



DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY

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MEMORANDUM FOR ALL DCSA PERSONNEL

SUBJECT: Whistleblower Protection

Point of Contact: Office of the Inspector General, dcsa.ig@mail.mil

Purpose. This memorandum provides Agency guidance and affirms leadership expectations regarding whistleblower protection.

Applicability. This guidance applies to DCSA employees and Federal employees detailed or assigned to DCSA (e.g., via joint duty assignments or internships).

Policy. The Civil Service Reform Act, the Whistleblower Protection Act, the Whistleblower Protection Enhancement Act, and related laws provide the right of every employee to make whistleblowing disclosures and provide protection from reprisal. Whistleblowing is defined as the disclosure of information that an employee reasonably believes is evidence of a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or a substantial danger to public health or safety.

DCSA is committed to safeguarding employees' rights and ensuring you are protected if you report wrongdoing. We all have an important role to play in promoting an environment in which employees feel free to come forward with their legitimate concerns without fear of reprisal.

All employees are obligated to report fraud, waste, abuse, and misconduct. I encourage you to bring such matters to the attention of your supervisory chain. Depending on the circumstance, there are also other reporting avenues available to you. You may report wrongdoing confidentially to the DCSA Inspector General Hotline (855-865-1508 or dcsa.ig@mail.mil), the DoD Inspector General Hotline, the Office of Special Counsel or, if appropriate, a Federal law enforcement agency.

The attached documents provide additional information about whistleblower protections and prohibited personnel practices. Supervisors and managers must maintain a workplace that respects employees' rights and preserves their obligation to raise legitimate concerns without fear of retaliation.

David M. Cattler
Director

Attachments:

1. Your Rights as a Federal Employee
2. Know Your Rights When Reporting Wrongs



Your Rights as a Federal Employee

Enforced by the U.S. Office of Special Counsel (OSC)

Prohibited Personnel Practices

Prohibited personnel practices (PPPs) are employment-related activities that are banned in the federal workforce because they violate the merit system through some form of employment discrimination, whistleblower retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles. Under 5 U.S.C. § 2302(b)(1)-(b)(14) a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

Discriminate (including discrimination based on marital status and political affiliation).

Ex: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is single. **NOTE:** OSC does not generally investigate Title VII discrimination. 5 U.S.C. § 2302(b)(1)

Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.

Ex: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent. 5 U.S.C. § 2302(b)(2)

Coerce the political activity of any person or take action against any employee as reprisal for refusing to engage in political activity. Ex: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate. 5 U.S.C. § 2302(b)(3)

Deceive or willfully obstruct any person from competing for employment. Ex: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get hired for a job in Headquarters. 5 U.S.C. § 2302(b)(4)

Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person. Ex: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified. 5 U.S.C. § 2302(b)(5)

Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant. Ex: Supervisor Jane specifies that Spanish-speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills. 5 U.S.C. § 2302(b)(6)

Engage in nepotism: Ex: Second-level Supervisor Jane asks First-level Supervisor Joe to hire or promote her son. Supervisor Denise serves as the first-line supervisor for her uncle Anthony. 5 U.S.C. § 2302(b)(7)

Take, fail to take, or threaten (to take or fail to take) a personnel action against an employee for making protected disclosures. Ex: Supervisor Joe directs the geographic reassignment of Employee Jill after Jill reported a gross waste of funds to the Office of Internal Affairs. 5 U.S.C. § 2302(b)(8)

Take, fail to take, or threaten (to take or fail to take) a personnel action against an employee for engaging in protected activity. Ex: Supervisor Jack terminates Employee John after learning that John reported a gross waste of funds to the Office of Inspector General; or for refusing to obey an order that would require John to violate agency regulations. 5 U.S.C. § 2302(b)(9)

Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee. Ex: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting. 5 U.S.C. § 2302(b)(10)

Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.

Ex: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. **NOTE:** OSC's jurisdiction is limited to disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions. *5 U.S.C. § 2302(b)(11)*

Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle.

