

Utah Tech University Policy

330: Whistleblower Protections



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I. Purpose

- 1.1 The purpose of this policy (the “Policy”) is to implement the requirements of the Utah Protection of Public Employees Act and establish the procedures by which Utah Tech University (“UT” or “the University”) will review a Complaint of Retaliatory Action communicated to the University by a UT Employee.

II. Scope

- 2.1 This policy applies to specific Retaliatory Actions defined herein when an Employee communicates to the University a Good Faith report of an alleged violation of the Utah Public Officers’ and Employees’ Ethics Act (i.e., whistleblowing). This policy does not apply to types of retaliation against an individual or group that are separately defined and proscribed in other UT policies, including University Policy 154: Title IX Sex-Based Discrimination, Sexual Harassment and Retaliation and University Policy 164: Protected Class and Non-Title IX Discrimination, Sexual Harassment and Retaliation.

III. Definitions

- 3.1 **Abuse of Authority:** An arbitrary or capricious exercise of power that: a) adversely affects the employment rights of another; or b) results in personal gain to the person exercising the authority or to another person.
- 3.2 **Complaint:** A formal, verbal, written, broadcast, or otherwise communicated report of Improper Conduct.
- 3.3 **Conflict of Interest:** A material, specific, and outside the ordinary course of Utah Tech business relationship or connection with a Reporting Individual or an allegation made in any received Complaint, such that the existence

of the relationship and/or connection would prevent that individual from operating objectively.

- 3.4 **Employee:** Any faculty, staff, undergraduate or graduate student employee, consultant, contractor, or any other individual under contract, written or otherwise, to provide paid services for the University.
- 3.5 **Final Decision Maker:** The Employee who receives the Independent Personnel Board's written recommendations and makes a final decision on whether the Reporting Individual was subjected to a Retaliatory Action in violation of the Utah Public Officers' and Employees' Ethics Act (UPPEA) and this policy. See Section 6.15-6.17 below, for additional information.
- 3.6 **Good Faith:** Means that an Employee acts with (a) subjective good faith and (b) the objective good faith of a reasonable Employee.
- 3.7 **Gross Mismanagement:** An 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 Utah Tech University that employs, or is managed or controlled by, the person.
- 3.8 **Improper Conduct:** Any suspected or actual activity that an Employee reasonably believes to be: a) a waste or misuse of public funds, property, or manpower; b) a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States; c) Gross Mismanagement, Abuse of Authority; or d) Unethical Conduct.
- 3.9 **Independent Personnel Board (Board):** The Board responsible to review a Complaint submitted pursuant to this Policy, comprised of a representative from Internal Audit, a representative from Human Resources (may be the Executive Director), and an individual trained in conducting reviews/investigations (such as an employee of the Office of Equity Compliance and TIX, an employee who administers the Student Conduct Code, or a trained external investigator retained by UT). No member of the Board may be (a) in the same academic or administrative department or office as the Reporting Individual (same executive division is permissible); (b) a supervisor of the Reporting Individual; or (c) have a Conflict of Interest in relation to the Reporting Individual or an allegation made in the Complaint.
- 3.10 **Reporting Individual:** An individual who communicates in Good Faith a violation of the Utah Public Officers' and Employees' Ethics Act.
- 3.11 **Responding Individual:** An individual alleged to have taken Retaliatory

Action against a Reporting Individual.

- 3.12 **Retaliatory Action:** Any of the following adverse actions taken against an Employee because of the Employee being a Reporting Individual: a) Dismissal; b) Pay Reduction; c) Failure to increase compensation by an amount that the Employee was promised or is otherwise entitled to; d) Failure to promote if the Employee would have otherwise been promoted; or e) Threatening to take any of the listed Retaliatory Actions.
- 3.13 **Unethical Conduct:** Conduct that violates a provision of the Utah Public Officers' and Employees' Ethics Act.

