



UTAH VALLEY UNIVERSITY

Policies and Procedures

POLICY TITLE	Whistleblower Anti-Retaliation	Policy Number	168
Section	Governance, Organization, and General Information	Approval Date	November 29, 2022
Subsection	Individual Rights	Effective Date	November 29, 2022
Responsible Office	Office of the Vice President of People and Culture		

1.0 PURPOSE

1.1 The purpose of this policy is to establish procedures by which the University implements the *Utah Protection of Public Employees Act* for review of certain types of retaliation complaints from university employees.

2.0 REFERENCES

2.1 *Utah Public Officers' and Employees' Ethics Act*, Utah Code Ann. § 67-16-1 et seq. (2019)

2.2 *Utah Protection of Public Employees Act*, Utah Code Ann. § 67-21-1 et seq. (2022)

2.3 UVU Policy 162 *Title IX Sexual Harassment*

2.4 UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*

2.5 UVU Policy 371 *Corrective Actions and Termination for Staff Employees*

2.6 UVU Policy 648 *Faculty Personnel Reduction*

3.0 DEFINITIONS

3.1 Abuse of authority: An arbitrary or capricious exercise of power that (1) adversely affects the employment rights of another; or (2) results in personal gain to the person exercising the authority or to another person or to the non-UVU entity they represent.

3.2 Communication: A verbal, written, broadcast, or other communicated report.

3.3 Complainant: For the purposes of this policy, an employee who alleges that they have experienced retaliatory action in violation of this policy.

3.4 Employee: For the purposes of this policy, a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for the University.



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3.5 Failure to promote: To fail to promote the employee if the employee would have otherwise been promoted.

3.6 Good faith: An employee acts with (a) subjective good faith; and (b) the objective good faith of a reasonable employee based on an honest belief and purpose and without fraudulent or deceptive intent.

3.7 Gross mismanagement: Action or failure to act by a person, with respect to a person's responsibility, that causes significant harm or risk of harm to the mission of the public entity or public body that employs, or is managed or controlled by, the person.

3.8 Respondent: For the purposes of this policy, an individual against whom an alleged complaint of retaliatory action in violation of this policy has been made.

3.9 Retaliatory action: To do any of the following to an employee in violation of Utah Code 67-21 *Utah Protection of Public Employees Act*:

3.9.1 Dismiss the employee;

3.9.2 Reduce the employee's compensation;

3.9.3 Fail to increase the employee's compensation by an amount that the employee is otherwise entitled to or was promised;

3.9.4 Fail to promote the employee if the employee would have otherwise been promoted; or

3.9.5 Threaten to take an action described in section 3.9.1-3.9.4.

3.10 Substantial evidence: Substantial evidence is relevant evidence that a reasonable person might accept as adequate to support a conclusion. Substantial evidence is less than a preponderance of evidence (i.e., not necessarily "more likely than not").

3.11 Unethical conduct: Conduct that violates a provision of Utah Code 67-16 *Utah Public Officers' and Employees' Ethics Act*.

4.0 POLICY

4.1 Scope of Policy

4.1.1 This policy applies to all University employees, as defined above.

4.1.2 This policy does not apply to types of retaliation that are separately defined and proscribed in other UVU policies, including Policy 162 *Title IX Sexual Harassment* and Policy 165 *Discrimination, Harassment, and Affirmative Action*.



4.2 Policy Statement

4.2.1 No UVU employee may unreasonably restrict another employee's ability to communicate or document

- 1) The waste or misuse of public funds, property, or workforce;
- 2) A violation or suspected violation of any law;
- 3) Gross mismanagement;
- 4) Abuse of authority; or
- 5) Unethical conduct.

4.2.2 Declining permission to record meetings or conversations is not an unreasonable restriction under this section. If an employee believes an unreasonably restrictive practice is occurring, they may raise the concern with individuals in their supervisory line or anonymously via EthicsPoint.

4.2.3 No person may take retaliatory action against a university employee because the employee engaged, or is expected to engage, in good faith, in a protected activity (as outlined below).

4.3 Protected Activities

4.3.1 The following activities are protected against retaliatory action under the *Utah Protection of Public Employees Act* and this policy:

- 1) Objecting to or refusing to carry out a directive that the employee reasonably believes violates federal, state, or local law;
- 2) Participating or giving information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body; and
- 3) Communicating in good faith, either directly or through another person acting on behalf of the employee, the conduct described in section 4.2.1(1–5).