Ex: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First amendment rights, a law implementing a merit system principle. *5 U.S.C. § 2302(b)(12)*

Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights.

Ex: A manager Issues a policy to all employees in his program that prohibits the employees from discussing the program in any way and fails to notify employees of protected channels for making disclosures. *5 U.S.C. § 2302(b)(13)*

Access the medical record of an employee or applicant, as part of, or in furtherance of any of the above-listed prohibitions.

Ex: An employee expresses interest in an open position to a hiring official, who wants to hire another applicant. The hiring official accesses the employee's medical records provided under a reasonable accommodation (RA) request and attempts to influence the employee to withdraw from competition by telling her that the stress of the new position will worsen a medical condition noted in her RA medical records. *5 U.S.C. § 2302(b)(14)*

WHAT CAN YOU DO IF YOU BELIEVE THAT A PPP HAS BEEN COMMITTED?

OSC is an investigative and prosecutorial agency. Current and former federal employees, including probationary employees, and applicants for federal employment can submit a complaint electronically to OSC at <https://osc.gov>. OSC will review the allegations to determine jurisdiction and investigate allegations of prohibited personnel practices. In complaints where OSC finds a violation, OSC has the authority to seek corrective and/or disciplinary action and/or file complaints with the Merit System Protection Board, where appropriate. 5 U.S.C. section 1212 and section 2302(b)(1)-(b)(14). You can learn more about prohibited personnel practices by watching [these](#) short videos.

WHAT CAN YOU DO IF YOU WANT TO REPORT GOVERNMENT WRONGDOING?

Current and former federal employees and applicants can confidentially report information evidencing a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. OSC has the authority to require the head of the agency concerned to investigate the matter. While OSC does not have independent investigative authority in these cases, Congress has given OSC an important oversight role in reviewing government investigations of potential wrongdoing.

HOW DOES OSC ENFORCE THE HATCH ACT?

The Hatch Act Unit (HAU) enforces compliance with the Hatch Act, which limits certain political activities of federal executive branch employees. All employees, except for the President and Vice President, are prohibited from: (1) using their official authority or influence to affect the result of an election; (2) soliciting, accepting, or receiving political contributions from any person; (3) being candidates in partisan elections; (4) soliciting or discouraging the political activity of persons with business pending before their employing office; and (5) engaging in political activity while on duty or in the federal workplace. *See 5 U.S.C. §§ 7323-7324.* HAU investigates complaints to determine whether a Hatch Act violation has occurred. In cases where HAU concludes that an employee has violated this law, it will either issue a warning letter or seek disciplinary action by negotiating a settlement or prosecuting the case before the Merit Systems Protection Board. HAU also is responsible for a nation-wide program that provides federal, state, and local employees, as well as the public at large, with legal advice on the Hatch Act, enabling individuals to determine their coverage under the Act and whether their contemplated activities are permitted under the Act. To further its advisory and enforcement role, HAU is very active in OSC's outreach program and operates a hotline and dedicated email address for individuals to request and receive timely Hatch Act advice. In addition, HAU launched its own webinar series tailored to various audiences to address specific Hatch Act topics. You can learn more about the Hatch Act's prohibitions by watching [these](#) short videos.

For more information on filing a complaint or making a disclosure: 202-804-7000, 800-872-9855, or submit a question at info@osc.gov.

Please note that OSC may not provide advice regarding merit of a complaint or whether the allegation meets the statutory definitions.

Updated and detailed information on OSC and its procedures can be found on OSC's website at <https://osc.gov>.

For information about training and the 2302c Certification Program please contact OSC's Outreach Unit via email at certification@osc.gov.



KNOW YOUR RIGHTS WHEN REPORTING WRONGS

Whistleblower disclosures can save lives as well as billions of taxpayer dollars. They play a critical role in keeping our government honest, efficient and accountable. Recognizing that whistleblowers root out waste, fraud and abuse, and protect public health and safety, federal laws strongly encourage employees to disclose wrongdoing. Federal laws also protect federal employees from retaliation.

