

NOTIFICATION GUIDELINES

UiT - The Arctic University of Norway

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1. Purpose

UiT - The Arctic University of Norway will make the best possible arrangements for employees, students and other affected parties to choose to report censurable conditions.

The purpose of these guidelines is to provide employees and students with guidance on how to report censurable conditions, to ensure effective protection of whistleblowers, to inform about the rights that whistleblowers have, and the rights of those who are the subject of a notification.

The guidelines are intended to clarify how notifications are to be received, followed up and concluded by UiT. This will ensure proper processing of all notifications, and provide as much predictability as possible regarding administrative procedure.

Employees' and students' right to notify must be seen in the context of UiT's work involving a safe and good climate for freedom of expression. It must be as simple and as easy as possible to report censurable conditions or assert controversial views. Openness can help prevent censurable conditions from arising, lower the threshold for internal criticism and uncover censurable practices.

Persons who are not affiliated with UiT can also report any censurable conditions that exist in the organisation. In such cases, these guidelines apply when appropriate.

2. What is notification?

To notify (whistleblow) is to report censurable conditions that exist in the organisation.

Employees, including hired employees, have the right to report censurable conditions that exist in the employer's organisation. This is pursuant to Section 2 A-1 of the Working Environment Act. Students have the right to report censurable conditions at the institution. This is pursuant to Section 4-3 b of the Act relating to Universities and University Colleges.

The term 'censurable conditions' is to be understood in its broadest sense. Firstly, it includes matters that are in breach of the law, regulation or other legal rules. It also includes breaches of written ethical guidelines in the organisation or ethical norms that are widely accepted in society.¹ This also includes breaches of other internal rules and guidelines.

Examples of censurable conditions that are encompassed by this include:

- Working conditions that are in breach of the requirements stipulated in the Working Environment Act. This applies, for example, to bullying, harassment, substance abuse, and an unsatisfactory working environment.
- Improper behaviour by management
- Unsatisfactory learning environment for students
- Danger to life or health
- Danger to the climate or the environment
- Corruption or other financial irregularities
- Unsatisfactory administrative proceedings in an administrative body.

- Breaches of personal data security

Circumstances that employees and students believe are censurable based solely on their own private, political or ethical convictions are generally excluded.

It is not necessary for someone who reports censurable conditions to use the term 'notification' in order for the rules on notification to apply. The decisive factor is whether censurable conditions that exist in the organisation are reported.

UiT takes all notifications seriously. This applies whether it is employees, students, or people with no affiliation to UiT who notify.

There may be doubt as to whether a matter falls under the definition of 'censurable conditions' as stipulated by the notification rules. Employees who are unsure whether a matter is considered sufficiently serious to report are nevertheless encouraged to notify their immediate manager or other responsible person about this. Students who are unsure whether a matter is considered sufficiently serious to report are encouraged to notify their course coordinator, teacher, head of department, student representative or student ombud. Whether a matter can be considered censurable must often be clarified in more detail in the follow-up of such an inquiry.

3. Notification procedure

3.1. General information on how to proceed

There are no formal notification requirements. Employees and students can notify orally or in writing. Employees and students may also notify anonymously. Non-anonymous notifications are nevertheless processed confidentially in accordance with Section 4.1 of the guidelines.

The person who is responsible for the case, cf. Section 3.3 of the guidelines, assesses whether a notification exists pursuant to the Working Environment Act.

A notification must be justifiable. In order for the notification to be justifiable, the person notifying must:

- Have a factual basis regarding the notification of censurable conditions
- Act in good faith regarding the actual censurable conditions
- Have taken employees, students and the organisation into account regarding the way in which a notification is made
- Have assessed whether the matter is of public interest, and the extent to which the information may damage the organisation's reputation

The Working Environment Act stipulates rules regarding notification procedure in Section 2 A-2. These are of particular importance when notifying the media or the general public, which can only take place in specified cases. This is presented in Section 3.5 of the guidelines. The burden of proof is on the employer to establish whether a notification has not been made in a proper manner.

