

5.1.9 Protecting Employees from Retaliation

(a) Policy

- (1) The California Whistleblower Protection Act protects all state civil service employees and applicants for state employment who make a protected disclosure in good faith from suffering retaliation. It is illegal for state officers and employees to retaliate against a state civil service employee or applicant for state civil service appointment for informally or formally reporting improper governmental activities or for refusing to obey an illegal order.
- (2) California Correctional Health Care Services (CCHCS) and the California Department of Corrections and Rehabilitation (CDCR) shall protect whistleblowers from retaliation by reviewing complaints of whistleblowers, notification of incidents of fraud or errors, harassment, discrimination, and retaliation and investigate as appropriate.

(b) Purpose

To ensure all CCHCS state civil service employees and applicants for state employment are protected from retaliation.

(c) Applicability

This policy and procedure applies to all CCHCS state civil services employees.

(d) Retaliation Complaint Procedure

(1) Internal

- (A) Complaints of retaliation shall be resolved at the lowest level.
- (B) Hiring authorities have the responsibility to protect all employees who report misconduct from retaliation by ensuring that all necessary measures are taken to protect whistleblowers during the investigation process as well as after the case has been adjudicated.
- (C) Labor Code, Section 1102.5, prohibits an employer from retaliating against an employee who discloses information that would result in a potential violation or noncompliance of statute or regulation to a governmental or law enforcement agency, to a person with authority over the employee, or another employee who has the authority to investigate. The Labor Code also protects employees who refuse to participate in an activity that would result in a potential violation or noncompliance of statute or regulation.
- (D) Allegations of retaliation shall be forwarded by the hiring authority to the Office of Internal Affairs (OIA) via a CDCR 989, Confidential Request for Internal Affairs Investigation/Notification of Direct Adverse Action, when a reasonable belief of misconduct occurred and the alleged misconduct, if proven true, would result in adverse action as defined in the CDCR's Department Operations Manual, Chapter 3, Article 22, Adverse Personnel Actions.

(2) External

This policy does not alter the ability or right of employees to file retaliation complaints directly, even if there is no formal complaint filed with the OIA, or other state agencies including, but not limited to, the following:

- (A) The State Personnel Board Appeals Division within 12 months from the most recent act of reprisal: http://www.spb.ca.gov/appeals/general_information.aspx.
- (B) California Department of Human Resources: <http://www.calhr.ca.gov/state-hr-professionals/Pages/appeals-and-grievances.aspx>.
- (C) The Office of the Inspector General: <https://www.oig.ca.gov/pages/about-us/how-to-file-a-complaint.php>.
- (D) The Public Employee's Relations Board: <https://www.perb.ca.gov/UPCByMail.aspx>.
- (E) Worker's Compensations Appeals Board: <https://www.dir.ca.gov/dlse/dlseRetaliation.html>.
- (F) The Department of Fair Housing and Employment: <https://www.dfeh.ca.gov/complaint-process/>.

(e) Discipline and Liability

- (1) In accordance with the provisions of Penal Code, Section 6129(c)(2), any employee of CDCR found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 days.
- (2) Pursuant to Government Code, section 8547.8(c), in addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law. However, any action for damages shall not be available

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to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a), and the board has issued, or failed to issue, findings pursuant to Section 19683.

(f) Training

All CCHCS civil service employees are required to complete the read and sign training via the online Learning Management System upon hire and annually thereafter.

References

- California Government Code, Title 2, Division 1, Chapter 6.5, Article 3, California Whistleblower Protection Act, Section 8547 et seq.
- California Labor Code, Division 2, Part 3, Chapter 5, Section 1102.5
- California Penal Code, Part 3, Title 7, Chapter 8.2, section 6129(c)(2)
- California Department of Corrections and Rehabilitation Department Operations Manual, Article 14, Section 31140.10, Reporting Misconduct and Protecting Employees from Retaliation
- Health Care Department Operations Manual, Administrative Policy, Chapter 5, Article 1, Section 4 Reporting of Actual or Suspected Incidents of Fraud, Errors, and Improper Governmental Activities Policy

Revision History

Effective: 08/2019