The U.S. Office of Special Counsel (OSC) plays an important role in helping whistleblowers. OSC is an independent agency that protects federal employees from prohibited personnel practices (PPPs), including whistleblower retaliation and unlawful hiring practices, such as nepotism. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies. This guide provides a summary of whistleblower protections and avenues available to employees to disclose wrongdoing. For more information, please visit OSC's website at www.osc.gov.

Disclosures of Wrongdoing

Where can I report wrongdoing?

Current and former federal employees and applicants (henceforth "federal employees") can report on any of the following types of wrongdoing:

- a violation of any law, rule, or regulation,
- gross mismanagement,
- a gross waste of funds,
- an abuse of authority,
- a substantial and specific danger to public health or safety, or
- censorship related to scientific research if censorship meets one of the above-listed categories.

Federal employees have many options on where to disclose wrongdoing, including but not limited to, making disclosures to supervisors or someone higher up in management; the agency's Inspector General (IG); OSC; or, Congress. For whistleblower disclosures involving classified national security information or other information protected from public release by law (e.g. patient privacy information), whistleblowers must use confidential channels such as an IG, OSC, or Congress in order to be protected from adverse personnel actions related to their disclosures.

Can probationary employees file disclosures or PPP complaints with OSC?

Yes. Probationary employees have the same right to file disclosures or PPP complaints with OSC as do most current federal employees, former federal employees, or applicants for federal employment. Note – except for appeals alleging retaliation for whistleblowing or engaging in protected activity, probationary employees generally do not have the right to appeal personnel actions to the Merit Systems Protection Board (MSPB).

Can I keep my identity confidential?

Yes. Most Inspectors General have hotlines that allow employees to make confidential disclosures. Inspectors General are prohibited from disclosing an employee's identity unless the IG determines that disclosure is unavoidable or is compelled by a court order. If you file a disclosure with OSC, your identity will not be shared outside of OSC without your consent. However, OSC may disclose your identity only if OSC determines that it is necessary because of an imminent danger to public health or safety or an imminent violation of any criminal law.

What will OSC do once I make a disclosure?

When a federal employee discloses wrongdoing to OSC, OSC evaluates the information and interviews the federal employee. OSC determines whether it is substantially likely that the employee's allegation – or any portion of it – can be proven and whether it discloses a violation of a law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. If it meets that standard, OSC will require the agency to investigate and submit a report of the agency's findings to OSC. The whistleblower then has an opportunity to comment on the agency report. Those comments, together with any comments or recommendations by the Special Counsel, are sent with the agency report to the President and congressional oversight committees. The agency report is usually made available to the public.

Prohibited Personnel Practices

Are whistleblowers protected from retaliation?

Yes. The Civil Service Reform Act and whistleblower protection laws prohibits retaliation. Retaliation for whistleblowing is one of fourteen [PPPs](#). Protection from whistleblower retaliation means it is unlawful for agencies to take, threaten to take, or fail to take a personnel action because the employee disclosed one or more of the six categories of government wrongdoing (listed on page 1). Personnel actions can include actions such as poor performance reviews, demotions, suspensions, or terminations. As noted above, probationary employees have the right to file PPP complaints with OSC.

However, disclosures of information specifically prohibited by law or required by Executive Order to be kept secret are protected only when made to an OIG, OSC, or certain individuals within Congress. Additionally, federal law establishes that a federal employee has the right to communicate with and provide information to Congress.

OSC also has jurisdiction to protect federal employees at most agencies from retaliation for filing an appeal, complaint, or grievance; helping someone else file or testifying on their behalf; cooperating with or disclosing information to the Special Counsel, an Inspector General, or a component responsible for internal investigations/reviews; or, refusing to obey an order that violates a law, rule or regulation.

What can you do if you believe retaliation occurred?

