

Whistleblower Disclosures

The Whistleblower Protection Act of 1989, updated by the Whistleblower Protection Enhancement Act (WPEA) of 2012, protects Federal employees from reprisal for disclosures of information they reasonably believe evidences:

- Violation of any law, rule, or regulation.
- Gross mismanagement.
- Gross waste of funds.
- Abuse of authority.
- Substantial and specific danger to public health or safety.
- Censorship related to scientific research or analysis (scientific integrity).

An Agency official's threat to take, propose, or not take a personnel action because of protected whistleblowing activities constitutes a prohibited personnel practice. The protection of Federal employee whistleblowers falls within the jurisdiction of the Office of Special Counsel (OSC), an independent agency. At NASA, under certain circumstances, the Office of Inspector General (OIG) may also review these matters.

You are protected if you make a lawful whistleblower disclosure to the OSC, the NASA OIG, or a NASA supervisor or manager. You are also protected if you make such a disclosure to other individuals or organizations, such as a congressional committee or the media, provided that the disclosure is not specifically prohibited by law and the information does not have to be kept secret in the interest of national defense or foreign affairs.

Disclosures Involving Classified Information

A disclosure of waste, fraud, or abuse that includes classified information is not a protected disclosure under the whistleblower laws unless the disclosure is made in accordance with the laws and rules that govern the proper handling and transmission of classified information. For example, you are not protected for disclosing classified information to an unauthorized recipient, even if you reasonably believe the information is evidence of waste, fraud, or abuse. You can make a protected disclosure of classified information to the OIG, but the information may not be transmitted using the OIG's unclassified hotline. **For more information on how to properly provide classified information to the OIG, please contact the OIG's hotline at 1-800-424-9183 or Cedric Campbell, the NASA Whistleblower Protection Coordinator, at 281-244-6122. You may also e-mail him at HQ-OIG-Counsel@mail.nasa.gov.**

The WPEA clarifies that employees are protected even if the disclosures are identified as part of their existing job duties, such as for auditors and safety inspectors. Further, the WPEA:

- Protects disclosures even if made to an individual who participated in the alleged wrongdoing being disclosed.
- Protects disclosures that have been previously made or were known.
- Protects employees regardless of their motive for making the protected disclosure unless the information is disclosed with the knowledge that it is false or with willful disregard for its truth or falsity.
- Protects verbal disclosures or those otherwise not made in writing.
- Protects disclosures without regard to when the reported activity may have occurred.

- Protects Government scientists for disclosures related to the integrity of the scientific process.

Additional Information for Supervisors

The Office of Special Counsel requires that NASA notifies supervisors annually on “how to respond to complaints alleging a violation of whistleblower protections” and has provided the attached PDF file titled “Responding to Employees Alleging Violations of Whistleblower Protections,” to meet this requirement. In addition to the presentation, please note the following key points:

- The training referred to in the presentation is located in SATERN and titled “AG-WHISTLE – Whistleblower Protection Training for Managers and Supervisors.” Supervisors are required to take this course at the start of their supervisory position and then again once in 3-year cycles.
- Employees alleging violations of whistleblower protections may not be familiar with whistleblower law or may not explicitly indicate that they are a whistleblower. Terms such as “whistleblower,” “reprisal,” or “retaliation,” need not be used. If the content of the allegation falls into the area of whistleblower protection, supervisors should treat it as such.
- Anonymity procedures and protections may differ depending on the content of the allegation. If an employee raises an issue about Anonymity please contact the Whistleblower Program Coordinator (see below).
- All employees are authorized and encouraged to disclose wrongdoing and may do so to the OIG without notifying their supervisors or “chain of command.” Supervisors should not discourage an employee’s disclosure regardless of avenue taken.

Points of Contact

For more information on whistleblower protection, you may contact Cedric Campbell, the NASA Whistleblower Protection Coordinator (who also serves as Associate Counsel to the NASA Inspector General) at 1-281-244-6122 or by e-mail at HQ-OIG-Counsel@mail.nasa.gov.

