

U.S. Office of Special Counsel

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 whistleblowers from retaliation.

The U.S. Office of Special Counsel (OSC) plays an important role in helping whistleblowers. OSC is an independent agency. OSC protects federal employees from “prohibited personnel practices,” including whistle-blower 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.

Where can I report wrongdoing?

Federal employees have many options to disclose wrongdoing. They can:

- tell a supervisor or someone higher up in management;
- report the issue to their agency’s Office of Inspector General (OIG); or
- file a complaint with OSC.

Current and former federal employees and applicants can confidentially report information to an OIG or OSC about any of the following types of wrongdoing:

- a violation of any law, rule, or regulation,
- mismanagement,
- a gross waste of funds,
- an abuse of authority, or
- a substantial and specific danger to public health or safety.

OSC protects federal employees who make disclosures to OSC or an OIG from retaliation.

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. 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, 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.

Are whistleblowers protected from retaliation?

Yes. The Whistleblower Protection Act prohibits retaliation. This means it is unlawful for agencies to take or threaten to take a personnel action against an employee because he or she disclosed wrongdoing. Personnel actions can include poor performance review, demotion, suspension or termination. In addition, the law prohibits 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 or an Inspector General; or refusing to obey an unlawful order.

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 or OSC.

Are disclosures to Congress protected?

Yes. Federal law establishes that a federal employee has the right to communicate with and provide information to the United States Congress.

What can you do if you believe whistleblower retaliation occurred?

If you believe that an agency has retaliated against you because of your whistleblowing, you can:

- file a complaint with OSC, which may seek corrective 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 Merit Systems Protection Board (www.mspb.gov) and assert whistleblower retaliation as a defense.

Note that an 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 for whistleblowing?

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 the 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.

How can the OSC remedy a prohibited personnel practice?

Current and former federal employees and applicants for federal employment may report suspected prohibited personnel practices 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, alleging that there are reasonable grounds to believe that a prohibited personnel practice occurred, is occurring, or is about to occur.

Can a manager be held accountable for retaliating against a whistleblower?

Yes. OSC may seek disciplinary action against any employee who commits a prohibited personnel practice. 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 prohibited personnel practice. If the MSPB finds that an individual has committed a prohibited personnel practice, 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.