

Annexure 3



UNIVERSITY OF LIMPOPO

WHISTLEBLOWING POLICY AND PROCEDURE MANUAL

CO2019/1603



CONTACT OPTION	CONTACT DETAILS
Unique freecall 0800 number	0800 26 26 26
Postal address	PO Box 51006 Musgrave 4062
SMS Short Code	33490
Toll free facsimile	0800 21 26 89
Online reporting	www.whistleblowing.co.za
E-mail Address	UL@whistleblowing.co.za

TABLE OF CONTENTS

1. Introduction	4
2. Policy Statement	4
3. Purpose of the policy	4
4. Scope of the application	5
5. What is whistleblowing	5
6. Who is a whistleblower	6
7. Who can raise a concern or make a disclosure?	6
8. Protecting and supporting the whistleblowers	6
a) <i>Where the whistleblower is an employee</i>	7
i. <i>The objective of the Amendment Act:</i>	7
ii. <i>Remedies in the case of occupation detriment</i>	8
b) <i>Where the whistleblower is not an employee?</i>	9
9. Whistleblowing Confidentiality	10
10. Whistleblowing Anonymously	11
11. Malicious claims	11
12. Reporting procedures	12
13. Information required when raising a concern or making a disclosure	13
14. How will the concern or disclosure be dealt with?	14
15. Duty to Act and Communicate	15
16. Right of appeal	16
17. Abuse of the whistle blowing policy	17
18. Record of concerns or disclosures made	17
19. Awareness	18
20. Policy review	18
21. Relevant legislation	18
22. Definitions as per the Public Disclosures Amendment Act of 2017	19

1. Introduction

University of Limpopo's values and the Code of Conduct and Ethics require all employees to conduct themselves with the highest standards of integrity.

Consistent with the university's values and the Code of Conduct and Ethics, the Whistleblowing Policy and Procedure Manual (Whistleblowing Policy) is essential for the university's commitment to the highest possible standards of openness, honesty and accountability.

2. Policy Statement

Council and management of the University of Limpopo, commit themselves to exposing and dealing decisively with acts of criminality, fraud, corruption and other irregular conduct, which are detrimental to good governance, through among other measures, the Whistleblowing Policy.

In line with this commitment and in order to enhance good governance, transparency and safeguard the integrity of the university, the Whistleblowing Policy is intended to provide:

- (i) A platform for raising concerns related to any malpractice, serious wrongdoing, illegal or unethical behaviour such as fraud, corruption and other misconduct
- (ii) Assurance that those who disclose such information will be treated fairly, adequately protected, taken seriously, and that action would be taken on the disclosure.

3. Purpose of the policy

The Whistleblowing Policy aims to foster and maintain an environment that encourages employees and other relevant stakeholders to voluntarily report suspected wrongdoing without fear of punishment or unfair treatment, and ultimately assist in preventing fraud, corruption and other misconduct within the university.

The policy provides written procedures or guidelines for raising such disclosures.

Its purpose is to

- Provide assurance of the university's commitment to protected disclosures
- Clarify what types of misconducts are reportable
- Inform individuals of the various ways of making a protected disclosure
- Provide assurance that such disclosures:
 - can be reported to appropriate authorities in a confidential manner without the risk of subsequent victimisation, discrimination or harassment;
 - will be taken seriously and investigated as appropriate and the outcome duly communicated;
 - will be managed in a timely, consistent and professional manner; and
 - will receive appropriate remedial action where concerns are substantiated.

4. Scope of the application

The policy applies to any person (employee, student, contractor, consultant, supplier, volunteer, intern, casual worker, member of community or council and stakeholders dealing with the university).

The policy is designed to deal with bona fide concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within the university. It will, however, not apply to personal grievances, which will be dealt with under existing procedures on grievances and discipline.

This policy is not designed to reopen matters that have been dealt with under grievance or disciplinary procedures.

5. What is whistleblowing

Whistleblowing is the disclosure of information which relates to suspected wrongdoing or dangers at work by an employee, contractor or any other stakeholder.

Wrongdoing can be defined as an unlawful activity, or other irregular conduct or activity, or malpractice in an organisation.

6. Who is a whistleblower

A whistleblower is a person who raises a genuine concern about wrongdoing within an organisation, or through an independent structure associated with the organization.