References:

- Additional information about whistleblower protections, to include making protected disclosures and filing claims of reprisal for whistleblowing activities, can be accessed on the OSC Web site at: <https://osc.gov/>.
- A course in the System for Administration, Training, and Educational Resources for NASA (SATERN), “Whistleblower Protection Training for Managers and Supervisors,” is available to **all** NASA employees. To locate the course:
 - Go to <https://satern.nasa.gov>, then click the **Launch SATERN** button.
 - In the **Find Learning** tile search field, type **Whistleblower Protection Training for Managers and Supervisors**.
 - Click the **Go** button.
- For more information on your rights, refer to the attached OSC file titled “Know Your Rights When Reporting Wrongs.”
- Whistleblower Protection Enhancement Act (WPEA):
<https://www.congress.gov/112/bills/s743/BILLS-112s743enr.pdf>

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- OIG's Whistleblower Protection Coordinator page, which can be found at: <https://oig.nasa.gov/>. At the bottom of the page under the **Contact NASA OIG** section, click the **Whistleblower Protection Ombudsman (or Coordinator)** link. Or you can use this direct link <https://oig.nasa.gov/whistleblower.html>.

For questions concerning this notice, contact:
NASA Shared Services Center (NSSC) Customer Contact Center
1-877-677-2123 (1-877-NSSC123) or nssc-contactcenter@nasa.gov

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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.*

U.S. Office of Special Counsel

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Rev. 03/19

Annual Training for Supervisors



Responding to Employees Alleging Violations of Whistleblower Protections

★ *New Requirements* ★

PUB. L. Nos. 115-73 (Oct. 26, 2017), 115-91 (December 12, 2017)

U.S. OFFICE OF SPECIAL COUNSEL
DIVERSITY, OUTREACH, AND TRAINING
CERTIFICATION PROGRAM

Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017

P.L. 115-73 (10/26/2017)



The head of each agency shall provide training, in consultation with the Office of Special Counsel and the Office of the Inspector General, to supervisors on how to respond to complaints alleging a violation of whistleblower protections.¹ This training shall be provided—

- to employees appointed to *supervisory positions* in the agency who have not previously served as a supervisor; and
- on an annual basis, to all employees of the agency serving in a *supervisory position*.

¹ Whistleblower protections are defined as retaliation for whistleblowing and retaliation for engaging in protected activity under 5 U.S.C. § 2302(b)(8) and (b)(9).

How to Respond



Overview of Statutory Obligations (See whistleblower protection criteria)

- Respond constructively when employees disclose government wrongdoing or allege retaliation; (See slides 8-9)
- Provide information on the rights and remedies available to employees alleging retaliation; (See slide 10) and
- Foster an environment where employees feel comfortable disclosing wrongdoing or alleging retaliation. (See slides 11-12)

Alleging Retaliation



Supervisors may not take, fail to take, or threaten to take or fail to take a personnel action for:

- Protected whistleblowing (i.e., disclosing wrongdoing) – statutory categories listed on slide 5
- Protected activity – statutory activities listed on slide 6

Whistleblowing Categories



In general, employees must have a “reasonable belief” that they are disclosing information in one or more of the following categories:

- Violation of any law, rule, or regulation
- Gross mismanagement: substantial risk of significant impact on mission
- Gross waste of funds: more than debatable expenditure
- Abuse of authority
- Substantial & specific danger to public health or safety
- Censorship related to scientific research or analysis (scientific integrity)

Note: Supervisory training on the prohibited personnel practices (required every three years) provides detailed information on retaliation and explains that “whistleblowing” (i.e., making protected disclosures) is only one of the four required elements in a whistleblower retaliation claim.

