

January 6, 2005

**MEMORANDUM**

TO: CSU Presidents

FROM: Charles B. Reed  
Chancellor

SUBJECT: Systemwide Complaint Procedure for Discrimination, Harassment and Retaliation Complaints for Employees Not Eligible to File a Complaint or Grievance Under a Collective Bargaining Agreement or Whose Collective Bargaining Agreement Incorporates CSU Systemwide Complaint Procedure - Executive Order No. 928

Attached is a copy of Executive Order 928, which supersedes Executive Order 675. Executive Order 928 provides the procedures for filing and processing discrimination, harassment and retaliation complaints for employees who are not eligible to file a complaint or grievance under a collective bargaining agreement or whose collective bargaining agreement incorporates CSU systemwide complaint procedure for such purposes. This executive order provides guidelines for handling discrimination, harassment and retaliation claims that are either not formalized in a written complaint or not filed timely.

If you have questions regarding this executive order, please call Employee Relations at (562) 951-4425.

In accordance with the policy of the California State University, the campus president has the responsibility for implementing Executive Order 928 and for maintaining the campus repository and index for all executive orders.

CBR/eb

**Attachment** Complaint Form

Distribution: Executive Staff, Office of the Chancellor  
Associate Vice Presidents, Faculty Affairs  
Human Resources Directors  
Equal Employment Opportunity Directors

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**THE CALIFORNIA STATE UNIVERSITY**  
**Office of the Chancellor**  
**401 Golden Shore**  
**Long Beach, California 90802-4210**  
**(562) 951-4747**

**Executive Order:** 928

**Title:** Systemwide Complaint Procedure For Discrimination, Harassment and Retaliation Complaints for Employees Not Eligible to File a Complaint or Grievance Under a Collective Bargaining Agreement or Whose Collective Bargaining Agreement Incorporates CSU Systemwide Complaint Procedure

**Effective Date:** January 6, 2005

**Supersedes:** Executive Order No. 675

This executive order provides employees the opportunity to file complaints alleging they were either discriminated against or harassed on the basis of a protected status or they were retaliated against for raising a discrimination/harassment claim, filing a discrimination/harassment complaint or participating in a discrimination/harassment investigation. This executive order is only available to: (1) employees who are not eligible to file a discrimination, harassment or retaliation complaint or grievance under a collective bargaining agreement; and (2) employees in bargaining units whose collective bargaining agreements have incorporated the CSU systemwide complaint procedure for such purposes.

There is currently no systemwide complaint procedure for applicants and independent contractors to file similar allegations. Yet, their allegations must be investigated to comply with nondiscrimination laws that protect applicants from discrimination, harassment and retaliation and independent contractors from harassment and retaliation. Consequently, each campus shall provide for these investigations by having in place a complaint procedure to handle allegations from applicants and independent contractors. Such a procedure shall designate several persons to whom an allegation can be brought.

Campuses shall include, as part of their training and orientation programs, information on this executive order. They shall also post the information in an area where employees are likely to see it and distribute the information to employees on an annual basis.

The senior director of employee relations in the Office of the Chancellor will be responsible for evaluating compliance with this executive order and for providing assistance in the development of campus and systemwide complaint procedures to handle discrimination, harassment and retaliation allegations.

**I. Introduction**

A. The California State University (CSU), through its chancellor and presidents,

is committed to the equitable and prompt response to any allegation of discrimination, harassment or retaliation made by an employee.

- B. Should discrimination, harassment or retaliation be found to exist in any employment action within CSU, all appropriate measures shall be taken to prevent recurrence and to remedy any effects on the claimant/complainant and others, if appropriate. Furthermore, should findings be made of discrimination, harassment or retaliation on the part of any CSU employee, appropriate action, including possible disciplinary action against the perpetrator, shall be taken under the direction of the president or chancellor, as applicable.

## **II. Application**

This procedure shall apply to CSU employees, as defined below, who are not eligible to file a discrimination, harassment or retaliation complaint or grievance under a collective bargaining agreement or whose collective bargaining agreement incorporates CSU systemwide complaint procedure for such purposes.