If you believe that an agency has retaliated against you because of your whistleblowing or because you engaged in protected activity such as disclosing information to an Inspector General, you can:

- file a complaint with OSC, which may seek corrective or disciplinary action when warranted;
- file a union grievance; or
- if you have been subject to a significant personnel action, you can file an appeal with the MSPB (www.mspb.gov) and assert retaliation (or any other PPP) as a defense.

Note that a federal employee may choose only one of these three options when appealing a significant personnel action.

What relief is available to an employee who has suffered retaliation?

Many forms of relief are available. They include job restoration, reversal of suspensions and other adverse actions, back pay, reasonable and foreseeable consequential damages, such as medical costs, attorney fees, and compensatory damages. In addition, damages may be awarded for attorney fees and expenses incurred due to retaliation.

Can OSC delay a personnel action while the matter is investigated?

Yes. An individual may ask OSC to delay, or “stay,” an adverse personnel action pending an investigation. OSC will consider requesting a delay of a personnel action if OSC has reasonable grounds to believe that a prohibited personnel action was taken and, absent a stay, the employee will be subjected to immediate and substantial harm, such as removal, suspension for more than 14 days, or geographic reassignment.

How can OSC remedy a prohibited personnel practice?

Federal employees may report suspected PPPs to OSC. Their complaint will be investigated. If there is sufficient evidence to prove a violation, OSC can seek corrective action, disciplinary action, or both. Alternatively, parties in selected cases may agree to mediate their dispute in order to reach a mutually agreeable resolution of the complaint. OSC may attempt to resolve a case with an agency at any stage. If an agency refuses to provide corrective action, then OSC can take the case to the MSPB. The MSPB can order the agency to take corrective action. Such litigation begins with the filing of a petition by OSC that alleges there are reasonable grounds to believe a PPP occurred, is occurring, or is imminent.

Can a manager be held accountable for retaliating against a federal employee?

Yes. OSC may seek disciplinary action against any employee who commits a PPP. If an agency fails to take disciplinary action, then OSC can bring a disciplinary action case to the MSPB against the employee who committed the PPP. If the MSPB finds that an individual has committed a PPP, it can order disciplinary action, including removal, reduction in grade, debarment from federal employment for up to five years, suspension, reprimand, or a fine of up to \$1,000. Additionally, new statutory provisions impose a mandatory proposed penalty for supervisors that commit violations of 5 U.S.C. § 2302(b)(8), (b)(9), or (b)(14).

Can appeals of PPP complaints be filed with the MSPB?

Retaliation Claims – Individual Right of Action (IRA) Appeals

Under some circumstances, employees may file appeals of PPP complaints with the MSPB. Employees may file what is called an IRA appeal with the MSPB for any personnel action taken, not taken, or threatened because of retaliation for whistleblowing or for engaging in protected

activity, such as filing an Office of Inspector General complaint. More information on the right to file an IRA may be found at [5 U.S.C. § 1221\(a\)](#). However, before filing an IRA appeal with the MSPB, employees must file a retaliation PPP complaint with OSC, requesting an investigation.

Can other types of appeals involving PPPs be filed with the MSPB?

Appeals of Significant Adverse Actions – Affirmative Defense

Yes. Employees may raise one or more of the 14 PPPs as a defense to a significant adverse action with the MSPB. However, the employee must elect whether to file a PPP complaint with OSC, file an appeal of the significant adverse action with the MSPB, or file a grievance with the union. The list of significant adverse actions may be found at [5 C.F.R. § 1201.3](#). If the employee elects to raise a PPP as a defense to a significant adverse action with the MSPB, such an appeal is called an “affirmative defense” to the agency’s personnel action and the MSPB will determine if the action that was taken was based on any of the 14 PPPs described in section 2302(b) of Title 5 of the U.S. Code.

For more information on MSPB appeal rights, go to www.mspb.gov.

*For more information on PPPs, including retaliation, go to www.osc.gov/ppp.
To learn more about filing a whistleblower disclosure with OSC, go to www.osc.gov/disclose.
To file a PPP complaint or whistleblower disclosure with OSC, go to www.osc.gov/efile.*

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