



**Lawrence Berkeley National Laboratory
Employee Concerns Program Description
Rev. 0**

Effective Date: September 10, 2019

Office of Institutional Assurance and Integrity

REVISION HISTORY

Revision Number	Revision/ Review Date	Description of Revision/Review
0	9/30/19	Development of a new Employee Concerns Program description document to satisfy DOE O Order 442.1B, Employee Concerns Program, DOE 10 CFR 708, Contractor Employee Protection Program, and the California Whistleblower Protection Act.

TABLE OF CONTENTS

GLOSSARY4

1.0 Program Description6

2.0 Exceptions6

3.0 Employee Concerns Program Requirements.....6

4.0 Roles and Responsibilities7

5.0 Information Management Systems/Database9

6.0 Employee Concerns Processes9

 6.1 Intake of Employee Concerns10

 6.2 Screening of Employee Concerns10

 6.3 Processing of Employee Concerns.....10

 6.4 Documentation of Employee Concerns.....12

 6.5 Closure of Employee Concerns.....13

7.0 Program Assurance14

 7.1 Annual Employee Communications.....14

 7.2 Program Assurance14

8.0 Recordkeeping Requirements14

GLOSSARY

TERM	DEFINITION
Alternative Dispute Resolution (ADR)	A process for resolving a dispute through a neutral third party. ADR may take the form of mediation or other techniques. To attempt resolution of an Employee Concern through ADR, all parties must voluntarily agree to utilize an ADR process.
Anonymous Concern	An employee concern submitted by a Concerned Individual who does not reveal his/her identity.
Confidentiality	A request by an individual with an employee concern to have his or her identity protected, to the extent allowable by law, from all persons except OIAI staff and other individuals supporting the ECP that may have a need-to-know.
Concerned Individual	A current DOE federal, contractor or subcontractor employee who expresses an employee concern through the ECP.
Duty-to-Act	The responsibility to immediately report to the Laboratory management or organization, or cognizant manager responsible for the activity any Employee Concern that is associated with a potential imminent threat to national security, or imminent danger to an individual's safety, public health or safety, and/or the environment, or that could otherwise compromise the safety and/or security of DOE operations and/or facilities.
Employee Concern	A good faith expression by an individual that: <ol style="list-style-type: none"> 1. An activity, policy, or practice of DOE, UC or Laboratory, including but not limited to, that which is related to the environment, safety, health, security, quality, and management of DOE facilities and/or operations that should be improved, modified, or terminated; or 2. The individual has been subjected to Harassment, Intimidation, Retaliation/Reprisal, or Discrimination (HIRD) for raising an employee concern. See Below.
Harassment	A behavior or an action taken by one or more supervisors or co-workers against or toward an individual to belittle, humiliate, or impede that individual in his or her work environment or job performance because the individual raised an employee concern. Harassment may include, but is not limited to, threatening, restraining, coercing, blacklisting, mocking, humiliating, and/or isolating an individual.

TERM	DEFINITION
Harassment, Intimidation, Retaliation/Reprisal, or Discrimination (HIRD)	A type of employee concern that includes allegations of harassment, intimidation, retaliation/reprisal, or discrimination for raising an employee concern.
Improper Governmental Activity (IGA)	Any activity by a state agency or by an employee that is undertaken in the performance of the employee's official duties, whether or not that action is within the scope of his or her employment, and that (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (2) is in violation of an executive order of the governor of California, a California Rule of Court, or any policy or procedure mandated by the <i>State Administrative Manual</i> or <i>State Contracting Manual</i> , or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency.
Intimidation	A behavior or an action taken by a supervisor or co-worker against or toward any employee to cause the employee to be fearful of filing an employee concern; cease from pursuing an employee concern; or otherwise be afraid for his/her safety or job security as a result of filing an employee concern.
Retaliation/Reprisal	An adverse action taken against or toward a Concerned Individual with respect to employment (e.g., discharge, demotion, or other negative action with respect to the Concerned Individual's compensation, terms, conditions or privileges of employment) because the employee raised an Employee Concern.
Substantiated	A type of finding with respect to an Employee Concern in which the OIAI Manager has corroborated the Employee Concern based on supporting evidence.
Unsubstantiated	A type of finding with respect to an Employee Concern in which the OIAI Manager has not been able to corroborate the Employee Concern based on supporting evidence.