7. Who can raise a concern or make a disclosure?

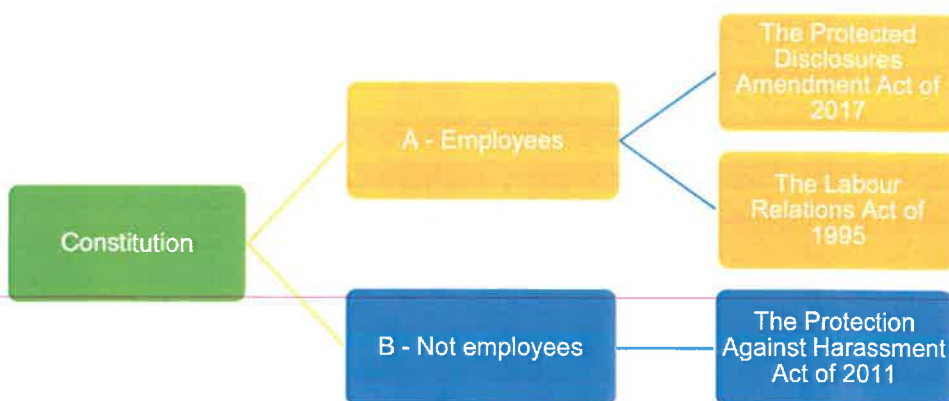
Any person (employee, student, contractor, consultant, supplier, volunteer, intern, casual worker, member of community or council and stakeholders dealing with the university) who has a reasonable suspicion of misconduct may raise a concern in accordance with this policy.

8. Protecting and supporting the whistleblowers

Whistleblowers may be concerned about possible repercussions. To minimize such concerns whistleblowers must be supported and taken seriously.

There are various laws that apply to different categories of whistleblowers, such as employees or the general public. These laws provide different levels of protection to those who come forward with information.

The main laws that pertain to whistleblowers are:



The Constitution

The Constitution applies to whistleblowers who are employees and general public.

Section 9.1 of the Constitution states that, “everyone is equal before the law and has the right to equal protection and benefit of the law.”

In addition, Section 16.1 (b) provides that “everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas.”

Section 23.1 states that “everyone has the right to fair labour practices.”

a) Where the whistleblower is an employee

The university has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected.

The Whistleblowing Policy is regulated by the Protected Disclosure Act No. 26 of 2000. The Act was amended by The Protected Disclosures Amendment Act, Act 5 of 2017), (‘the amended Act’).

i. The objective of the Amendment Act:

- To protect an employee or worker from being subjected to an occupational detriment on account of having made a protected disclosure.
- To provide for remedies in connection with any occupational detriment suffered; and
- To provide procedures for employees or workers to disclose information of improprieties by his/her employer in a responsible manner.

A protected disclosure is when an employee makes any disclosure:

- In good faith;
- Reasonably believes the information disclose are substantially true; and
- Not for personal gain, excluding any reward payable in terms of any law.

Examples of the types of concerns that may be reported include, but are not limited to, past, present or likely future wrongdoing in one or more of the following categories:

- Criminal offences;
- Failure to comply with certain legal obligations;
- Miscarriages of justice;
- Endangering of the health or safety of individuals;
- Damage to the environment;
- Unfair discrimination as defined in the Employment Equity Act and the Promotion of Equality and Prevention of Unfair Discrimination Act;

Any irregularity covered above has been, is being or is likely to be deliberately concealed.

The Amended Act further indicates that the disclosure is protected if made to certain persons, namely:

- Legal Advisor;
- Employer;
- Member of Cabinet/ Executive Council of Province, where relevant; where the employer is a Public Sector body;
- The Public Protector;
- The South African Human Rights Commission;
- The Commission for Gender Equality;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The Public Service Commission;
- Auditor-General; and
- Any Person, prescribed in certain circumstances.

ii. Remedies in the case of occupation detriment

Employees who have made a disclosure must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern.

If a disclosure is protected, it means that any work-related problem/ victimization suffered as a result of the disclosure can be taken to court of law. An employee who feels victimized can refer a dispute to the Commission for Construction, Mediation and Arbitration for conciliation and thereafter to the Labour Court.

An employee, who reasonably believes that he/she may be adversely affected as a 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 the University. The terms and conditions of employment of such an employee may not be less favourable than before, the transfer, except if the employee gives his/ her written consent.

The Amended Act provides for payment by the employer of compensation and for actual damages suffered by the employee or worker.

The Amended Act provides additional protection to employees and workers against any civil, criminal or disciplinary proceedings that might otherwise be initiated where the disclosure is prohibited by any other law, oath, contract, practice or agreement requiring confidentiality. This does not protect the employee or worker from the consequences of any participation by them in the impropriety.

