Your Rights
When Reporting Wrongs

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

What is the U.S. Office of Special Counsel (OSC)?

OSC is an independent federal agency that protects current federal employees, former federal employees, and applicants for federal employment from prohibited personnel practices (PPPs), including whistleblower retaliation and unlawful hiring practices. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies. This guide provides a summary of the avenues available to disclose wrongdoing and the protections afforded to whistleblowers. For more information, please visit OSC's website at https://osc.gov.

--Disclosures of Wrongdoing--

Why Should You Make a Disclosure to OSC?

Whistleblowers play a vital role in keeping our government honest, efficient, and accountable. Whistleblower disclosures can save lives and billions of taxpayer dollars. 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.

Disclosure Categories

Current federal employees, former employees, and applicants for federal employment can report on any of the following six 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 integrity or research if censorship falls into one of the other categories of wrongdoing.**

Protected disclosures may be made to numerous entities including, but not limited to, supervisors; senior leaders; the agency's Inspector General (IG); OSC; Congress; or outside the agency. For disclosures involving classified national security information or other information protected from public release by law, individuals **must use** confidential channels such as an IG or OSC to be protected from personnel actions related to their disclosures. Also, certain Members of Congress are authorized to receive disclosures of classified information.

What Happens After You Make a Disclosure to OSC?

Federal law establishes a unique process for disclosures made to OSC. This process is intended to protect the confidentiality of the whistleblower and ensure that the alleged wrongdoing is investigated and, where necessary, corrected. In brief, when a whistleblower disclosure is filed with OSC:

1. You are interviewed by OSC staff to determine whether there is a "substantial likelihood" that the allegation occurred. *The statute requires that the substantial likelihood determination be made in 45 days*;
2. The Special Counsel then may require an agency head to investigate and report on the disclosure. You, the whistleblower, have a statutory right to review and comment on the agency report of investigation;
3. After the investigation, the Special Counsel sends the agency's report, the whistleblower's comments, and the Special Counsel's determination as to the completeness and apparent reasonableness of the agency report and any corrective action, to the President and congressional oversight committees; and
4. The information transmitted to the President is made public on OSC's website.

OSC does not have independent investigative authority in these cases. However, Congress has given OSC an important oversight role in reviewing government investigations of potential wrongdoing.

--Prohibited Personnel Practices--

Are Whistleblowers Protected from Retaliation?

Yes. The Civil Service Reform Act and whistleblower protection laws prohibit retaliation. It is unlawful for an agency to take, fail to take, or threaten (to take or fail to take) a personnel action because of a disclosure of any one of the six categories of government wrongdoing listed on page 1 of this handout. Personnel actions can include actions such as poor performance reviews, demotions, suspensions, or terminations.

OSC also has jurisdiction to protect current federal employees, former employees, and applicants for employment from retaliation for engaging in protected activity. Protected activity means 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 IG, 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 That Retaliation Occurred?

If you believe that an agency has retaliated against you because of a protected disclosure or because you engaged in protected activity, you can:

- **File a complaint with OSC, which may seek corrective or disciplinary action when warranted;**
- **File a complaint with the IG;**
- **File a union grievance; or**
- **If you have been subject to a personnel action that is directly appealable to the Merit Systems Protection Board (MSPB) (e.g., removal, reduction in grade or pay, suspension for more than 14 days), you can file an appeal with the MSPB at www.mspb.gov and assert retaliation (or any other PPP) as a defense.**

Can OSC Delay a Personnel Action While the Matter is Investigated?

Yes. You may ask OSC to delay, or "stay," a personnel action pending an investigation. OSC will consider requesting a delay of a personnel action if OSC has reasonable grounds to believe that the personnel action that was taken or will be taken constitutes a PPP and, absent a stay, you will be subjected to immediate and substantial harm, such as removal, suspension for more than 14 days, or geographic reassignment. OSC's policy statement on stays of personnel actions can be found here.

How Can OSC Remedy a Prohibited Personnel Practice?

You may report suspected PPPs to OSC. Your complaint will be investigated. If there is sufficient evidence to prove a violation, OSC can seek corrective action. Corrective action may 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.

Parties in selected cases may agree to mediate their dispute 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 PPP occurred, is occurring, or is imminent.

Can a Federal Manager be Held Accountable for Retaliation?

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).

--MSPB Appeals--

Retaliation Claims: Individual Right of Action (IRA) Appeals

Under some circumstances, you may file appeals of PPP complaints with the MSPB. An IRA is a complaint filed with the MSPB where the individual alleges that a personnel action was taken, not taken, or threatened in retaliation for making protected disclosures or for engaging in protected activity, such as filing an IG complaint. Before filing an IRA appeal with the MSPB, employees must file a retaliation PPP complaint with OSC, requesting an investigation. More information on the right to file an IRA may be found at 5 U.S.C. § 1221(a) and here.

Can I Raise a PPP as an Affirmative Defense When Appealing an Adverse Action?

Yes. You may raise one or more of the 14 PPPs as a defense to an adverse action with the MSPB. However, you must elect whether to file a PPP complaint with OSC, file an appeal of the adverse action with the MSPB, or file a grievance with the union. 5 U.S.C. § 7121(g). The list of adverse actions may be found at 5 C.F.R. § 1201.3. If you elect to raise a PPP as a defense to an 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 5 U.S.C. § 2302(b).

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