



UTAH VALLEY UNIVERSITY

OFFICE OF GENERAL COUNSEL

TO: UVU President's Council

FROM: Nicole Ferguson, Assistant Attorney General for UVU and Cathy Jordan, UVU Associate General Counsel

DATE: November 7, 2022

RE: Compliance Revision to UVU Policy 168 *Whistleblower Anti-Retaliation*

UVU should initiate a limited revision to UVU Policy 168 under the streamlined “compliance change approval process” outlined in UVU Policy 101.¹

Background

The *Utah Protection of Public Employees Act* serves as the legislative authority and legal basis of UVU's Policy 168 *Whistleblower Anti-Retaliation*. This past legislative session, the Utah Legislature passed Senate Bill 40 (S.B. 40), which amended the Utah Protection of Public Employees Act.²

The prior version of the *Utah Protection of Public Employees Act* used the terms “adverse action” and “retaliatory action” interchangeably throughout the Act. The updated Act defines “retaliatory action” and replaces the term “adverse action” so that “retaliatory action” is used consistently throughout the Act. Thus, S.B. 40 supplanted the term “adverse action” with the term “retaliatory action.” S.B. 40 also created a new definition for the term “good faith.” S.B. 40 became effective on May 4, 2022.

UVU's current Policy 168 includes the term “adverse action” and “retaliation.” Those terms must be supplanted by the term “retaliatory action” to comply with S.B. 40. UVU's current Policy 168 also defines “good faith” differently than S.B. 40. This policy revision proposes changing the “good faith” definition to incorporate S.B. 40's good faith definition.

¹ Policy 101 § 4.2.4.

² S.B. 40 may be found here: <https://le.utah.gov/~2022/bills/static/SB0040.html>



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Proposed Revisions

The proposed revisions to Policy 168 are limited in scope to adopt S.B. 40's changes to the Utah Protection of Public Employees Act. The proposed revisions are:

- Update the definition of "good faith," consistent with S.B. 40
- Delete the definition of "adverse action" consistent with S.B. 40
- Define "retaliatory action" consistent with S.B. 40
- Supplant the term "adverse action" with "retaliatory action" per S.B. 40

Preview for UVU Policy 168 updates

This summer, USHE and the Utah Attorney General's Office drafted a *Whistleblower Protections Model Policy* for USHE universities to adopt. The Office of General Counsel is reviewing this draft policy to incorporate relevant sections of our investigative and hearing procedures from UVU Policy 165 *Discrimination, Harassment, and Affirmative Action*. By incorporating these procedures, we will provide clarity to investigative and hearing participants and satisfy due process requirements. The Office of General Counsel will work with People and Culture to revise our Policy 168 through UVU's regular policy process. This change will ensure our investigative and hearing procedures are consistent.