1.0 Program Description

The Lawrence Berkeley National Laboratory (LBNL) Employee Concerns Program (ECP) implements the Contractor Requirements of the Department of Energy (DOE) Order 442.1B, Employee Concerns Program, DOE 10 CFR 708, Contractor Employee Protection Program, and the California Whistleblower Protection Act (Government Code Section 8547-8547.12. It also serves as the implementing document for the University of California and the Laboratory's Requirements and Policies Manual (RPM) policies, Whistleblower Policy – Reporting & Investigating Allegations of Suspected Improper Governmental Activities (02.02.008.000) and Whistleblower Protection (02.02.009.000).

The ECP ensures that concerns/allegations reported by individuals related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, and allegations of suspected improper governmental activities are accepted, processed, investigated and resolved timely, and the individuals reporting these concerns/allegations are protected from harassment, intimidation, retaliation/reprisal, or discrimination (HIRD).

2.0 Exceptions

Employee/supervisor relationship issues (such as performance improvement actions and grievances) are addressed through Human Resources processes. Operational incidents and deficiencies are addressed through the Issues Management Program processes, including entry in the Corrective Actions Tracking System (CATS).

3.0 Employee Concerns Program Requirements

The LBNL ECP establishes and maintains the processes to accept, process, investigate, and resolve employee concerns, including suspected improper governmental activities, in a timely manner. In addition, the ECP provides the means to inform employees of their rights and responsibilities to report any concerns, issues or allegations of improper actions related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, as well as to harassment, intimidation, retaliation/reprisal, or discrimination as a result of reporting employee concerns.

Corrective actions as a result of a substantiated employee concern that do not involve harassment, intimidation, retaliation and discrimination, and employee/employer relationship issues (such as performance improvement actions and grievances) are developed and implemented as prescribed by PUB 5519, Issues Management Program Manual.

All reported employee concerns will be documented, including acceptance or dismissal of a concern through closure and resolution subsequent to an investigation.

Records created or maintained as part of the ECP are federal records, and where applicable, are subject to the Privacy Act and/or the Freedom of Information Act (FOIA). To the extent possible, the OIAI Manager will protect the identities of the individual(s) who identify concerns, who are subject(s) of the concern, and/or information that may compromise the identity of individuals interviewed or named by interviewees in connection with the investigation.

Confidentiality

Confidentiality is the cornerstone of an effective ECP. The ECP processes are administered in a manner that provides anonymity and confidentiality for employees who report concerns unless legally compelled to disclose such information. Some individuals will raise Employee Concerns only if they believe their identities will not be disclosed, the protection of the identity of these individuals is a significant factor in ensuring cooperation of Concerned Individuals.

A Concerned Individual may submit an Employee Concern without revealing his/her identity, in which case the Employee Concern is referred to as an Anonymous Concern.

If a Concerned Individual or a witness requests confidentiality, the OIAI Manager must maintain confidentiality to the greatest extent possible. The OIAI Manager must inform the Concerned Individual of the limitations on protection of confidentiality under circumstances such as:

- The existence of a Duty-to-Act requirements;
- Disclosure or reporting is required by law, rule, regulation, court order or DOE Order;
- An employee may be identified with the Employee Concern (e.g., the employee has previously voiced the Employee Concern, in whole or part, to a supervisor or co-workers; the uniqueness of the Employee Concern); and
- Confidentiality may impact the ability to thoroughly investigate an Employee Concern.

