ARIZONA BOARD OF REGENTS
POLICY MANUAL

6-914 Protection of Employees from Reprisal for Whistleblowing

Revision Dates

3/2/2001, 4/6/1990 (adopted)

A. Purpose

To prohibit supervisory personnel from taking adverse personnel action against an employee, or failing to take an otherwise appropriate action, as a result of the employee's good faith disclosure of alleged wrongful conduct to a public body or to a designated university officer on a matter of public concern. An employee who discloses and subsequently suffers an adverse personnel action as a result is subject to the protection of this Policy (6-914 Protection of Employees from Reprisal for Whistleblowing).

B. Source

Arizona Revised Statutes § 38-531; § 38-533; § 41-1062

C. Applicability

All employees and supervisors of employees of the Arizona Board of Regents or a state university under the Board's jurisdiction who disclose alleged wrongful conduct, as defined in this Policy (6-914 Protection of Employees from Reprisal for Whistleblowing), and, who, as a result of the disclosure, are subject to an adverse personnel action.

D. Policy

No adverse personnel action may be taken against a university employee in knowing retaliation for any lawful disclosure of information on a matter of public concern to a public body, including a designated university officer, which information the employee in good faith believes evidences: (1) a violation of any law, (2) mismanagement, (3) gross waste or misappropriation of public funds, (4) a substantial and specific danger to public health and safety; or (5) an abuse of authority, collectively referred to herein as alleged wrongful conduct.

No supervisor, director, chair, dean, department head, or any other employee with authority to make or materially influence significant personnel decisions shall take or recommend an adverse personnel action against an employee in knowing retaliation for disclosing alleged wrongful conduct to a public body. Any employee found to have so violated this Policy (6-914 Protection of Employees from Reprisal for Whistleblowing) shall be disciplined, up to and including

termination, in accordance with existing university rules, policies, and procedures.

E. Definitions

1. Abuse of authority: Action or decision which is outside the scope of the alleged violator's position, scope of duties, or level of authority as authorized by the university president or designee. However, even actions or failure to take actions which are within the alleged violator's authority may constitute abuse of authority if the violator's motive or purpose is to harass, intimidate, or treat the employee unreasonably or capriciously under the applicable facts and circumstances.

2. Adverse personnel action: An employment-related act or decision or a failure to take appropriate action by a supervisor or higher level authority which affects an employee negatively. The following are adverse personnel actions in the university's personnel system:

   a. Termination of employment, including denial of tenure, denial of continuing status, non-renewal, or dismissal for cause

   b. Demotion

   c. Suspension

   d. Written reprimand

   e. Retaliatory investigation

   f. Decision not to promote

   g. Receipt of an unwarranted performance rating

   h. Withholding of appropriate salary adjustments

   i. Imposition of involuntary transfer or reassignment;

   j. Elimination of the employee's position, absent a reduction in force, reorganization, or a decrease in or lack of sufficient funding, monies, or work load;

   k. Denial of awards, grants, leaves, benefits, or training for which the employee would normally be eligible;

l. Other significant change in job responsibilities or working conditions which are inconsistent with the employee's position, salary, or grade.

3. Alleged wrongful conduct: Violation of law, mismanagement, gross waste or misappropriation of monies, substantial and specific danger to public health and safety or abuse of authority.

4. Conflict of interest: when an employee is in a position to influence a university activity or decision in ways that could lead to any matter or form of personal gain to the employee or for his/her family member, or when the employee has a personal vested interest in the activity or decision.

5. Day: Calendar day. In cases of faculty, academic professionals, and other employees appointed on an academic year (nine month) basis, day does not include summer, mid-semester, semester, or other similar break periods.

6. Discloser: An employee who reports alleged wrongful conduct to a public body, as defined herein.

7. Disclosure: Oral or written report by an employee to a public body of alleged wrongful conduct on a matter of public concern.

8. Disclosure investigation: Review and determination made by the appropriate university officer and/or designees of a disclosure.

9. Filing: Receipt by the office where filing is required.

10. Gross waste or misappropriation of public funds: Action or decision which is outside the scope of the alleged violator's spending or budgetary authority, or even when the action or decision is within budgetary authority, the action would be considered by a reasonable person to be grossly excessive, wasteful, or an improper use of public funds.

11. Knowing retaliation: An adverse personnel action taken by a supervisor or other authority against an employee because of a prior disclosure of alleged wrongful conduct.