IV. Policy

- 4.1 UT encourages lawful whistleblowing pursuant to state and federal law. An Employee of UT who believes they have been subjected to Retaliatory Action for any protected reporting as a Reporting Individual shall follow the Procedures outlined in this Policy in Section VI.
- 4.2 Human Resources shall provide Employees with a copy of the Utah Protection of Public Employees Act (UPPEA) statute upon hire, upon request by the Employee, and when an Employee submits a Complaint under this Policy. Human Resources is also responsible for posting notices and using other appropriate means to keep Employees informed of their protections and obligations under the UPPEA.
- 4.3 A Reporting Individual is not required to prove the truth of their allegations at the time a Complaint is submitted but is required to act in Good Faith. Any Employee who does not act in Good Faith may be subject to civil fines of up to \$5,000 and/or disciplinary action by UT pursuant to University Policy 371 or Policy 372, up to and including termination of employment. Any presumption of Good Faith may be rebutted if the Employee knew, or reasonably ought to have known, that the Complaint is malicious, false, or frivolous.
- 4.4 Details regarding Complaints under this Policy are shared on a need-to-know basis and will be treated as confidential to the extent permitted by law and at the discretion of UT.
- 4.5 UT reserves all rights afforded to it under applicable law. Nothing in this policy or related policies, procedures and practices of UT or UT's governing bodies shall be read to offer or constitute a legal agreement or contract or be subject to legal jurisdiction in the law or courts of any kind. UT's policies, procedures and practices are subject to change at any time. This policy is enacted solely to comply with the requirements of Utah

Code 67-21-3.7 and does not confer any additional rights.

V. References

- 5.1 University Policy 154: Title IX Sex-Based Discrimination, Sexual Harassment and Retaliation
- 5.2 University Policy 157: Personal Conduct/Conflict of Interest
- 5.3 University Policy 164: Protected Class and Non-Title IX Discrimination, Harassment, Sexual Harassment and Retaliation
- 5.4 University Policy 371: Faculty Termination
- 5.5 University Policy 372: Corrective & Disciplinary Action
- 5.6 Utah Code § 67-21-1 *et seq.* Utah Protection of Public Employees Act
- 5.7 Utah Code § 67-16-1 *et seq.* Utah Public Officers' and Employees Ethics Act

VI. Procedures

- 6.1 PROCEDURE FOR REPORTING. An Employee who believes that Utah Tech has taken a Retaliatory Action against them as a result of being a "Reporting Individual" may file a written Complaint through the University's online ethics reporting form available on the Internal Audit website (see Section 7.1 of this policy for link).
 - 6.1.1 The Reporting Individual must include all relevant information available to the Reporting Individual that supports the allegations raised in the Complaint.
 - 6.1.2 Individuals who submit their Complaint to the Utah Board of Higher Education, the commissioner of higher education, the state Attorney General's office, law enforcement (if the conduct is criminal in nature), the state auditor's office, the state court administrator, the Utah Division of Finance, the president of the Utah Senate, the speaker of the Utah House of Representatives, or the Utah governor's office are subject to the protections of this Policy.
 - 6.1.3 A Complaint provided to any of the individuals listed in 6.1.2 will not be deemed to have been filed a Complaint at the University until the Complaint has been received by Internal Audit.

- 6.2 A Complaint must be filed no later than within thirty (30) calendar days of the alleged Retaliatory Action. Filing of a Complaint after the established thirty (30) calendar day deadline may result in the immediate dismissal of the Complaint.
- 6.3 COMPLAINT RESOLUTION. Upon Human Resources' receipt of a timely-filed Complaint, Human Resources shall, within five (5) calendar days, empanel an Independent Personnel Board.
- 6.4 Upon empanelment of the Independent Personnel Board, Human Resources shall provide notice to the Reporting Individual and the Responding Individual (collectively, the "Parties") that a Complaint has been received pursuant to this Policy. This notice shall include the names and identities of the individuals empaneled to the Independent Personnel Board and will include a copy of this Policy and the Utah Protection of Public Employees Act.
- 6.5 The Parties may, within five (5) calendar days, submit a written objection related to the makeup and statutory definitions of the Independent Personnel Board. Failure to submit a timely objection will be construed as a waiver of such right.
- 6.6 If a member of the Independent Personnel Board is disqualified after an objection, the Independent Personnel Board will proceed with the remaining members available. If, however, fewer than two (2) members remain, Human Resources may appoint an additional members(s) who by statutory definition may be invited to participate.
- 6.7 To the extent reasonably possible, Human Resources will collect relevant documents provided by the Reporting Individual or otherwise maintained by Utah Tech. Human Resources will forward the Complaint and any collected documentation to the Independent Personnel Board for their review.
- 6.8 The Independent Personnel Board shall convene as soon as is practicable, but at least within seven (7) calendar days of their receipt of the Complaint, to review the Complaint and relevant documentation and, as deemed necessary by the Independent Personnel Board, set a time to interview the Reporting Individual, the Responding Individual, and any necessary witnesses.
- 6.9 UT shall bear the burden to prove by substantial evidence that its action was justified by reasons unrelated to the Employee's Good Faith actions under Utah Code Section 67-21-3. If UT believes the Employee's Complaint does not plausibly establish that the Employee: 1) was in fact a