4.0 Roles and Responsibilities

ROLE	RESPONSIBILITY
Laboratory Management	<p>Fosters a culture where employee concerns can be raised promptly identified and resolved without fear of retaliation/reprisal.</p> <p>Provides an annual notice to employees regarding the availability of the ECP as an avenue for filing an employee concern, including Whistleblower and Whistleblower Protection allegations, confidentially or anonymously.</p>

ROLE	RESPONSIBILITY
Division Management	<p>Cooperate with and support ECP investigations and resolution.</p> <p>Support the right of employees to raise employee concerns without fear of retaliation/reprisal.</p> <p>Develops and implements corrective actions in response to substantiated employee concerns, issues and management concerns identified through the investigation as prescribed in PUB 5519, Issues Management Program Manual.</p>
Office of Institutional Assurance & Integrity (OIAI)	<p>Oversees the development, implementation and administration of the ECP.</p> <p>Maintains, manages and provides resources for the implementation of the ECP, including policies, processes, procedures, standards and appropriate training of personnel supporting the ECP.</p> <p>Provides support to the Laboratory's Deputy Director for Operations and Chief Operating Officer in preparing the annual notice to employees regarding the ECP.</p> <p>Assures that corrective actions developed and implemented in response to substantiated employee concerns, issues and management concerns are addressed as prescribed in PUB 5519, Issues Management Program Manual.</p>
OIAI Manager and Whistleblower Locally Designated Official (LDO)	<p>Operates independently from line management and has direct access to the Laboratory Director, Deputy Director for Research, and Deputy Director for Operations and Chief Operating Officer.</p> <p>Interfaces with other Laboratory entities and organizations, such as Laboratory Counsel, Human Resources, Environment, Health, Safety, Security, Internal Audit and Research Compliance to evaluate Employee Concerns in an independent and objective manner.</p>

ROLE	RESPONSIBILITY
	Convenes and chairs the Investigations Workgroup to ensure comprehensive intake, evaluation, coordination, investigation and resolution of complaints pertaining to alleged improper governmental activity.
Investigations Workgroup (IWg)	Acting in an advisory role to the OIAI Manager/LDO, the Investigations Workgroup ensures comprehensive intake, evaluation, coordination, investigation and resolution of employee concerns and allegations pertaining to improper governmental activities.
Employees (Concerned Individuals)	<p>Reports concerns and issues, including but not limited to, environment, safety, health, security, quality, and management of DOE facilities and operations, and allegations of suspected improper governmental activities, without fear of retaliation/reprisal.</p> <p>Cooperates with and support ECP investigations and resolution.</p>

5.0 Information Management Systems/Database

The University of California EthicsPoint is the official automated system to document Employee Concerns and Whistleblower and Whistleblower Protection allegations. EthicsPoint is also used as the official case management system for the ECP.

EthicsPoint is a comprehensive and confidential reporting tool that supports the ECP workflow from intake, case file records management, data warehousing of supporting documentation, including evidence, attachments and investigation findings and reports.

EthicsPoint supports tracking and trending of data, and customized reports and analytics.

6.0 Employee Concerns Workflow and Processes

Concerned Individuals may raise a concern using one or more of the following methods:

1. Entry in EthicsPoint
2. Contacting the OIAI Manager by phone, email or in person

3. Notifying his/her supervisor or another person of authority, who will report the employee concern to the OIAI Manager.

Once the concern has been raised and communicated to the OIAI Manager, the following actions will occur:

6.1 Intake of Employee Concerns

When a Concerned Individual initiates an Employee Concern, the OIAI Manager will perform an intake with the Concerned Individual, if the identity of the Concerned Individual is known, to clearly understand and document the Employee Concern.

Employee Concerns reporting allegation of a suspected IGA and reporting of retaliation as a result of reporting an IGA are handled following the RPM Whistleblower and Whistleblower Protection policies.

6.2 Screening of Employee Concerns

The OIAI Manager will review and evaluate the employee concern, and determine the course for resolution. The screening must be performed in a time period consistent with the nature and severity of the Employee Concern. During the screening process, the OIAI Manager will:

- Determine if there are required notifications to other organizations.
- Identify any potential or perceived Conflict-of-Interest in the processing of the Employee Concern. In the event such conflicts are identified, mitigation measures must be documented.
- Consider whether additional facts need to be gathered before determining the appropriate methods by which to process the Employee Concern.