12. Mismanagement: Action or decision which exceeds the scope of the alleged violator's responsibilities, or even if the action is within responsibilities, the action would be considered by a reasonable person to be grossly excessive or unfair.

13. Personnel action: An employment-related action or decision which affects an employee positively or negatively.

14. Public body: The Arizona Attorney General; the Arizona Legislature; the Governor of Arizona; a federal, state, or local regulatory or law enforcement agency; the local county attorney; a member of the Arizona Board of Regents, a university president, provost, vice president, vice provost, college dean, or non-academic department director.

15. Service provider: Independent entity which has contracted with the university to provide hearing officer services. The hearing officer will be selected by the service provider through a process which includes consultation with the parties.

16. Supervisory employee: Any supervisor, director, chair, dean, department head, or other employee who has authority to make or materially influence significant personnel decisions.

17. University officer: President, provost, vice-provost, vice-president, dean, or non-academic department director.

18. Violation of law: A violation of local, state, or federal law or regulation that is applicable to the university or its employees.

19. Whistleblower complainant (complainant): A current or former employee who disclosed alleged wrongful conduct to a public body and who subsequently is subject to an adverse personnel action as a result of making the prior disclosure.

20. Whistleblower complaint: A complaint filed by a complainant with a university officer alleging that an adverse personnel action was taken in retaliation for a prior disclosure of alleged wrongful conduct to a public body.

21. Whistleblower complaint review: A review by a university officer or committee of a whistleblower complaint, resulting in a written decision which the university officer provides to the complainant.

22. Whistleblower external hearing: A hearing conducted by an external hearing officer selected by the complainant and university to conduct a hearing if the complainant is dissatisfied with the decision of the university officer following a whistleblower complaint review.

F. Making A Disclosure

An employee who becomes aware of alleged wrongful conduct is encouraged to make a disclosure to any public body as soon as possible, but in any case must make the disclosure no later than three hundred sixty-five (365) consecutive calendar days after becoming aware of the conduct.

In order to allow the university an opportunity to investigate alleged wrongful conduct and to take necessary internal corrective action, employees are encouraged to report in writing a disclosure of alleged wrongful conduct to a university president, provost, vice president, vice provost, dean, or non-academic department director.

If the employee is unwilling or unable to put an oral disclosure in writing, the university officer who investigates the disclosure will prepare a written summary of the employee's disclosure and provide a copy to the employee. No later than ten (10) days after receipt of the summary, the employee may submit a written supplement to the university officer who prepared the summary. Failure to submit a supplement within ten (10) days will constitute acceptance of the summary as an accurate statement of the disclosure made by the employee. The university officer and/or designees will conduct an investigation into the allegations of the disclosure and will take necessary corrective action, as warranted. Throughout this process, the confidentiality of the discloser will be maintained to the greatest extent possible. At the conclusion of the investigation, the university officer will notify the discloser and other affected employees in writing of the determination. A copy of the determination shall be retained by the provost, the discloser, and the alleged violator. The investigation shall be conducted by a university officer who does not have a conflict of interest in the matter being investigated. A discloser must suffer adverse personnel action as a result of making a disclosure to file a whistleblower complaint and receive a hearing.

Where the university officer determines the employee's allegations do not meet the definition of disclosure under this policy, the university officer shall refer the employee to other available university grievance or appeal processes to address the employee's concerns. Furthermore, where the employee's allegations constitute a complaint of discrimination on a basis covered by the university's non-discrimination or similar policy, the employee's allegations shall be referred to the university office charged with investigating allegations of discrimination, rather than being investigated as a disclosure of alleged wrongful conduct under the whistleblower policy.

G. False Allegations of Wrongful Conduct

An employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including termination of employment, in accordance with university rules, policies, and procedures.

H. Legitimate Employment Action

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons or cause under university rules and policies. It shall not be a violation of this policy to take adverse personnel action against an employee whose conduct or performance warrants that action separate and apart from that employee making a disclosure.

I. Whistleblower Complaint

No later than thirty (30) days after a current or former employee is notified or becomes aware of an adverse personnel action, he or she may protest the action by filing a written whistleblower complaint with a university designated officer or committee if the employee believes the action was based on his or her prior disclosure of alleged wrongful conduct. The university officer or committee, on receipt of a whistleblower complaint, shall review the complaint expeditiously to determine: (1) whether the complainant reported alleged wrongful conduct to a public body on a matter of public concern before an adverse personnel action was imposed; (2) whether the complainant suffered an adverse personnel action after reporting alleged wrongful conduct to a public body; (3) whether the complainant alleged that the adverse action resulted from the prior disclosure; and (4) whether the complainant alleged the adverse action was the result of knowing retaliation for the employee's disclosure. The review shall be conducted by a university officer or committee whose members do not have a conflict of interest in the matter being reviewed.

