



Office of the President

One Washington Square
San José, California 95192-0002

PD 2009-02

June 26, 2009

MEMO TO: Administrative Heads, Chairs, Deans, Directors and
Vice Presidents

FROM: Jon Whitmore
President

SUBJECT: Presidential Directive 2009-02 (Supersedes PD 96-04)

**San José State University Discrimination Complaint
Procedure for External Job Applicants**

In compliance with CSU Executive Order 928, <http://www.calstate.edu/EO/EO-928.html>, the purpose of this Presidential Directive is to assure that San José State University continues to comply with all Federal and State legislation and California State University policies regarding unlawful discrimination and, in particular, to establish a discrimination complaint procedure applicable to external job applicants.

Persons Covered by this Presidential Directive

This Presidential Directive is developed to provide SJSU external job applicants an opportunity to seek redress when they feel they have been discriminated against in the hiring process based on their age, race, color, national origin, religion, sexual orientation, sex, gender identity, marital status, medical condition, or disability.

Complaint Filing Deadline

An external job applicant may file a complaint with SJSU within 180 days after the alleged incident of discrimination.

Filing a Complaint

All discrimination complaints filed by external applicants for employment shall be directed to the Human Resources Office for Equal Opportunity (OEO), University Police Building, 3rd Floor for investigation and resolution. An external applicant for employment may file a written complaint by submitting a completed Discrimination Complaint Form to the Office for Equal Opportunity, San José State University, One Washington Square, San José, CA 95192-0046. A Complaint Form may be obtained at <http://www.sjsu.edu/hr/docs/oEO/forms/complaint.pdf>.

The OEO shall notify the applicant in writing as to whether or not the complaint is being processed or has been found to be deficient in some manner. The letter of notification will identify the complaint issue(s) to be investigated and state the timeframe for informal resolution, formal investigation, and final appeal to the SJSU Office of the President.

Informal Resolution Period

The OEO shall have thirty (30) working days to attempt to resolve the complaint informally in a manner that addresses any harm that may have been suffered as a result of the possible discrimination and take steps to prevent similar discrimination from recurring.

Formal Investigation

If the complaint is not resolved during the informal resolution period, the OEO will conduct a thorough, impartial investigation that meets basic procedural standards of fairness and justice. The OEO shall assemble statements, documents and other relevant evidence, and interview witnesses and other identified individuals who may have information concerning the allegations set forth in the complaint. The OEO shall evaluate the evidence and make determinations and recommendations in accordance with SJSU policies related to unlawful discrimination. This investigation shall take a maximum of sixty (60) working days and shall conclude with issuance by the OEO of a report delineating the following: 1) the allegations investigated; 2) the evidence gathered and the findings based on a preponderance of evidence standard; and 3) the determination as to whether or not reasonable cause exists to believe that discrimination occurred.

If the OEO concludes there was cause, it shall issue a separate conclusion regarding recommendations for corrective actions. These recommendations may include individual remedies for the complainant or a range of formal or informal disciplinary measures or other personnel actions.

Disposition of Complaint

If there is a finding of cause, the OEO will refer any recommendations for corrective action to the appropriate University administrator. The appropriate administrator will make the final decision on whether or not to implement any corrective actions recommended in the OEO report. Any corrective actions, including disciplinary measures, taken pursuant to these procedures shall be consistent with employees' rights under state law, Title V, and any collective bargaining agreement governing the terms and conditions of employment of any affected employees. The OEO shall mail to the complainant a copy of the final OEO report no later than 60 working days after the initiation of its investigation, along with a notice of the complainant's right to appeal the OEO's findings to the Office of the President if he or she is not satisfied with the decision.

Appeal to the Office of the President's

If the complainant remains dissatisfied with the OEO's disposition of his or her complaint of discrimination, the complainant has the right to appeal the matter in writing to the SJSU Office of the President within ten (10) working days of receipt of the OEO investigative report. In this appeal, applicants should identify any discrepancies they believe to exist in the OEO's investigation, state why they disagree with the OEO's findings, and provide any supporting evidence.

The Office of the President shall have twenty-one (21) working days from the date of receipt to act on the appeal. Upon completion of its review, the Office of the President shall notify the complainant of its findings and that the appeals process has been concluded.

Extensions in Procedural Deadlines

Reasonable extension of any time limits in these procedures shall be granted by the Associate Vice President of Human Resources for just cause, provided all concerned parties are given adequate notice of extension. Time limits set forth herein refer to working days, which are Monday through Friday, excluding all officially recognized University holidays or campus closures.