyone else at the District regarding this matter? If so, please state name(s) and date(s) of any prior communications.

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I certify that this information is correct to the best of my knowledge.

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

\_\_\_\_\_  
Signature of Complainant

**ATTACH ADDITIONAL PAGES AS NEEDED**

**INSTRUCTIONS TO COMPLAINANT:**

Please complete the information listed below. Your contact information and the phone numbers and addresses of your witnesses will be kept **confidential** and **will not be released to the respondent**.

Name of complainant: \_\_\_\_\_

Contact Information:

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

Street

City

Zip Code

Telephone: ( ) \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

If there is anyone who could provide more information regarding this complaint, please list names, addresses, and phone number. Please use additional pages as necessary to provide contact information of other witnesses.

Name: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_ *Email:* \_\_\_\_\_

Name: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_ *Email:* \_\_\_\_\_

Name: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_ *Email:* \_\_\_\_\_

Name: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_ *Email:* \_\_\_\_\_  
\_\_\_\_\_

Please see Administrative Procedure 7700 for more information and for filing instructions regarding this form. Whistleblower complaints may also be filed with the, Office of Human Resources, San Jose/Evergreen Community College District 40 South Market Street, San Jose, CA 95113.

## **WHISTLEBLOWERS ARE PROTECTED**

It is the public policy of the State of California to encourage employees to notify an appropriate government or law enforcement agency, person with authority over the employee, or another employee with authority to investigate, discover, or correct the violation or noncompliance, and to provide information to and testify before a public body conducting an investigation, hearing or inquiry, when they have reason to believe their employer is violating a state or federal statute, or violating or not complying with a local, state or federal rule or regulation.

### **Who is protected?**

Pursuant to California Labor Code Section 1102.5, employees are the protected class of individuals. “Employee” means any person employed by an employer, private or public, including, but not limited to, individuals employed by the state or any subdivision thereof, any county, city, city and county, including any charter city or county, and any school district, community college district, municipal or public corporation, political subdivision, or the University of California.

[California Labor Code Section 1106]

### **What is a whistleblower?**

A “whistleblower” is an employee who discloses information to a government or law enforcement agency, person with authority over the employee, or to another employee with authority to investigate, discover, or correct the violation or noncompliance, or who provides information to or testifies before a public body conducting an investigation, hearing or inquiry, where the employee has reasonable cause to believe that the information discloses:

1. A violation of a state or federal statute,
2. A violation or noncompliance with a local, state or federal rule or regulation, or
3. With reference to employee safety or health, unsafe working conditions or work practices in the employee’s employment or place of employment.

A whistleblower can also be an employee who refuses to participate in an activity that would result in a violation of a state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation.

### **What protections are afforded to whistleblowers?**

1. An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from being a whistleblower.
2. An employer may not retaliate against an employee who is a whistleblower.
3. An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.
4. An employer may not retaliate against an employee for having exercised his or her rights as a whistleblower in any former employment.

Under California Labor Code Section 1102.5, if an employer retaliates against a whistleblower, the employer may be required to reinstate the employee's employment and work benefits, pay lost wages, and take other steps necessary to comply with the law.

### **How to report improper acts outside of the District**

If you have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees should contact the California Community Colleges Chancellor's Office or the District's Board of Trustees. Employees can contact the State Personnel Board with complaints of retaliation resulting from whistleblower activities. The State Personnel Board hotline is (916)653-1403. You may also call the California State Attorney General's Whistleblower Hotline at 1-800-952-5225.



