



HLC Accreditation Evidence Document

Title: UAPPM Policy 2200: Reporting Suspected Misconduct and Whistleblower Protection from Retaliation

Office of Origin: University Administrative Policies and Procedures Manual

Description: The UAPPM Policy concerning the principled protections provided for employees who report suspected misconduct within the university.



2200

WHISTLEBLOWER PROTECTION AND RETALIATION
REPORTING SUSPECTED MISCONDUCT AND RETALIATION

Effective Date: October 26, 1994

Revised: 1/15/07

Subject to Change Without Notice

This version
was distributed
for the period

1-15-07 to:

1. General

The University of New Mexico strongly encourages all University employees, acting in good faith, to report any suspected misconduct that may be taking place at the University. An employee who interferes with or tries to interfere with the right of another employee reporting suspected misconduct is subject to disciplinary action, up to and including dismissal. The University is committed to protecting employees who report suspected misconduct in accordance with the Whistleblower Protection Act. Misconduct is any on-the-job activity performed by a University employee that violates state and/or federal laws or regulations, local ordinances, or University policy. A more detailed definition is provided in **Section 2.** below. For the purposes of this policy the term "employee" is broadly defined and includes all faculty, staff, and student employees; independent contractors; and volunteers. This policy describes the procedures for reporting and investigating suspected misconduct, interference with reporting suspected misconduct, and retaliation. Nothing in this policy limits the right of any person to seek individual remedies or otherwise proceed under any other state or federal remedy.

1.1. Whistleblower Protection Against Retaliation

Retaliation will not be tolerated and will be promptly investigated by the University. Any employee who retaliates against an employee who has reported suspected misconduct is subject to disciplinary action, up to and including dismissal. Retaliation and the procedures for reporting retaliation are described in **Section 8.** herein.

1.2. Employees Reporting Suspected Misconduct

An employee reporting suspected misconduct:

- will be protected from retaliation for reporting suspected misconduct;
- can report suspected misconduct anonymously, but doing so may limit an employee's protection from retaliation and the University's ability to conduct a full investigation;
- can contact the University Internal Audit Department at any time concerning the timeline of the review or investigation;
- can amend a report if new information become available;
- should not investigate suspected misconduct on their own; and
- will be notified when the investigation is complete.

2. Misconduct

Misconduct is any on-the-job activity performed by a University employee that violates state and/or federal laws or regulations, local ordinances, or University policy. Misconduct includes, but is not

limited to, the examples listed below.

- Misuse, mismanagement, or misappropriation of funds, securities, vehicles, property, facilities or any other University asset.
- Corruption or bribery.
- Theft of University property.
- Paying or receiving money for hours not worked.
- Falsification of documents or reports.
- Willful failure to perform duties.
- Discrimination.
- Sexual harassment.
- Using or being under the influence of alcohol or drugs at work.
- Personal use of University materials or assets (other than incidental use as defined in **Section 4.2 of Policy 4000** and **Section 2.3 of Policy 2500**).
- Endangerment of public health or safety.
- Unauthorized release of confidential information.
- Retaliation against an employee who has reported suspected misconduct or interference with the right of an employee to report suspected misconduct.

3. Confidentiality

The University will try to prevent disclosure of the identity of the employee reporting suspected misconduct without their consent. However, often the identity of an employee may become obvious to others due to the nature of the information. The reporting employee's identity may be disclosed if necessary or required:

- to any law enforcement agency investigating the matter;
- to University employees assigned to investigate the matter;
- to University administrators and Regents to the extent necessary to conduct an investigation (on a need-to-know basis only);
- if required pursuant to a subpoena or by law;
- if necessary to defend a grievance by an employee; or
- if required by due process in connection with disciplinary action against the person accused.

The employee will be notified by the applicable University administrator when the employee's identity will be disclosed under any of the above circumstances. Whenever possible, the employee will be notified in advance of the disclosure. Employees reporting suspected misconduct or subsequent retaliation may need to testify in order to prove misconduct occurred and to defend against a legal action or grievance that may be brought against the University, its officers, or its agents.

