



U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505

## OSC's Enforcement of the Anti-Gag Order Provision in Whistleblower Law

**FOR IMMEDIATE RELEASE**

**CONTACT: Nick Schwellenbach, (202) 254-3631; [nschwellenbach@osc.gov](mailto:nschwellenbach@osc.gov)**

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The U.S. Office of Special Counsel (OSC) is releasing information on its enforcement of the anti-gag order provision in the Whistleblower Protection Enhancement Act (WPEA). The WPEA, passed unanimously in both the House and Senate in 2012, strengthened anti-retaliation protections for federal workers. Under the anti-gag provision, agencies cannot impose nondisclosure agreements and policies that fail to include required language that informs employees that their statutory right to blow the whistle supersedes the terms and conditions of the nondisclosure agreement or policy. (5 U.S.C. § 2302(b)(13)).

Without the WPEA's required language, federal employees may erroneously believe that a nondisclosure policy, form, or agreement nullifies their whistleblower rights. OSC issued [guidance](#) to agencies on the anti-gag provision in March 2013.

To date, OSC has obtained 33 corrective actions addressing violations of the anti-gag provision. Typically, these corrective actions require agency management to revise their communication to employees to include language explicitly stating that employees have the right to blow the whistle.

Some examples:

- A supervisor in the Department of Homeland Security's (DHS) Office of Professional Responsibility (OPR) emailed his staff and directed them not to communicate with Inspector General auditors, stating that "We need to have one voice." After OSC informed DHS that this communication constituted a nondisclosure policy in violation of the WPEA, DHS OPR issued a revised email with the required WPEA language, and clarifying that OPR employees have a right to communicate directly with the Inspector General.
- A high-level engineer at the Energy Department's Hanford Site disclosed that a contractor's shoddy work created a significant threat to public health and substantial cost overruns. He also disclosed inadequate Energy Department oversight of that contractor. During OSC's investigation, OSC learned that employees on certain projects were being forced to sign nondisclosure agreements, many of which lacked the required WPEA language. After OSC's intervention, the Energy Department agreed to communicate the required information to all employees who were subject to nondisclosure agreements, providing clear notice to employees of their right to continue to disclose evidence of waste, fraud, and abuse. The engineer and other whistleblowers separately filed a False Claim Act lawsuit against several Energy Department contractors; the Justice Department joined their lawsuit, and the contractors [settled](#) for \$125 million in November 2016.
- Two police officers with the Federal Emergency Management Agency (FEMA) disclosed alleged misconduct by a supervisor to a Justice Department investigator. FEMA disciplined both officers based on a FEMA directive, which prohibited employees from disclosing information related to certain types of misconduct to any individual or office other than the DHS Inspector General. OSC found that this directive violated the WPEA's nondisclosure provision, and FEMA agreed to revise it. OSC was also able to reverse the FEMA's discipline against the officers and protect the employees from further retaliation.

OSC provides training to federal agencies on the anti-gag provision, as well as other prohibited personnel practices, as part of its required [2302\(c\) certification program](#). For example, one prohibited personnel practice explicitly shields employees for blowing the whistle on any effort to "distort, misrepresent, suppress" or otherwise censor any government "research, analysis, or technical information" that the employee reasonably believes could, among other

things, pose a substantial and significant threat to public health or safety or constitute a violation of law, rule, or regulation. (5 USC § 2302(b)(8)).

The WPEA's anti-gag provision is based on an amendment that Senator Charles Grassley (R-IA) has added to appropriations laws since the late 1980s. The amendment bars federal agencies from spending taxpayer funds to implement or enforce any nondisclosure agreement that does not inform employees of their rights and responsibilities under the whistleblower law.

"The federal government must foster an environment where employee disclosures are welcomed. This makes our government work better and protects taxpayer dollars through disclosures of waste, fraud, and abuse. Nondisclosure agreements and policies can chill would-be whistleblowers from coming forward. These orders must clearly state that federal employees have a right to make disclosures of wrongdoing," said Special Counsel Carolyn Lerner.

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*The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at [www.osc.gov](http://www.osc.gov).*