

## POLICY: WHISTLE BLOWING

### 1. INTRODUCTION

- 1.1 The policy on whistle blowing is regulated by the Protected Disclosures Act 26 of 2000, which provides for:
- 1.1.1 the reporting by employees of criminal and other irregular conduct in the University of South Africa (UNISA) which are detrimental to good governance;
  - 1.1.2 the [procedures for disclosing information](#) by an employee regarding unlawful or irregular conduct by his/her employer and/or other employees; and
  - 1.1.3 the protection of such employee who makes a protected disclosure from being subjected to an occupational detriment.
- 1.2 UNISA falls within the description of an organ of state and thus falls within the ambit of this Act.
- 1.3 An employee is a person who works at UNISA and who receives remuneration from UNISA, excluding an independent contractor/supplier.
- 1.4 A contract of employment includes good faith which requires a reciprocal relationship of trust and confidence. An employee, therefore, owes a duty towards UNISA to be honest in the workplace and to avoid conduct that is detrimental and prejudicial to UNISA.

### 2. GENERAL GUIDELINES

- 2.1 The following steps should be followed:
- (a) Carefully consider the issue(s) before you report anything;
  - (b) Be reasonably certain of the claims/allegations you are making;
  - (c) Do not be over-suspicious of people or actions taken by them;
  - (d) If you observe something that bothers you or does not seem right, share your concerns with someone in your line of authority;
  - (e) If unable to do so, register your concern with the Whistle Blowers hotline.
- 2.2 When considering the proper action to follow always have due regard to the prejudice that may be caused to innocent parties as a result of unfounded allegations or the adverse working conditions that may be created as a result.

### 3. DEFINITIONS

The Protected Disclosures Act, 2000 defines the relevant terminology as follows:

Disclosure is defined as the disclosure of information regarding the conduct of the employer or employees that relates to:

- (a) a criminal offence;
- (b) failure to comply with any legal obligation;
- (c) a miscarriage of justice;
- (d) the health and safety of an individual being endangered;
- (e) damage to the environment;
- (f) unfair discrimination; or
- (g) the concealment of any of the abovementioned activities.

Occupational detriment (in relation to the working environment of an employee) includes the following:

- (a) disciplinary action;
- (b) dismissal, suspension, demotion, harassment or intimidation;
- (c) transfer against the employee's will;
- (d) refusal of transferring or promoting the employee;
- (e) a term of condition of employment or retirement that disadvantages the employee;
- (f) refusal of a reference from the employer;
- (g) denial of appointment to any employment, profession or office;
- (h) a threat regarding any of abovementioned actions;
- (i) adversely being affected in respect of employment opportunities and work security.

### 4. PROTECTED DISCLOSURES

4.1 UNISA, and more specifically the Council, as the employer, is prohibited from subjecting an employee, who makes any disclosure, to any occupational detriment.

4.2 A protected disclosure refers to a disclosure made to:

- (a) a legal adviser/legal practitioner/person, whose occupation involves the giving of legal advice, with the aim of obtaining legal advice;
- (b) the employer in terms of this Policy/Rule;
- (c) the Public Protector;

- (d) the Auditor-General;
  - (e) any regulatory body constituted in terms of the laws of South Africa.
- 4.3 A protected disclosure is when an employee makes any disclosure:
- (a) in good faith;
  - (b) reasonably believes, the information disclosed, is substantially true;  
**and**
  - (c) not for personal gain, excluding any reward payable in terms of any law.
- 4.4 A protected disclosure includes when an employee, who makes the disclosure to his/her employer, has reason to believe that:
- (a) he/she will be subjected to an occupational detriment;
  - (b) it is likely that the evidence relating to the impropriety will be concealed or destroyed;
  - (c) the employee has previously made a disclosure of substantially the same information and no action was taken within a reasonable period after the disclosure; or
  - (d) the impropriety is of an exceptionally serious nature would constitute a protected disclosure.
- 4.5 In determining whether it is reasonable for an employee to make the disclosure, the following must be considered:
- (a) the identity of the person to whom the disclosure is made;
  - (b) the seriousness of the impropriety;
  - (c) whether the impropriety is continuing or likely to occur in future;
  - (d) whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;
  - (e) whether the disclosure was made according to the prescribed procedures of the employer; and
  - (f) the public interest.

## **5. REMEDIES AVAILABLE TO A PERSON WHO HAS MADE A PROTECTED DISCLOSURE**

- 5.1 If a disclosure is protected, it means that any work-related problem suffered as a result of the disclosure can be taken to a court of law. An employee who feels victimized can refer a dispute to the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation and thereafter to the Labour Court.
- 5.2 An employee, who reasonably believes that he/she may be adversely affected as result of the disclosure, can request, if reasonably possible and practicable, to be transferred to another post or position in the same or other department of UNISA. The terms of conditions of employment of such an

employee may not be less favorable than before the transfer, except if the employee gives his/her written consent.

**6. REVIEW OF WHISTLEBLOWERS POLICY**

- 6.1 This policy must be reviewed at least annually for its effectiveness to ensure that it is in compliance with the practice and procedures at UNISA and in compliance with the relevant legislation in the Republic of South Africa.
- 6.2 It is the responsibility of the Internal Audit Department to ensure that the relevant changes are made to this policy in accordance with the relevant UNISA policies.

**7. IMPLEMENTATION OF POLICY**

Related policies of the former institutions that were in force prior to the commencement of this Policy are replaced with effect from the date on which Council approves this Policy.