Employees and students themselves choose when they wish to make a notification. UiT encourages employees and students to notify as soon as possible. This is to ensure that ongoing censurable conditions are brought to an end as quickly as possible, and also to make it easier to investigate a notification that is given shortly after a censurable condition has occurred.

Employees and students who are unsure about whether they want to or should report a possible censurable condition can discuss this with the same persons who can receive notifications at UiT, cf. Section 3.3 of the guidelines. Employees can also discuss such issues with safety representatives, employee representatives or their own lawyer. Students can discuss such issues with student representatives and the student ombud.

If there is a duty to notify, employees and students are obligated to notify immediately. The duty to notify is presented in Section 3.6 of the guidelines.

3.2 What should the notification contain?

UiT's ability to follow up the notification is related to how detailed the notification is. Detailed information about the censurable condition, such as time, place, what happened, who was present, who the whistleblower considers responsible, where further information can be obtained, etc., can help UiT react more quickly and thus stop the censurable condition.

A notification should include:

- Full name, but the person notifying may remain anonymous
- Date of reporting
- Time period or date and time of the event or observation
- Exactly what has been observed/description of the event
- Those who are subject of the notification
- Location of the occurrence/event
- Other witnesses
- Any knowledge of previous cases

3.3 Internal notification at UiT

Employees can always notify internally to their immediate manager, or a manager higher up in the organisation, including the most senior manager. UiT has also appointed specific contact persons at level 1 in the central administration to whom employees can make a notification. Name and contact information are updated at uit.no/si-ifra. Employees can also notify internally via safety representatives, employee representatives or their own lawyer.

Students can always notify their course coordinator, teacher or head of department. UiT has also appointed specific contact persons at level 1 in the central administration to whom students can make a notification. Name and contact information are updated at uit.no/si-ifra. Students can also notify via student representatives.

The case manager in notification cases is the head of the relevant unit;

- At level 3 in UiT's organisation, the head of department/centre director is the case manager.
- at level 2 in UiT's organisation, the dean/faculty director is the case manager.
- at level 1 in UiT's organisation, the head of department is the case manager.

The person receiving a notification must report the case to the person responsible for the case in question. This must be done without undue delay. The case manager must assess the case in question and ensure that it is followed up in a proper manner, and processed in accordance with the guidelines.

In cases where the case manager is clearly partial, e.g. in a situation where the notification concerns the case manager, the person receiving the notification must further report the case to the case manager's superior.

If uncertainty arises in certain cases as to who the notification should be reported to, this can be clarified in consultation with UiT's contact persons in the Joint Administration at level 1.

3.4 Notification to public authorities

Employees and students can always notify externally to a public supervisory authority or other public authority. For example, this may apply to notifications to the police, the Norwegian Labour Inspection Authority, The Equality and Anti-Discrimination Ombud, the Parliamentary Ombud, the Norwegian Data Protection Authority, the Office of the Auditor General, the Ministry or other agencies.

3.5 Notification to the general public

The Working Environment Act sets stricter requirements regarding notifications to the general public. This is because notifications to the general public may have a greater potential for harm to organisations than internal notification. Notification to the general public includes notification to newspapers, radio, TV, blogging, podcasts and through social media.

Employees and students may externally notify the general public if:

- The person notifying has first made an internal notification, or has reason to believe that internal notification will not be appropriate. For example, there may be reason to believe that internal notification is not appropriate if the employee/student has reason to believe that internal notification will be met with retaliation.
- The person notifying acts in good faith regarding the content of the notification. This means that the person notifying should, as far as possible, investigate the actual circumstances. It would not be considered appropriate to notify the media or the general public about baseless or weakly founded allegations.²
- The notification concerns censurable conditions of public interest. This requirement is not to be strictly assessed, but may, depending on the circumstances, protect UiT

in relation to information that is only of internal or personal interest being released and discussed in the public arena.³

3.6 In which cases is there a duty to notify?

Generally speaking, notification is voluntary.