No later than forty-five (45) days after receipt of the complaint, the university officer shall notify the complainant in writing of the results of the review and whether the adverse personnel action is affirmed, reversed, or modified, and provide a copy of the decision to the employee's supervisor. The supervisor will implement the decision and will verify implementation in writing to the university officer no later than ten (10) days after receipt of the university officer's decision.

Where the designated university officer or committee finds the employee did not make a disclosure pursuant to this policy, the employee shall be referred to other available university grievance or appeal processes to pursue the complaint. Furthermore, because there are other university policies and statutes that provide remedies for claims of retaliation following the filing of an unlawful discrimination complaint, such retaliation claims will be referred to the university office charged with investigating allegations of discrimination rather than being reviewed as whistleblower complaints.

A complainant who is dissatisfied with the decision of the university officer on the whistleblower complaint may file a request for a whistleblower hearing and

proceed under the following procedures.

J. Procedures

1. Request for hearing

The Board, through its universities, has contracted with qualified service providers to provide qualified external hearing officers and a hearing process for a complainant who is dissatisfied with the university officer's decision. The purpose of the hearing is to determine whether an adverse personnel action resulted from the complainant's prior disclosure of alleged wrongful conduct. No other issues or determinations are authorized. The hearing officer will be selected by the service provider in consultation with the parties. The hearing officer cannot be a university employee and, except for the contractual arrangement to provide hearing officer services, cannot have substantial interest in the university.

a. Request for hearing

No later than fifteen (15) days after receipt of the university officer's decision, a complainant who is dissatisfied and desires an external hearing must file a written request for hearing with the university representative or office designated to review these requests.

b. Contents of request for hearing

A request for hearing must contain the following:

(1) A specific statement that it is a request for a whistleblower hearing by an external hearing officer;

(2) The name, work address, work telephone number and position of the complainant;

(3) The name, work address, work telephone number and position of the university officer who issued a decision on the complainant's whistleblower complaint;

(4) A statement of the reasons for requesting a hearing including the objectionable portion of the university officer's decision;

(5) A statement of the specific relief or remedy requested; and

(6) Copies of (a) the employee's prior disclosure or the written

summary prepared by a university officer; and (b) the university officer's decision on the whistleblower complaint.

2. Appointment of hearing officer

No later than twenty (20) days after receipt of a request for hearing, the designated university officer or committee who receives the complaint will determine whether the complainant qualifies for an external hearing based on the following:

a. The complainant identified an adverse personnel action imposed on him or her and the date of notice of the action;

b. The complainant made a prior disclosure of alleged wrongful conduct to a public body on a matter of public concern prior to the adverse personnel action;

c. The complainant alleges the adverse personnel action resulted from the prior disclosure;

d. The complainant attached the disclosure and the decision on the whistleblower complaint review to the request for hearing.

The request will be reviewed by a university officer or committee whose members do not have a conflict of interest with respect to that matter.

If the request qualifies for an external hearing, the designated university officer or committee will forward the request to the service provider to begin the process of selecting an external hearing officer and conducting a whistleblower hearing.

If the request does not qualify for a whistleblower hearing, the request will be returned to the complainant with written reasons for rejection. No later than ten (10) days after receipt of the decision, the complainant may file a written appeal of the rejection to the university president or designee. The president or designee will respond to the complainant in writing no later than twenty (20) days after receiving the appeal. If the president or designee reverses the decision, the case will proceed; if the president or designee affirms the decision that the request does not qualify for a hearing, that decision is final.

3. Submission of the record

No later than twenty (20) days after receipt of the request for hearing, the service provider shall notify the complainant and the identified university officer that the request for hearing is accepted and assist the parties with the mutual selection of the hearing officer, the procedures for a pre-hearing conference in person or by telephone, and the procedures which will be followed in conducting the hearing, including submission of evidence, documents, and witness lists. The hearing officer may require the parties to submit summaries of their positions before the hearing commences.

The hearing will be conducted no later than ninety (90) days after the request is received by the service provider, unless the hearing officer extends the time for good cause.