4. Reporting Suspected Misconduct

Employees who are aware of or have reason to suspect misconduct should report the conduct, either orally or in writing using any of the following methods. An employee should report suspected misconduct as soon as reasonably possible, preferably within sixty (60) days from the time the employee becomes aware of the suspected misconduct. Employees should select the reporting method listed below that they are most comfortable with and is most appropriate to the situation.

- Report the conduct to your supervisor unless there is reason to believe the supervisor may be involved in the misconduct.

- Call the UNM Hotline 1-888-899-6092--call may be anonymous, but doing so may limit an employee's protection from retaliation and the University's ability to conduct a full investigation.
- Report the conduct to the Internal Audit Department--suspected misconduct by the Internal Audit Department should be reported to the University President's Office.
- Report the conduct to the department responsible for dealing with the conduct in question such as OEO, Campus Police, Risk Management, or HR as outlined in **Section 6.1.** herein.

Once an initial report has been filed, an employee may amend the report if the employee becomes aware of new information. Supervisors should not investigate reports, but instead must notify the Internal Audit Department when a report of suspected misconduct is received. The Internal Audit Department coordinates all responses to reports of suspected misconduct regardless of reporting method.

Reports of suspected misconduct should include the following information:

- Name of employee filing the report (a report may be anonymous, but such action may limit an employee's protection from retaliation and the University's ability to conduct a full investigation.).
- Address and telephone number where the employee prefers to be contacted.
- A detailed description of the suspected misconduct. This should include the name(s) and department(s) of all those believed to be involved.
- Dates or range of dates of suspected misconduct.
- Any supporting evidence or material that may be available to the reporting employee. However, employees are not to investigate suspected misconduct on their own or remove University records from their proper location.

If suspected misconduct is reported orally, the supervisor or University administrator receiving the report will document all information received at the time the report is made or as soon afterwards as possible.

All reports regardless of reporting method are coordinated by the Internal Audit Department. The Internal Audit Department will not accept complaints concerning allegations of *suspected* misconduct or retaliation that have been previously investigated or are currently being investigated by another University department.

5. False Information

An employee who knowingly gives false information or knowingly makes a false report of suspected misconduct or a subsequent false report of retaliation, or who knowingly provides false answers or information in response to an ongoing investigation will be subject to disciplinary action, up to and including dismissal, by the University.

6. Investigation of Suspected Misconduct

The Internal Audit Department will review and evaluate reports of suspected misconduct to determine if the report should be referred for further review and/or investigation. If such a determination is made, the Internal Audit Department will prepare a written report of the review. The University will act upon the Internal Audit Department's recommendations promptly. However, the timeliness of any investigation shall depend on the type and complexity of the report, the alleged act, and the type of investigation required. Time limitations for court actions or administrative proceedings are not delayed or interrupted during an investigation. In accordance with due process rights, the accused shall be notified of that allegations of misconduct have been made and will be allowed to respond. The administrative

department responsible for conducting the investigation will determine when it is appropriate to notify the accused. The employee reporting suspected misconduct may contact the Internal Audit Department for information on the timeline of the review or investigation.

6.1. Investigations will be conducted by the appropriate University department listed below in accordance with that department's investigation procedures. Allegations against any of the departments listed below will be investigated by the administrator to whom the department head reports. A joint investigation may be conducted when more than one (1) area is involved.

- The University Division of Human Resources will investigate allegations related to violation of personnel policies.
- The University Office of Equal Opportunity will investigate any allegations of discrimination or sexual harassment.
- The University Department of Safety and Risk Services will investigate any allegations concerning safety or an unsafe work environment.
- The Internal Audit Department will investigate any allegations concerning the handling of University financial matters, documents, information, or equipment in accordance with **"Dishonest or Fraudulent Activities" Policy 7205, UBP.**
- The University Police Department will investigate any allegations concerning security or criminal activity.