Pursuant to Section 2-3, 2nd paragraph, letters (b), (d) and (e) of the Working Environment Act, there is a duty to notify in the following cases:

- In the event of errors or non-conformities that may endanger life or health if you are unable to correct the situation yourself.
- In the event of harassment (bullying) and discrimination in the workplace/place of study
- Employees and students who are injured at work or contract illness that you believe is due to the work or conditions at the place of work.

Section 2.2 of the Ethical Guidelines for the Public Service stipulates that there is a duty to notify in the following cases:

- Any circumstances that could cause the employer, employee, student or the surroundings to suffer losses or damages.⁴

In cases where there is a duty to notify, notification must be given immediately.

Safety representatives have a stricter duty to notify pursuant to Section 6-2, third paragraph of the Working Environment Act. If a safety representative becomes aware of circumstances that may cause an accident or health hazards, the safety representative must immediately notify employees on site and the employer. If the notification is not taken into account within a reasonable amount of time, the safety representative must inform the Norwegian Labour Inspection Authority or the Working Environment Committee.

3.7 Detailed information regarding anonymous notification

Notification may be given anonymously. An anonymous notification is a notification where the person or persons receiving the notification at UiT do not know who the whistleblower is. Anonymous notifications can be submitted via uit.no/si-ifra. However, anonymous notifications may be more difficult for UiT to follow up due to the fact that it is not possible to ask the whistleblower any additional questions, etc. As far as possible, anonymous notifications are processed in the same way as notifications where the whistleblower is known.

3.8 Duty of confidentiality as an obstacle to notification?

The duty of confidentiality pursuant to Section 13 of the Public Administration Act does not prevent employees from notifying internally. Nor does it prevent external notification to the superior authority in the line.

Employees may be subject to a special duty of confidentiality under other legislation. Confidentiality rules may limit the right to notify. Therefore, a specific assessment must be made in each case of whether the relevant statutory provisions limit the right to notify.

4. Processing notification

4.1 Basic principles for processing notification at UiT

Notification cases must receive proper case processing. The administrative procedure rules of the Public Administration Act apply to notification.

The case manager must assess the notification and ensure that it is followed up in a proper manner, and processed in accordance with the guidelines. The case manager must inform the superior manager as soon as possible. The case manager assesses who should be involved in the further processing of the case, and assesses the need for support and assistance when following up the notification. The case manager assesses their own impartiality, and, at an early stage, must seek advice and assistance from UiT's contact persons in the following departments in the Joint Administration; the Research, Education and Communication Division and the Financial and Organisation Division.

Those who process the notification are obligated to investigate allegations of censurable conditions as soon as possible after a notification has been received. The case is investigated through conversation with the whistleblower.

The person or persons who are the subject of the notification are given the opportunity to explain their views on the situation and the facts in accordance with Section 4.5 of the guidelines.

Further investigations and mapping, including conversations with and obtaining information from parties other than those involved in the case, are assessed and carried out to the extent necessary so as to obtain the best possible overview of the case.

Any case documents are archived and given the necessary protection in the electronic archive.

Other procedural rules that apply in an individual case will depend on the situation and the seriousness of the circumstances that have been reported.

UiT has the following basic principles for processing notification:

- All inquiries must be taken seriously
- The identity of the whistleblower is confidential information – The identity of the whistleblower must not be made known to more people than is absolutely necessary for the further processing of the case.
- Anonymous notifications must be processed
- Anonymous sources can be worth just as much as open sources
- The choice of notification method will have no bearing on how the notification is processed
- The notification case must be processed confidentially
- The notification case must receive an objective assessment
- Impartiality requirements for those processing the case
- Employees must be able to notify without fear of consequences

- The case manager must ensure that further investigations of the allegations concerning the censurable conditions are carried out as soon as possible.
- Whistleblowers must receive feedback within a reasonable period of time

4.2 External assistance

When processing individual cases where, for example, there are conflicts of impartiality or in cases that require professional expertise, e.g. in the event of notifications related to financial irregularities or other special circumstances, UiT may use external assistance to investigate and assess the case. Level 1 in UiT's organisation assesses and decides whether external assistance should be used in each case.

