

OSC Issues Guidance to Agencies on Implementing New Whistleblower Protections, Updates Prior Guidance on Non-disclosure and Employee Communications Monitoring Policies

FOR IMMEDIATE RELEASE

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WASHINGTON, D.C./February 1, 2018 – The U.S. Office of Special Counsel (OSC) today issued guidance to federal agencies on implementing newly enacted whistleblower protections, including the new prohibition against accessing employee medical records in furtherance of any prohibited personnel practice, including retaliation for whistleblowing. OSC, under Special Counsel Henry J. Kerner, also updated two previously issued memoranda, one on agency policies involving the monitoring of employees' communications and whistleblower disclosures, and another on agency non-disclosure policies, forms, or agreements, to ensure that agencies do not interfere with protected whistleblowing.

“The new measures enacted by Congress and signed by the President fill gaps in current protections and enhance accountability for whistleblower retaliation,” Kerner said. “Protecting whistleblowers and increasing accountability for retaliation promote good government and the responsible use of tax dollars. OSC is ready and available to help agencies fulfill their whistleblower obligations.”

The first memorandum reminds agencies of their requirement to modify and enact training and education provisions on prohibited personnel practices, including whistleblower retaliation, and establish new disciplinary requirements. These new requirements are the result of two pieces of legislation President Trump signed into law at the end of 2017: the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, and the OSC Reauthorization Act of 2017.

The Kirkpatrick Act makes it a prohibited personnel practice to access an employee's medical records in furtherance of whistleblower retaliation. Additionally, it establishes mandatory disciplinary penalties for supervisors who engage in whistleblower retaliation. It also enhances agencies' obligations to provide information to employees on whistleblower protections. New supervisors are now also required to receive training on responding to whistleblower retaliation complaints, increasing awareness of whistleblower protections. The measure is named for a clinical psychologist who blew the whistle on unsafe practices at a Department of Veterans Affairs medical center and tragically committed suicide after the agency fired him for whistleblowing.

The second memorandum urges departments and agencies to ensure that their non-disclosure policies, forms, and agreements conform to statutory requirements on protected whistleblowing. The third memorandum aims to ensure that their policies and practices on monitoring employee email and other communications do not interfere with or chill employees from lawfully disclosing wrongdoing. OSC's guidance should be used to inform agencies' evaluations in both instances.

Federal law requires agency heads, in consultation with OSC, to ensure that “agency employees are informed of the rights and remedies available to them” under civil service and whistleblower protection laws. OSC has certified more than 90 percent of federal agencies under its newly designated 2302(d) Certification Program. The certification steps include: (1) placing informational posters about prohibited personnel practices (PPP) and whistleblower protection laws at agency facilities; (2) providing

information about protections under whistleblower protection laws to new employees as part of the orientation process; (3) providing annual notification to current employees about their rights and remedies under whistleblower protection laws; (4) providing PPP training for supervisors; and (5) posting a link to OSC's website on the agency's website and intranet.

The memoranda issued today are available [here](#), [here](#), and [here](#). OSC also issued a Frequently Asked Questions page regarding the Reauthorization Act's clarification of its intent that OSC not be denied access to privileged agency material in the course of OSC investigations. The FAQ is available [here](#).

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.