The Labour Relations Act protects whistleblowers through its Sections 186 (2)(d) and 187(1)(h), which refer to unfair labour practice and unfair dismissal. Section 191 (3) empowers an employee to refer a dispute concerning an unfair labour practice, if the employee has suffered occupational detriment by an employer.

b) Where the whistleblower is not an employee?

Citizen whistleblowers can be subjected to intimidation and victimisation too.

In this case the remedies available are not always regulated by whistleblowing legislation, and each case is treated on its merits.

The Protection Against Harassment Act of 2011 (PAHA) is useful to whistleblowers who get harassed.

Harassment under the PAHA is defined as:

“directly or indirectly engaging in conduct that the harasser knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person.”

It encompasses these activities:

- following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; and
- sexual harassment.

Under Section 2 of the PAHA, a citizen can get a protection order against a person harassing them. This is granted by the Magistrate’s Court and prohibits the perpetrator from harassing the victim any further.

9. Whistleblowing Confidentiality

The University will treat all disclosures made in line with this policy in a confidential and sensitive manner. The identity of the individual making the allegation will be kept

confidential as far as possible under the terms of the investigation. Circumstances may, however, dictate that, in time, it may be necessary for their identity to become known – for example, they may have to be called as a witness. However, the identity of the individual will only be revealed after obtaining permission to do so from the individual.

10. Whistleblowing Anonymously

Preference would be for whistleblowers to disclose their names and contact details (in strict confidence). However, this policy provides for whistleblowers to remain anonymous should they wish to do so.

Remaining anonymous will not preclude a report from being investigated, and the matter will not receive less priority than other cases. However, reports made anonymously are not easily investigated due to the investigator's inability to request additional information, and accordingly the report will need to be considered at the discretion of the investigator.

In exercising this discretion, the factors to be taken into account would include:

- The seriousness of the issues raised
- The detail and amount of information provided
- Whether or not the issue or allegation that has been reported can be confirmed by other sources

Should the whistleblower like to remain anonymous, it is important that this be specified from the outset. It is the responsibility of the whistleblower to not let anyone else know that he/she has made the report.

11. Malicious claims

The Amended Act provides protection to the employer against malicious claims by making it an offence to provide false information intentionally, and where this results in harm, a conviction may result in a fine, imprisonment for up to two years, or both a fine and imprisonment.

If it is concluded that a whistleblower has made false allegations maliciously or with a view to personal gain, the whistleblower will be subjected to disciplinary action.

Where the whistleblower is not an employee and has made false allegations maliciously or with a view to personal gain the university will obtain a legal opinion and may consider taking legal action against the whistleblower.

12. Reporting procedures

If an employee has a concern about malpractice, he/she should raise it first with his/her manager/supervisor. This may be done verbally or in writing.

If an employee is unable to raise the matter with his/her manager for whatever reason, he/she should raise the matter with the Registrar or Vice-Chancellor and Principal.

If these channels have been followed but the employee still has concerns, or if he/she feels that the matter is so serious that he/she cannot discuss it with any of the above, the employee should contact the Chief Audit Executive.

Should the concern relate to a Council Member, the matter should be raised with the Chairperson of the Council. **Should the concern relate to the Chairperson of the Council, it should be referred to the Executive Committee.**

If individual feels that they cannot raise the concern in this manner, then they should use the confidential and anonymous Whistleblowing Hotline.

The Whistleblowing Hotline provides employees, students and stakeholders with a safe mechanism for reporting these instances without fear of victimization. It is available 24-hours a day, 365 days a year. All calls are treated confidentially and the whistleblower may choose to remain anonymous. Calls to the Whistleblowing Hotline are not tracked. The whistleblower can speak to an agent in any of the official languages.

Phone calls will be answered by an independent third party vendor. The third party agent will ask a number of questions which will help to create a report focusing on the facts surrounding the concern raised.

Whistleblowers will be given a reference number when calling the Whistleblowing Hotline. Should a whistleblower wish to call back later to provide additional information or follow up on what has been done about the violation which was reported the reference number would need to be provided.

In order for the whistleblower to be kept abreast of the concern, the whistleblower needs to contact the Whistleblowing Hotline. The whistleblower will then be informed whether the investigation is complete and where it is complete the whistleblower will be advised of whether discipline was imposed or not imposed. Should the problem recur or should the whistleblower be the victim of retaliation, the university needs to know immediately.