As part of the screening process, the OIAI Manager will evaluate whether there is a Duty-to-Act. If the OIAI Manager determines there is a Duty-to-Act, required notifications and any other appropriate action will be taken immediately.

- The OIAI Manager will notify the Concerned Individual, if the identity of the Concerned Individual is known, of a Duty-to-Act situation.
- The OIAI Manager may suspend the processing of an Employee Concern until after the Duty-to-Act notification or other related action, but must resume the processing of the Employee Concern in a timely manner.

6.3 Processing of Employee Concerns

The OIAI Manager will inform the Concerned Individual about the applicable ECP process for his/her concern, including other formal and informal avenues available to attempt to resolve an Employee Concern.

In processing an Employee Concern, the OIAI Manager will use one or more of the following methods as appropriate:

6.3.1 Informal Resolution

In instances where a Concerned Individual has raised an issue that does not meet the definition of an Employee Concern, but may need to be resolved using other assurance mechanisms to close the issue, the OIAI Manager will determine the appropriate approach to pursue on a case-by-case bases.

6.3.2 Dismissal

The OIAI Manager may dismiss an Employee Concern when appropriate, such as when:

- the Employee Concern is outside the scope of the ECP;
- the transfer of the Employee Concern to another organization is not appropriate;
- the Employee Concern is too general to investigate; or
- the Employee Concern has not been made in good faith.

6.3.3 ADR

ADR involves the use of a neutral third party and may take the form of mediation or other techniques. To resolve an Employee Concern through ADR, all parties must voluntarily agree to utilize the ADR process. Human Resources personnel may be contacted to assist in the ADR process as appropriate.

6.3.4 Transfer to Another Organization

The OIAI Manager may transfer an Employee Concern in writing to another organization with subject matter expertise or when another established resolution process exists to address the Employee Concern, such as human resources, environment, health and safety, security, research compliance, legal, or internal audit. The IWg will be used to determine which entity is best suited to address the Employee Concern and to facilitate the transfer of the concern. If an Employee Concern is transferred to another organization the following applies:

- The OIAI Manager must inform the Concerned Individual of the transfer of the Employee Concern if the identity of the Concerned Individual is known.
- The organization that accepts the transfer will have responsibility and jurisdiction to address the Employee Concern and is responsible for communicating the results to the Concerned Individual if the identity of the Concerned Individual is known.
- Once transferred, the OIAI Manager has no further responsibility to the Concerned Individual regarding the Employee Concern.

6.3.5 Referral to Another Organization

The OIAI Manager may refer an Employee Concern in writing to another organization or program for evaluation, for example Laboratory Counsel, Internal Audit, or Human Resources. Such referral does not transfer ultimate decision-making authority over the Employee Concern to that organization or program providing such evaluation.

- If an Employee Concern is referred to another organization, the OIAI Manager must inform the Concerned Individual of the referral if the identity of the Concerned Individual is known.
- Upon accepting the concern, the receiving organization is responsible for investigating the Employee Concern and documenting its findings and reporting the findings to the OIAI Manager.
- The OIAI Manager must evaluate the response to verify that it addresses the Employee Concern. The OIAI Manager may investigate further if the response does not fully address the Employee Concern.

6.3.6 Investigation

The OIAI Manager may initiate an investigation to examine and resolve an Employee Concern. The OIAI Manager may bring in outside subject matter experts to assist in or conduct the investigation.

An Investigation Work Plan will be developed to include, methods of investigation, lines of inquiry, interviews, interviewees, inspection of relevant documents, sites, or equipment, and an evaluation of practices being followed.

ECP investigations will be conducted in a manner that provide sufficient evidence to factually and credibly determine if the Employee Concern is substantiated, partially substantiated or unsubstantiated.