4.3 Whistleblowers' protection against retaliation

Pursuant to Section 2 A-4 of the Working Environment Act, retaliation against employees who notify is prohibited. Pursuant to Section 4-3 b of the Act relating to Universities and University Colleges, retaliation against students who notify is prohibited. Retaliation means any unfavourable act, practice or omission, which has the character of punishment or sanction, and that is a consequence of or a reaction to the fact that the employee has notified. This includes:

- Threats, harassment, arbitrary discrimination, social exclusion or other improper conduct.
- Warnings, change of duties, relocation or demotion
- Suspension, dismissal, summary discharge or disciplinary action.

Factual counterarguments and counter-evidence are not considered retaliation.

The prohibition against retaliation comes into effect as soon as an employee/student makes known that the right to notify will be invoked, for example, by providing information.

UiT encourages all whistleblowers, employees and students to report if they believe retaliation has taken place in breach of this prohibition.

If employees and students present information that gives reason to believe that retaliation has occurred, the employer has the burden of proof regarding any claim that no such retaliation has occurred.

Whistleblowers' protection against retaliation is conditional on the statutory rules of procedure being followed.⁵ This will be fulfilled as long as employees and students proceed in the manner described in point three. However, an obviously erroneous notification, or a notification intended to harm, can have personnel consequences. Inquiries that fall outside the notification rules must always be processed in a proper and objective manner.

Retaliation against a whistleblower entitles the whistleblower to redress from the employer, regardless of whether the employer is at fault (see Section 2 A-5 of the Working Environment Act). If the employee has also suffered a financial loss due to retaliation, the affected party may claim compensation from the employer according to normal tort law rules.

The identity of the whistleblower must not be made known to more people than is absolutely necessary for the further processing of the case. No one other than those who are necessary to clarify the censurable conditions must be involved.

If the person who is the subject of the notification requests access to the case in accordance with the provisions of the Public Administration Act, UiT must decide whether the person in question is entitled to be informed of the whistleblower's identity. If the whistleblower would not have given notification without being anonymous to the person being reported, UiT may consider exempting the whistleblower's identity from a party's right of access, cf. Section 19, second paragraph, letter b of the Public Administration Act.

If it is necessary to make the identity of the whistleblower known to the person or persons who are the subject of the notification, the whistleblower must be informed of this in advance. If the whistleblower wishes, he or she may decide to withdraw the notification.

4.4 UiT's duty to investigate and take measures

When a notification has been given regarding censurable conditions in the organisation, UiT must ensure that the notification is adequately investigated within a reasonable amount of time.

What is to be regarded as a reasonable amount of time depends on the severity of the notification, the importance of a rapid clarification and how long it will practically take to investigate the matter.⁶ UiT will generally give high priority to notification cases.

UiT will carry out the investigations for which the notification provides a factual basis, and will ensure that whistleblowing cases are clarified as thoroughly as possible.⁷

If the investigations reveal that censurable conditions have existed, UiT must ensure that these cease immediately. UiT will also consider measures to prevent similar censurable conditions from occurring in the future.

In each individual case, UiT must ensure that the stipulated measures are followed up by the responsible manager, or others who have been given special responsibility for the follow-up. In each individual case, the following must be stipulated:

- Specifically what the measures entail,
- who will follow up the case, and
- who will be given information about the measures.
- In cases where measures have been stipulated over a period of time, the necessary information about the measures must be provided to any new responsible managers.

A notification may trigger a duty to act on the part of UiT pursuant to law. Such duty to act does not automatically lapse if a notification is subsequently withdrawn. The duty to act may mean that it is not possible to maintain confidentiality regarding the notification. In such cases, UiT must, as far as possible, take into account a whistleblower's wish for anonymous or confidential processing of the case.

4.5 Rights of the person or persons who are subject to the notification

The person or persons who are subject of the notification must be given the opportunity to explain their views on the situation and the facts, as well as gain access to information in the notification case. This is so that UiT ensures that the case is clarified as thoroughly as possible, and to ensure that those who are the subject of the notification have the right to rebuttal (contradiction).