DETAILS OF THE WHISTLEBLOWING HOTLINE	
CONTACT OPTION	CONTACT DETAILS
Unique freecall 0800 number	0800 26 26 26
Postal address	PO Box 51006 Musgrave 4062
SMS Short Code	33490
Toll free facsimile	0800 21 26 89
Online reporting	www.whistleblowing.co.za
E-mail Address	UL@whistleblowing.co.za

13. Information required when raising a concern or making a disclosure

Formal investigations will be conducted where there is reason to believe that improper acts have been committed. In order for the investigation to be effective, disclosures should be as specific as possible and should as a minimum include the following detail:

- What alleged wrongdoing is being reported?
- Where and when (dates, times and places)?
- Who was involved?
- How the individual(s) or firm(s) committed the act?, and
- Why is the activity improper?

The whistleblowers are not expected to prove the truth of an allegation. When reporting, the whistleblowers will however need to show that there is sufficient ground for making the allegation or expressing a concern.

Whistleblowers must provide supporting information (any evidence that is available, list credible witnesses), since allegations based upon rumours without any corroborative evidence may affect the reputations of innocent persons.

14. How will the concern or disclosure be dealt with?

The action taken by the university will depend on the nature of the matter raised.

Matters reported must be forwarded to the Chief Audit Executive for a preliminary investigation to enable the department, determine whether a complete investigation is warranted.

To determine the manner in which to deal with the matter an initial assessment will be carried out to determine the scope of any investigation.

The Chief Audit Executive would then submit a request for authorization to conduct an investigation to the Vice Chancellor and Principal, unless this designated official is implicated in which case the authorization would be sought from the Chairperson of the Audit Committee of Council.

Where the identity of the whistleblower is known, the Chief Audit Executive shall communicate in writing with the whistleblower and in such communication:

- Acknowledge that the concern has been received
- Indicate the manner in which the matter will be dealt with
- If necessary request a meeting with the whistleblower to obtain further information.

- Give an estimate of the time it will take to provide a final response.
- Inform him/her whether further investigation will take place

Amongst others, the matters raised may be investigated internally by:

- management (Human Resources, Academics, Safety and Security Services); or
- Internal Audit.

The Internal Audit Function is ultimately responsible for managing the process.

Investigations may, at times be conducted in conjunction with internal structures within the university or external structures. In some cases, the University may appoint an investigator or team of investigators including staff with relevant experience of investigations or specialist knowledge of the subject matter. Depending on the nature of the matter, forensic auditors may be engaged to carry out the necessary investigation.

The outcome of the investigation will be reported to the Vice-Chancellor and Principal and to the Audit Committee of Council.

Where it is established that fraud/irregularity has occurred, the report will be forwarded to the relevant university structures for further handling.

15. Duty to Act and Communicate

A 'Duty to Inform Employee or Worker' has been placed upon employers in the Amended Act.

a) Decision and acknowledgement within 21 days of disclosure.

Any person or body to whom a protected disclosure has been made, must, as soon as reasonably possible, but within 21 days after the protected disclosure has been made, decide whether to (i) investigate the matter or not; or (ii) refer the disclosure to another person or body if that disclosure could be investigated or dealt with more appropriately by that other person or body. The person or body must in writing acknowledge receipt of the disclosure by informing the employee or worker of the decision.

b) Decision and written acknowledgement after 21 days of disclosure or referral.

If a decision to investigate the matter or not cannot be taken within 21 days (of disclosure or referral, as the case may be), that person or body must inform the employee or worker (within 21 days) in writing that he/she or it is unable to take the decision within 21 days and on a regular basis, at intervals of not more than two months at a time, that the decision is still pending. The person or body must as soon as reasonably possible but within six months (of disclosure or referral, as the case may be) inform the employee or worker of the decision.

Scope of decision

Where the decision to investigate has been taken, the time-frame within which the investigation will be completed must be specified where possible and where the decision to not investigate has been taken, reasons for such decision must be specified.

Outcome

The person or body taking the decision to investigate has a duty to inform the employee or worker of the outcome of the investigation.

c) Exemption from providing written acknowledgement of disclosure

The person or body to whom a protected disclosure has been made or referred to, is not obligated to provide written acknowledgement of receipt of the disclosure where that person or body does not know the identity and contact details of the employee or worker who has made the disclosure or if it is necessary to avoid prejudice to the prevention, detection or investigation of a criminal offence.