4. Conduct of hearing

Hearings shall be conducted in accordance with the requirements of A.R.S. §41-1062 governing administrative hearings, as well as the requirements of this policy and the rules and procedures of the service provider. The procedures designated in this policy supersede rules of the service provider, if there is a conflict. The formal rules of evidence do not govern the hearing. Generally, the party advocating a particular point or fact has the burden of proof on that point or fact. Ultimately, the person seeking review has the burden of persuading the hearing officer that the adverse action occurred because of a prior disclosure of alleged wrongful conduct to a public body. The evidence standard is proof by a preponderance of the evidence.

The hearing officer has subpoena power. The hearing shall either be recorded or transcribed, as determined by and at the university's expense, so as to provide an accurate, written rendition of the hearing.

5. Attorneys or advisers

Complainant, at his or her own expense, may be represented by an attorney at any stage of the hearing process, including but not limited to presentation of the case during the hearing. If the complainant is represented at the hearing by an attorney, then the university representative may also be represented at the hearing by an attorney.

6. Resolution by agreement

At any time, the parties may agree upon a resolution of the matter. In such event, the written agreement shall be presented to the designated university officer who shall close the case and notify the service provider

and the parties in writing that the matter is resolved by agreement.

7. Hearing officer's decision

No later than thirty (30) days after the close of the hearing, the service provider shall provide the hearing officer's written report to the parties and to the university president. The report will contain findings of fact and the evidence relied upon to sustain those facts, conclusions including reference to applicable law, rules or policies, and a decision by the hearing officer that the adverse personnel action was or was not based on a prior disclosure, and whether the adverse action is affirmed, reversed, or modified.

The university will implement the decision of the hearing officer no later than ten (10) days after receipt, except that the hearing officer may not direct that the university grant renewal, tenure, continuing status or promotion to a faculty member or academic professional.

If the hearing officer finds that an adverse personnel decision related to renewal, tenure, continuing status or promotion of a faculty member or academic professional was the direct result of the disclosure of alleged wrongful conduct, the hearing officer shall remand the complaint to the university for further proceedings consistent with its internal procedures.

K. Dismissal of Tenured Faculty or Continuing Academic Professionals

Board of Regents Policy 6-201, (Conditions of Faculty Service), and 6-301, (Conditions of Professional Service), provide extensive due process and procedures for dismissal of tenured faculty or continuing academic professionals, including review and/or hearings by university faculty committees. In dismissal cases, the internal grievance hearing process as set out in the hearing provisions of ABOR Conditions Policies must be completed and include a report with recommendations from the committee to the university president for decision. The grievance committee will consider the whistleblower and other grievance issues raised by the grievant. If the complainant disagrees with the results of the internal process, he or she may request a whistleblower hearing as provided in this policy.

L. Request for Review or Rehearing

1. In compliance with A.R.S. §41-1062.b, a complainant who is dissatisfied with the decision may request a rehearing or review by filing a written request with the service provider no later than 1fifteen (15) days following receipt of the written decision. The service provider will forward the request to the hearing officer on receipt. The request shall be based on

one or more of the following grounds:

a. Irregularities in the proceedings, including but not limited to any abuse of discretion or misconduct by the hearing officer or hearing panel, which has deprived the complainant/grievant of a fair and impartial hearing;

b. Newly discovered material evidence which with reasonable diligence could not have been presented during the fact-finding or hearing process;

c. Excessive severity of the sanction; or

d. The decision is not justified by the evidence or is contrary to law.

2. Following receipt of the request for review, the hearing officer shall make whatever review is deemed necessary to resolve the issues that have been raised.

3. The service provider will provide the hearing officer's written decision on review to the parties and university president no later than twenty (20) days after receipt of the request from the complainant.

4. When the complainant does not request rehearing or review, the hearing officer's decision following the hearing becomes the final agency decision fifteen (15) days after the complainant's receipt of that decision. When the complainant requests review, the hearing officer's decision following review is the final agency decision.

5. The hearing officer's decision is subject to judicial review only under A.R.S. §12-901, et seq. The hearing officer's decision following the hearing shall include a statement notifying the complainant that he or she has thirty-five (35) days from the date on which the decision becomes final to seek review of that decision in the superior court in accordance with the provisions of the Administrative Review Act, A.R.S. §12-901, et seq.

M. Dissemination

Each university shall develop appropriate mechanisms to advise all employees of the existence of this policy, including but not limited to making the policy available on the university's web site, including a reference to the policy in employee handbooks, and posting copies of the policy where appropriate.

Policy History

4/6/1990 Approved by the Board on second reading.

3/2/2001 Policy revision approved by the Board on second reading.

Related Information