Protected Activity



Protected activity includes:

- Exercise of appeal, complaint, or grievance rights
- Testimony or other assistance to person exercising such rights
- Cooperation with or disclosures to Special Counsel, Inspector General, or component responsible for internal investigation or review
- Refusal to obey an order that would require violation of law, rule, or regulation



SUGGESTIONS FOR SUPERVISORS

Respond to Employees Alleging Retaliation or Disclosing Wrongdoing



- Stay open and receptive to employee's disclosures of wrongdoing even if the disclosures do not appear to meet the legal definition of whistleblowing
- Find out what the employee is trying to accomplish with the disclosure of wrongdoing (e.g., requesting an investigation of the disclosure or filing a complaint of retaliation)
- Determine whether the employee wants to remain anonymous and familiarize yourself with agency policies covering anonymity (i.e., do not promise an employee that you will keep their identity secret if it is not possible under your agency's policies)

Respond to Employees Alleging Retaliation or Disclosing Wrongdoing (cont.)



- Even if you disagree with the content of the disclosure of wrongdoing or the facts of the alleged retaliation, ensure that you do not allow your disagreement to affect your personnel decisions
- Do not take action against an employee for disclosing wrongdoing “outside the chain of command” or for disclosing the information in violation of a rule, regulation or policy
- If the employee is attempting to reveal *classified information* or information *prohibited from release by law*, inform the employee that their right to disclose such information is limited to the following entities: the Office of Special Counsel (OSC), the Office of Inspector General (OIG), and/or other appropriate authorities within the agency or Congress

Provide Information to Employees Alleging Retaliation or Disclosing Wrongdoing



- Most importantly, inform the employee of their right to disclose government wrongdoing or allege retaliation
- If the employee alleges retaliation, inform the employee of their right to file such claims with the Office of Special Counsel, the Office of Inspector General (OIG), the OIG Whistleblower Protection Coordinator, and/or any other office within the agency that may review such allegations
- If the employee is requesting an investigation of the alleged wrongdoing, there may be concerns with the supervisor conducting such investigations
- Supervisors should, however, alert the appropriate agency investigative authority if, for instance, the employee discloses a danger to public health or safety or any other imminent harm

Foster an Environment Where Employees Feel Comfortable Alleging Retaliation or Disclosing Wrongdoing



For example:

- Remind employees of their right to engage in whistleblowing, e.g., through periodic emails or at staff meetings, and stress your goal of creating/maintaining a workplace free from retaliation
- Remember protected disclosures of government wrongdoing (those not prohibited by law or classified) may be made to *anyone*, including outside of the agency, and employees are not required to follow a chain of command
- Provide in-person training to staff, e.g., OSC expert training ([OSC speaker request form](#))

Foster an Environment Where Employees Feel Comfortable Alleging Retaliation or Disclosing Wrongdoing (cont.)



For example:

- Provide employees with an anonymous suggestion box
- Highlight that whistleblowing may lead to innovation or modification of practices
- Publicize an example in which a whistleblower's disclosure of wrongdoing led to better practices
- Be receptive to differing points of view and encourage employees to share their dissenting opinions

Guide for Supervisors

Tip: Print this slide for reference!

Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 & Special Counsel Reauthorization Act of 2017

P.L. 115-91 (12/12/2017)



The following points will assist supervisors with meeting the new supervisory whistleblower criteria as well as the new supervisory obligation to respond to allegations of retaliation:

- Inform the employee of their right to disclose government wrongdoing or allege retaliation to several entities (depending upon the agency), including but not limited to, OSC and/or the appropriate OIG.
- Advise the employee of the various avenues to report the government wrongdoing or file a complaint of retaliation.
- Provide information on your agency's confidentiality policies.
- Alert the appropriate agency investigative authority if, for instance, an employee discloses a danger to public health or safety.



OSC phone / email contacts



Case Review Division:	(202) 804-7000 (800) 872-9855 info@osc.gov
Disclosure Unit:	(202) 804-7000 (800) 872-9855 info@osc.gov
Hatch Act Unit:	(202) 804-7002 (800) 85-hatch hatchact@osc.gov
Website:	osc.gov [complaint forms/e-file]
Speaker Requests & Certification Program:	(202) 804-7163 certification@osc.gov