## **III. Definitions**

- A. "Employee" includes any full- or part-time CSU employee, whether permanent, tenured, probationary, temporary, intermittent, casual employment, or Management Personnel Plan employee.
- B. "Claimant" refers to an employee who has made a discrimination, harassment or retaliation claim under Section V of this executive order.
- C. "Complainant" refers to an employee who is eligible to file, and has filed, a written formal discrimination, harassment or retaliation complaint under Section VI of this executive order.
- D. "Complaint" refers to a written formal allegation filed by a complainant under Section VI of this executive order.
- E. "Representative" refers to a union representative from the claimant or complainant's collective bargaining unit, or another individual who may serve as a representative of an employee entitled to such representation under the provisions of this executive order.
- F. The terms "Respond" and "File" refer to personal delivery or deposit in the U.S. Mail, certified with return receipt requested. If personal delivery is used, the calendar date of delivery shall establish the date of response or filing. If certified mail delivery is used, the postmark shall establish the date of response or filing.

## **IV. Scope**

- A. In order to use this procedure, a CSU employee must assert:
  - 1. A violation of CSU's systemwide policies against discrimination, harassment or retaliation; and

2. The specific harm resulting from the alleged violation.

#### **V. Informal Level (Optional)**

- A. Prior to or instead of filing a written formal complaint under Section VI of this executive order, an employee (claimant) may seek to meet with the campus administrator responsible for administering CSU nondiscrimination, anti-harassment and non-retaliation policies, or a campus administrator designated by the president (or chancellor, if the employee works at the Chancellor's Office), to determine the nature of any discrimination/harassment/retaliation claim and to explore a resolution of the claim. Such claimant must be given information on how to file a formal complaint during this meeting.
- B. The claimant should request this meeting no later than twenty days after the event giving rise to the claim or no later than twenty days after the claimant knew or reasonably should have known of the event giving rise to the claim. The claimant and campus administrator should meet as soon thereafter as possible, but no later than fourteen days after the claimant has requested the meeting.
- C. The employee may have a representative present during the discussion of the claim with the campus administrator.
- D. Whenever possible, the campus administrator shall attempt to resolve the claim at the Informal Level. A resolution at the Informal Level shall be documented.
- E. The campus administrator may decide an informal resolution is inappropriate and/or that the circumstances described by the claimant warrant investigation. The campus administrator should invite the claimant to file a formal written complaint pursuant to Section VI of this executive order if the campus administrator concludes that an investigation is warranted.
- F. If the claimant decides to file a formal written complaint, the investigation shall be conducted pursuant to Sections VI and VIII of this executive order.
- G. If the campus administrator concludes that an investigation is warranted but the claimant declines to file a formal written complaint at this time, the investigation shall nevertheless be conducted.
- H. Each campus shall have in place a procedure for investigating discrimination, harassment and retaliation claims described in section V(G). The procedure is to be consistent with Section VIII of this executive order.
- I. The campus administrator shall respond to the claimant no later than sixty days after the meeting pursuant to Sections V(A) and V(B) is held, unless an extension of the timeline has been obtained pursuant to Section VIII(F) of this executive order.
- J. Generally, the response should include a summary of the allegations, a

description of the investigative process, the standard used to determine whether a violation of policy occurred, the evidence considered and a determination of whether the allegations were substantiated.

- K. The response shall inform the claimant of his/her option for filing a written formal complaint under Section VI of this executive order, if he/she disagrees with the finding of the investigation, and the timeline for doing so.

## **VI. Level I - Formal**

A. An employee may enter the Formal Level procedure in one of three ways:

1. By filing a written formal complaint that was not preceded by an Informal Level investigation;
2. By filing a written formal complaint at the invitation of the campus administrator who, having discussed the allegations with the employee at the Informal Level, determined that an investigation is warranted; or
3. In response to the results of an Informal Level investigation with which the employee disagrees. In the first two instances, an employee may file a written formal Level I complaint with the president (or chancellor, if the employee works at the Chancellor's Office) no later than:
  - Thirty days after the event giving rise to the complaint; or
  - Thirty days after the employee knew or reasonably should have known of the event giving rise to the complaint. In the third instance, an employee may file a written formal Level I complaint with the president (or chancellor, if the employee works at the Chancellor's Office) no later than ten days after the Informal Level response.