Reporting Individual; and 2) suffered a Retaliatory Action, UT may challenge the Employee's claim in a written submission to the Independent Personnel Board prior to the commencement of the review hearing. If the Independent Personnel Board finds by substantial evidence that the Employee has not stated a plausible claim, the Independent Personnel Board may dismiss the Complaint without a hearing.

6.10 The Independent Personnel Board shall issue a written recommendation with corresponding facts and reasoning addressing, at minimum, the following points:

6.10.1 Whether the complainant was in fact a Reporting Individual;

6.10.2 Whether the Reporting Individual was subject to Retaliatory Action;

6.10.3 Whether or not the Responding Individual has established, by substantial evidence, that the Responding Individual's actions were justified by reasons unrelated to the Reporting Individual's Good Faith action or belief;

6.10.4 Whether the Responding Individual took a Retaliatory Action in violation of this Policy;

6.10.5 Proposed remedies for the Reporting Individual for any violations of this Policy, if any; and

6.10.6 If the Independent Personnel Board finds that Retaliatory Action has been taken in violation of this Policy, the Independent Personnel Board may recommend any of the following remedies:

6.10.6.1 Reinstatement of the Employee at the same level as before the Retaliatory Action;

6.10.6.2 Payment of back wages;

6.10.6.3 Full reinstatement of fringe benefits;

6.10.6.4 Full reinstatement of seniority rights; or

6.10.6.5 If the Retaliatory Action includes a failure to promote, a pay raise that results in the Employee receiving the pay that the Employee would have received if the Employee had been promoted.

6.11 A Responding Individual found in violation of the UPPEA under this Policy may be subject to disciplinary action pursuant to UT Policy 372, up to and

including termination of employment.

- 6.12 The Independent Personnel Board will issue its written recommendations to the Final Decision Maker with a copy to the Reporting Individual and Responding Individual within twenty-three (23) calendar days of the Reporting Individual filing the Complaint with UT, unless the Reporting Individual and the Independent Personnel Board have mutually agreed to a longer period of time not to exceed an additional thirty (30) calendar days.
- 6.13 The senior administrator (e.g., a Vice President) of the division employing the Reporting Individual shall be the Final Decision Maker. If the senior administrator participated as a member of the Independent Personnel Board or has a Conflict of Interest, the senior administrator's appropriate designee shall become the Final Decision Maker.
- 6.14 The Final Decision Maker may ask clarifying questions of any person(s) involved in the process and review any relevant information, as needed, to reach a final decision.
- 6.15 The Final Decision Maker shall issue a written final decision within seven (7) calendar days of receiving the Independent Personnel Board's recommendations: a) adopting the recommendations of the Board (in whole or part); b) rejecting the recommendations of the Board (in whole or part) and/or making such other findings and conclusions as necessary for each of the above-identified categories (Section 6.11); and/or c) referring the matter to the proper sanctioning authority within UT for the evaluation and imposition of sanctions against the Responding Individual found to have violated this Policy.
- 6.16 The Final Decision Maker shall send the written decision to, or make available for review by, the Reporting Individual, Responding Individual, and all such UT Employees that the Final Decision Maker deems necessary to effectuate the decision.

VII. Addenda

- 7.1 University's Ethics Point Reporting webpage:
<https://internalaudit.utahtech.edu/ethical-concerns/>

Policy Owner: Executive Director of Human Resources
Policy Steward: Executive Director of Human Resources

History:
Approved 07/17/2022