The investigation outcome includes a written report describing the findings, which explicitly documents the determination of substantiated, partially substantiated or unsubstantiated. The report may include recommendations for resolution of the Employee Concern.

6.3.7 Withdrawal

Upon written or verbal request, the Concerned Individual may withdraw an Employee Concern at any time.

6.4 Documentation of Employee Concerns

Employee Concerns will be documented in EthicsPoint and working papers will be documented in an ECP case file on a Google Drive in sufficient detail to

permit processing. Supporting documentation, correspondence, and/or evidence provided by the Concerned Individual, evidence obtained or prepared, and the final report will be maintained in the Concerned Individual's ECP case file, with the final report also uploaded in EthicsPoint as appropriate.

6.5 Closure of Employee Concerns

An Employee Concern must be tracked until closure. All Employee Concerns are expected to be closed timely, generally with the goal of within 120 calendar days from date of the Employee Concern receipt. However, closure of the Employee Concern will depend on its complexity, the amount of required supporting information/documentation, availability of personnel for inquiry, and overall circumstances of the Employee Concern. An Employee Concern is considered closed when one of the following has occurred and documented in the ECP case file and EthicsPoint:

- The Employee Concern has been dismissed or resolved informally.
- The Concerned Individual has withdrawn the Employee Concern and the nature of the Employee Concern does not require further evaluation or action.
- The Employee Concern has been resolved through ADR.
- The Employee Concern has been transferred or referred to another organization and the following steps have been taken:
 - The organization to whom the concern was transferred or referred has documented its findings and the OIAI Manager has evaluated the response to verify it addresses the Employee Concern.
 - The results have been communicated to the Concerned Individual if the identity of the Concerned Individual is known.
 - Affected management has been briefed on any issues for management attention and resolution.
- The Employee Concern has been investigated to determine if the concern is substantiated, partially substantiated or unsubstantiated and the following steps have been taken:
 - The Concerned Individual, if the Concerned Individual's identity is known, has been notified regarding the disposition of the Employee Concern (e.g., substantiated, partially substantiated, or unsubstantiated, and any corrective actions taken).

Note: To protect the Confidentiality of those who provided information or other input to an investigation, the specifics of the investigation must not be provided in the closure summary provided to the Concerned Individual.

- Any identified corrective actions are documented in the ECP case file. Corrective actions will be implemented following LBNL PUB

5519, Issues Management Program Manual, including entry in the Corrective Action Tracking System (CATS) as applicable. Ineffective or untimely resolution of an Employee Concern may be elevated to management as appropriate.

7.0 Program Assurance

7.1 Annual Employee Communications

On an annual basis, employees will be informed of the availability of the ECP as an avenue for filing an employee concern, including Whistleblower and Whistleblower Protection allegations; the information on where to submit an employee concern, confidentially or anonymously; and their right to report Employee Concerns through the ECP and seek resolution through local complaint or dispute resolution systems, or with first line supervisors.

7.2 Program Assurance

On a semi-annual basis or more frequency upon request, a summary of ECP activity data, such as the number and categories of Employee Concerns and their time frames for completion and disposition, will be submitted to UC and DOE/BASO.

At least once every three years an assessment of the ECP processes will be performed and documented to determine its overall effectiveness. Corrective and improvement actions, when appropriate, will be developed and implemented to correct issues and address opportunities impacting the effectiveness of the ECP.

Tracking and trending of employee concerns, and sharing lessons learned and best practices will be incorporated into the broader Contractor Assurance Systems processes, such as metrics, performance monitoring and analysis, and lessons learned/best practices processes.

8.0 Recordkeeping Requirements

ECP case files and other relevant records will be maintained in accordance with the records management requirements as outlined in the Requirements and Policies Manual Archives and Record Management Policy (10.03.001.000).

Employee Concerns records will be maintained to track the following information:

- Number of Employee Concerns
- Categories of Employee Concerns
- Disposition of Employee Concerns
- Time frames for resolving Employee Concerns