B. If the employee chooses to file a written formal complaint, he/she shall either complete the complaint form provided by the CSU (attached) or submit a signed statement containing all of the information below:

1. The terms of the CSU systemwide policies against discrimination, harassment or retaliation alleged to have been violated and, if applicable, the reasons why the investigation conducted under the Informal Level procedure did not resolve the issue.
2. The specific harm resulting from the violation.
3. A detailed description of the factual events giving rise to the complaint.
4. The complainant's name, address, home and work phone numbers, job title, and classification.
5. The name, address and telephone number of the representative, if any.
6. The date the complaint was filed.
7. The complainant's signature.

C. If the allegations contained in the complaint have not previously been evaluated to determine whether an investigation is warranted, the campus

administrator responsible for administering the CSU nondiscrimination, anti-harassment and non-retaliation policies, or the campus administrator designated by the president (or the chancellor, if the employee works at the Chancellor's Office) shall do so.

- D. If an investigation is deemed not warranted, the campus administrator shall respond to the complainant in a timely manner, explaining why no investigation is conducted.
- E. If an investigation is deemed warranted, the investigator shall hold a meeting with the complainant and the complainant's representative, if any, at a mutually acceptable time and location.
- F. The complainant shall inform the investigator of all issues and evidence known, or which could reasonably be known, to the complainant that are related to the complaint. If an investigation had been conducted at the Informal Level, the complainant shall discuss the complainant's specific disagreements with such findings and the relevant reasons and evidence. The complainant may present no additional issues after Level I.
- G. The investigator shall carefully review the issues raised by the complainant and conduct an investigation pursuant to Sections VI and VIII of this executive order. Where an Informal Level investigation had already been conducted, the Level I investigation should be limited in scope to the complainant's specific disagreements with the findings at the Informal Level.
- H. The campus administrator shall respond to the complainant no later than sixty days after the Level I filing, unless an extension of the timeline has been obtained pursuant to Section VIII(F) of this executive order.
- I. Generally, the Level I response should include a summary of the allegations, a description of the investigative process, the standard used to determine whether a violation of policy occurred, the evidence considered and a determination of whether the allegations were substantiated.

## **VII. Level II - Formal**

- A. The complainant may file a Level II complaint with the Office of the Chancellor no later than ten days after the Level I response if the complainant is not satisfied with the outcome at Level I.
- B. The request for a Level II review shall be in writing and shall detail the specific disagreements with the Level I response.
- C. The investigator shall meet with the complainant to discuss the complainant's disagreements with the Level I response. The investigator shall carefully review the issues raised by the complainant and conduct an investigation pursuant to Sections VII and VIII of this executive order. The investigation should be limited in scope to the complainant's specific disagreements with the findings at Level I.
- D. The University shall respond to the complainant no later than ninety days after

the Level II filing, unless an extension of the timeline has been obtained pursuant to Section VIII(F) of this executive order.

- E. Generally, the Level II response should include a summary of the allegations, a description of the investigative process, the standard used to determine whether a violation of policy occurred, the evidence considered and a determination of whether the allegations were substantiated. The Level II response shall be the final decision.