4.3.1.1 An employee is presumed to have communicated in good faith if the employee gives written notice or otherwise formally communicates the conduct described in section 4.2.1(1–5) to one of the following entities:

- 1) A person in authority over the person alleged to have engaged in the conduct described in section 4.2.1(1–5);
- 2) The attorney general's office;



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- 3) Law enforcement, if the conduct is criminal in nature;
- 4) The Utah Board of Higher Education or a member of the Utah Board of Higher Education;
- 5) The commissioner of higher education;
- 6) The President of the University; or
- 7) UVU's Internal Audit Office.

4.3.1.2 The presumption of good faith may be rebutted by showing that the employee knew or reasonably ought to have known that their communication was malicious, false, or frivolous.

4.3.2 Pursuant to the *Utah Protection of Public Employees Act*, an employee who knowingly makes a false accusation of retaliatory action under this policy is subject to discipline, up to dismissal from employment. Such disciplinary action would proceed according to the procedures in the relevant disciplinary policy, given the status of the employee (e.g., Policy 371 for most staff; Policy 648 for most faculty).

5.0 PROCEDURES

5.1 Filing a Complaint

5.1.1 The employee must file a written complaint alleging retaliatory action prohibited by this policy with the Director of Equal Opportunity and Affirmative Action within 60 calendar days of the alleged retaliatory action prohibited by this policy. Late complaints may be dismissed.

5.2 Complaint Resolution

5.2.1 The complaint resolution process (including notices, complaint, investigation, appointment of hearing panel, hearing, and appeal) shall to the extent feasible follow the procedures described in UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*, subject to the following statutorily required specifications:

5.2.1.1 Panel Composition—The appointed hearing panel may not include any panelist who (1) is in the same academic or administrative department or office (same executive division is permissible) as the complainant; (2) is a supervisor of the complainant; or (3) has a conflict of interest in relation to the complainant or an allegation made in the complaint.

5.2.1.2 Standard of Proof—The respondent shall bear the burden of proof to establish by substantial evidence (as defined in section 3.11) that the action was justified by reasons unrelated to the complainant's participation, or expected participation, in a protected activity (as outlined in section 4.3).



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5.2.1.3 Remedial Actions— If the hearing panel determines that retaliatory action occurred in violation of this policy, they may recommend one or more of the following remedial actions to the final decision maker:

- 1) Reinstatement of the employee at the same level as before the retaliatory action;
- 2) Payment of back wages;
- 3) Full reinstatement of fringe benefits;
- 4) Full reinstatement of rank or seniority rights; or
- 5) If the retaliatory action includes failure to promote, a pay raise that results in the employee receiving the pay that the employee would have received if the person had been promoted.

5.2.1.4 Timeline—The hearing panel shall hear the matter, decide whether retaliatory action under this policy occurred, and recommend remedial action to the final decision maker within the later of (1) 30 calendar days after the day on which the employee files the complaint; or (2) a longer period of time, not to exceed 30 additional days, if the complainant and the hearing panel mutually agree on the longer time period.

5.2.1.5 The senior executive (such as the President, Provost, or Vice President) of the division in which the complainant is employed shall be the final decision maker on the remedy and shall render a decision within seven calendar days after the day on which the senior executive receives the recommended remedy from the hearing panel. If the relevant senior executive has a conflict of interest, the final decision maker will be the President.

5.3 Notices

5.3.1 Human Resources shall provide an employee with a copy of the *Utah Protection of Public Employees Act* upon hire, post notices, and use other appropriate means to keep employees informed of their protections and obligations under the *Utah Protection of Public Employees Act*.

5.3.2 The Office of Equal Opportunity and Affirmative Action shall provide an employee with a copy of the *Utah Protection of Public Employees Act* upon request and upon filing a complaint under this policy.



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POLICY HISTORY		
Date of Last Action	Action Taken	Authorizing Entity
June 25, 2020	New policy approved as a temporary emergency.	UVU Board of Trustees
June 24, 2021	Revised policy approved as a regular policy.	UVU Board of Trustees
November 29, 2022	Revisions approved through compliance change process.	UVU President's Council UVU Board of Trustees