16. Right of appeal

If the whistleblower does not agree with the outcome, or is not satisfied that the matter has been handled fairly, he or she may appeal to the Vice-Chancellor and Principal (where the Vice-Chancellor and Principal was not the recipient of the original disclosure), or to the Chairperson of the Council (where the Chairperson of the Council was not the recipient of the original disclosure or the matter relates to the Vice-Chancellor and Principal). Appeals should be made within 4 weeks from the date of issue of the report. The scope of the appeal is confined to the original complaint, the evidence uncovered during investigation, the relevant decisions and the fairness of the process.

The Vice-Chancellor and Principal/Chairperson of the Council has wide powers to consider an appeal, and has full discretion to determine the process. The outcome of that appeal is final.

17. Abuse of the whistle blowing policy

The abuse of the Whistle Blowing Policy by staff, students and any other University stakeholders is a serious offence and the necessary disciplinary action will be invoked.

The abuse of the policy may come in different forms or shape, including but not limited to: -

- a) Hoax disclosure/ reporting
- b) Point scoring or settling of grudges
- c) Defamation of character

18. Record of concerns or disclosures made

The Chief Audit Executive will maintain a central record containing summary information about each disclosure raised in a manner that allows for whistle blowers confidentiality. It will include the date, the nature of the disclosure, the summary of the incident, treatment of incident reported and the status. This record will be submitted to the Audit Committee of Council which shall be responsible for overseeing the receipt, retention and investigation of and response to all concerns raised. These reports will be followed up with reports on action taken until the matter can be closed.

Detailed notes about any investigation into a disclosure will be retained by whoever undertook the investigation and treated as confidential.

19. Awareness

In order for this policy to be successful, it must be supported by a structured training, education, communication and awareness programme.

The policy must also be broadly advertised within the university and easily accessible. Managers shall be responsible for ensuring that all employees under their control are made aware of and receive the relevant policy documentation.

The whistleblowing contact options and details must be broadly advertised and clearly visible.

20. Policy review

This policy may be modified unilaterally at any time without notice. Modification may be necessary, amongst other reasons, to maintain compliance with applicable legal requirements.

As a minimum the policy shall be reviewed every five years unless there is significant changes in legislation.

21. Relevant legislation

This policy should be read in conjunction with the Code of Conduct and Ethics and the following legislation:

- Dismissal which forms Schedule 8 to the Labour Relations Act 66 of 1995,
- Chapter II of the Employment Equity Act of 1998,
- The Promotion of Access to Information Act 2 of 2000,
- The Promotion of Administrative Justice Act 3 of 2000,
- The Prevention and Combating of Corrupt Activities Act 12 of 2004,
- The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000,
- Public Disclosures Amendment Act of 2017.

22. Definitions as per the Public Disclosures Amendment Act of 2017.

The Amended Act, defines the following terminologies as follows:

Business includes the whole or part of any business, trade, undertaking or service.

Disclosure means any disclosure of information regarding any conduct of an employer, or of an employee or of a worker of that employer, made by any employee or worker who reason to believe that the information concerned shows or tends to show one or more of the following:

- That a criminal offence has been committed, is being committed or is likely to be committed
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health and safety of an individual has been, is being or is likely to be endangered.
- That the environment has been, is being or is likely to be damaged.
- Unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act NO.55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000) or
- That any matter referred to in paragraph a-f has been, is being, or is likely to be deliberately concealed.

Employee means

Any person, excluding an independent contractor, who works or worked for another person or for the State, and who receives or received, or is entitled to receive any remuneration; and

Any other person who in any manner assists or assisted in carrying on or conducting or conducted that business of an employer.”

Occupational detriment, in relation to [the working environment of] an employee or a worker, means—

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated;
- (c) being transferred against his or her will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- (f) being refused a reference, or being provided with an adverse reference, from his or her employer;
- (g) being denied appointment to any employment, profession or office;
- (h) being subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the disclosure of—
 - (i) a criminal offence; or
 - (ii) information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;
- [[h)] (i) being threatened with any of the actions referred to in paragraphs (a) to [(g)] (h) above; or
- [[i)] (j) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, [and] work security and the retention or acquisition of contracts to perform work or render services;”

Protected disclosure means when a person reports allegations of suspected improper activities to an appropriate authority, it is known as a protected disclosure.

Temporary employment service means any person who, for reward, procures for or provides to a client other persons who

- Render services to, or perform work for, the client: and

- are remunerated by the temporary employment service

Worker means

- any person who works or worked for another person or for the State; or
- any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an employer or client, as an independent contractor, consultant, agent; or
- any person who renders services to a client while being employed by a temporary employment service.