## **VIII. General Provisions**

- A. The person who conducts an investigation under this executive order may be the campus administrator in charge of administering CSU policies on nondiscrimination, anti-harassment and non-retaliation or someone else designated by the president/chancellor, provided that he/she shall be an MPP employee or an external consultant, who is not within the administrative control or authority of the person alleged to have discriminated, harassed or retaliated, and was not involved in the investigation at the lower level(s), if any. All investigations under this executive order shall be conducted in a reliable and impartial manner.
- B. CSU employees are required to cooperate with the investigation, be forthright and honest, and keep confidential the existence and details of the investigation.
- C. The investigation shall include, at a minimum, formal interviews with the claimant/complainant and the person alleged to have discriminated or harassed (i.e., the respondent).
- D. Both the claimant/complainant and the respondent shall have the right to identify witnesses and other evidence for consideration in connection with the investigation; however, the investigator may decide which witnesses are relevant to the investigation.
- E. The claimant/complainant may have a representative present during his/her meeting with the campus administrator and/or the investigator to discuss the discrimination or harassment claim/complaint. Where the respondent is a CSU employee and the allegations are such that, if true, they could reasonably subject the respondent to discipline, then the respondent shall be permitted to have a representative accompany him/her to the interview.
- F. (1) Time limits set forth herein refer to working days, which are Monday through Friday, excluding all officially recognized University holidays or closure of the campus where the claim/complaint originated.  
  
(2) If the claimant/complainant, the respondent, the witnesses, the campus administrator, the investigator, or the Chancellor's Office designee is on an approved leave of three days or more, the time limits shall be extended by the length of time the individual is absent.  
  
(3) Time limits set forth herein may also be extended by mutual agreement. If the University requests a time extension in order to conduct an effective

investigation and the claimant/complainant does not agree, the University will issue a response within the timeline of this executive order based on the information available at that time. The investigation shall continue until the University is satisfied its duty to respond appropriately to allegations of discrimination, harassment or retaliation has been discharged, provided the investigation is completed no later than one hundred twenty days after the meeting is held between the claimant and the campus administrator or between the complainant and the individual designated to respond, as applicable.

- G. CSU is not obligated under this executive order to investigate a complaint not timely filed under its provisions. An untimely filed complaint may not be re-filed. Notwithstanding the foregoing, CSU shall investigate the underlying allegations in an untimely filed discrimination, harassment or retaliation complaint if CSU determines the circumstances warrant investigation. The investigation conducted in such a circumstance does not resurrect the employee's complaint or permit a subsequent filing of that complaint. The response issued at the conclusion of the investigation will note that the complaint was untimely filed. The investigation shall be conducted under the Informal Level procedure of this executive order.
- H. A complainant may withdraw a complaint at any time. The complainant shall not be entitled to file any subsequent complaint on the same alleged incident under the Formal Level procedure of this executive order. Although the complainant is barred from filing subsequent complaints on the same incident, the underlying allegations of a withdrawn discrimination, harassment or retaliation complaint shall be investigated if CSU determines the circumstances warrant investigation. The investigation conducted in such a circumstance does not resurrect the employee's complaint or permit a subsequent filing of that complaint. The response issued at the conclusion of the investigation will note that the complaint was withdrawn. The investigation shall be conducted under the Informal Level procedure of this executive order.
- I. If, after an investigation has been conducted, the president/chancellor concludes it is reasonably likely that CSU policy against discrimination, harassment or retaliation was violated, he/she will take prompt and appropriate measures to remedy any damage done by the violation and to prevent any further violations.
- J. Failure by the University to respond timely shall permit the complaint to be filed at the next level.
- K. By mutual agreement, the complainant and the University may consolidate complaints on similar issues at any level.
- L. Taking into account campus operational needs, CSU shall provide the claimant and representative, if any, one hour release time for preparation of the claim and reasonable time for presenting the claim at the Informal Level upon their request.
- M. Taking into account campus operational needs, CSU shall provide the

complainant and a representative, if any, reasonable release time for preparing and presenting the complaint upon their request.

- N. Where it is necessary for the complainant or his/her representative to have access to specific information for the purpose of investigating a complaint, the complainant or his/her representative shall make a written request for such information to the appropriate administrator. The complainant or his/her representative shall have access to information within the policies and procedures and laws governing confidentiality and privacy that are relevant to any issue raised in the complaint. This provision does not authorize a complainant access to the personnel files of another without the written consent of that person.

Charles B. Reed  
Chancellor

Dated: January 6, 2005