If the employee reports suspected misconduct which personally affects the reporting employee in the workplace, the Internal Audit Department *may* consult the University Dispute Resolution (DR) Coordinator to determine whether to proceed under this policy or to transfer the matter, in whole or in part, to the DR Coordinator for proceedings under **"Dispute Resolution" Policy 3220, UBP.**

6.2. Great care must be taken in dealing with suspected misconduct to avoid the following:

- Inaccurate accusations.
- Violating any employee's right to due process.
- Making statements that could lead to claims of false accusation or other offenses.
- Alerting suspected individuals that an investigation is under way.

7. Report of Investigation

7.1. When the investigation is completed, a confidential report of the investigation will be sent for appropriate action to the vice president responsible for the unit where the investigation was conducted or to the President for units that report to the President. If the investigation is conducted by the Internal Audit Department, the report will be filed in accordance with Internal Audit Department policies. The Internal Audit Department will notify the complainant when an investigation is completed.

7.2. If illegal activity appears to have occurred, the findings will be reported to the appropriate audit and law enforcement agencies. This will be coordinated with University Counsel and other appropriate University administrators.

8. Interference With or Retaliation for Reporting Suspected Misconduct

A University employee may not interfere or try to interfere with the right of another employee to report suspected misconduct and may not retaliate against an employee who has reported suspected misconduct. If an employee believes that retaliation or interference was threatened, attempted, or occurred, he or she may file a complaint with the Internal Audit Department. Employees reporting suspected interference with or suspected retaliation for reporting suspected misconduct by the Internal Audit Department may file a report with the President's Office. An employee may file a retaliation complaint only if he or she has previously reported suspected misconduct.

8.1. Retaliation is any adverse action taken against an employee who has reported suspected misconduct when business related reasons do not exist for the action or the action is outside of regular practice. Some examples of retaliation are listed below.

- Giving unwarranted negative performance evaluations to the reporting employee.
- Moving the reporting employee frequently and/or to undesirable locations, without legitimate business justification.
- Transferring the reporting employee, without legitimate business justification.
- Reprimanding the reporting employee, without legitimate business justification.
- Taking adverse salary actions against the reporting employee, without legitimate business justification.
- Suspending, demoting, or dismissing the reporting employee, without legitimate business justification.
- Creating a hostile work environment for the reporting employee.

Reporting *suspected* misconduct does not exempt an employee from legitimate personnel action taken during the normal course of business.

8.2. If the employee reports suspected retaliation, that personally affects the reporting employee in the workplace, the Internal Audit Department may consult the DR Coordinator to determine whether to investigate the retaliation report under this policy or to transfer the matter, in whole or in part, to the DR Coordinator for proceedings under "**Dispute Resolution**" Policy 3220, UBP.

8.3. The Internal Audit Department will review and evaluate reports of suspected interference with or suspected retaliation against an employee for reporting suspected misconduct to decide if an investigation is justified. Subject to **Section 8.2.** the Internal Audit Department will refer the investigation to the appropriate department for investigation. If an employee alleges retaliation by the Internal Audit Department, the President's Office will review and evaluate the report to decide if an investigation is justified. If an investigation is warranted, the report will be referred to the appropriate department for investigation.

9. False or Inaccurate Accusations

It is important to protect individuals from false, unsubstantiated, or inaccurate accusations. Therefore, when a report of suspected misconduct or suspected retaliation is not substantiated, the file containing all documents relating to the report, review, or investigation will be sealed and delivered to University Counsel's office. The file will be stored for six (6) years after the date the file is sealed, after which time it may be destroyed.

10. Disciplinary Action

All disciplinary action taken as a result of investigations will be in accordance with the personnel policies contained in the University Business Policies and Procedures Manual, the collective bargaining agreements, and the Faculty Handbook as appropriate.

Comments may be sent to UBPPM@UNM.edu
<http://www.unm.edu/~ubppm>

[Contents](#)

[Section 2000
Contents](#)

[Policy Listing](#)

[Forms](#)

[Index](#)

[UBP Manual
Homepage](#)

[UBP Homepage](#)

[UNM Homepage](#)