UiT must consider when it is appropriate to provide the person/s who is/are the subject of the notification with information about the content of the notification. If there is a risk of destruction of evidence or other improper influence on the investigations, UiT must consider conducting further investigations before informing the person/s who is/are the subject of the notification. In such cases, the person/s who is/are the subject of the notification must be made aware of the notification when it is justifiable to do so in relation to the information in the case.

If a notification leads to an individual decision under the Public Administration Act, the person notified is a party to the case. UiT must ensure that the parties' rights under the Public Administration Act are safeguarded.

If censurable conditions have not been found, the feedback must be given in such a way that the person/s who is/are the subject of the notification can feel that they are free from suspicion.

In certain cases, UiT's initial investigations may reveal that no censurable conditions exist. A whistleblower may have acted in good faith but was wrong about the facts of the case. In such cases, UiT must consider whether it is appropriate to inform the person or persons who are the subject of the notification. This must be based on a concrete assessment of the whistleblower's interests, the interests of the person or persons who are the subject of the notification, the interests of good notification culture, and the interests of the working environment in general.

4.6 Information to the whistleblower about proceedings and outcomes

The whistleblower must get confirmation that their notification has been received as soon as possible and within 7 days at the latest. It is natural that the whistleblower also wants to know how the notification is being processed. Apart from receiving information about proceedings and routines, it is important that the whistleblower does not become more involved in the case than is necessary.

The whistleblower should be informed about who knows the whistleblower's identity and at what level the case is being processed, but is not entitled to further access to the case proceedings or what type of assessments are being made in the case.

The whistleblower must be notified about the outcome of the notification.

If the case involves matters about which the employer has a duty of confidentiality, information must, as far as possible, be provided to the whistleblower without disclosing confidential information. Official sanctions against the person or persons who are the subject of the notification and the basis for these sanctions will normally not be

encompassed by a duty of confidentiality.⁸ However, the sanctions may be exempt from public disclosure in the interests of proper personnel management, cf. Section 23 of the Freedom of Information Act. Whistleblowers who receive information about sanctions or other matters that UiT exempts from public disclosure must be informed of their obligation to contribute to such information being exempted from public disclosure.

4.7 Support for involved parties

Being involved in a notification case can be stressful for the whistleblower, for the person or persons who are the subject of the notification, and for others involved. Measures that can ease the burden must be assessed on an ongoing basis. Employees must be informed about the possibility of being followed up by the occupational health service. Students must be informed about the possibility of being followed up by the student counselling service.

5. Relationship with the general freedom of expression

The Working Environment Act's provisions regarding notification are in addition to employees' general freedom of expression. Public officials, as well as everyone else, enjoy a fundamental right to express critical opinions about the State's activities and all other matters. The freedom of expression is not unlimited, and is, among other things, restricted by rules on confidentiality. In addition to this, the duty of loyalty in employment may entail certain limitations. See Section 3.3 of the Ethical Guidelines for the Public Service with comments.

6. Specific notification routines, relevant guidelines/instructions, special duty to report

In order to make it as easy as possible to notify, and to ensure the best possible administrative procedure, specific routines for notification have been developed for certain conditions.

Specific notification routines:

- Guidelines on the processing of research ethics issues at UiT - The Arctic University of Norway
- Notification guidelines regarding sexual harassment
- Guidelines for reporting HSE non-conformities
- Guidelines for processing notifications of bullying and/or harassment between students

Relevant guidelines:

- Guide to ethical guidelines
- Ethical Guidelines for Educators
- Ethical Guidelines for the Public Service

The duty to report may also result from special legislation.

¹ Section 2 A-1, second paragraph of the Working Environment Act.

² Prop.74 L (2018-2019) page 52.

³ Prop.74 L (2018-2019) page 52.

⁴ Such a duty is already pursuant to Section 2.2 of the Ethical Guidelines for the Public Service.

⁵ Section 2 A-4, first paragraph, first sentence of the Working Environment Act.

⁶ Prop.74 L (2018-2019) page 52.

⁷ Cf. the principle in Section 17, first paragraph of the Public Administration Act.

⁸ See the Ministry of Justice and Public Security's guide to the Freedom of Information Act (G-2009-419) Section 6.2.3.2.