



# 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,” 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](http://www.osc.gov).

## 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; 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.

OSC 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 or an Inspector General; or, refusing to obey an unlawful order.

For a list of organizations from which OSC does not have jurisdiction to receive and process complaints, visit OCS's website at [www.osc.gov/Pages/ppp-whocanfile.aspx](http://www.osc.gov/Pages/ppp-whocanfile.aspx).

## 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.

## **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.

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 Congress. Additionally, federal law establishes that a federal employee has the right to communicate with and provide information to Congress.

## **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 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 (MSPB; [www.mspb.gov](http://www.mspb.gov)) and assert retaliation 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 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 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 the OSC remedy a prohibited personnel practice?**

Federal employees may report suspected prohibited personnel practices (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 prohibited personnel practice 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 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. Additionally, new statutory provisions impose a minimum penalty for supervisors that commit violations of 5 U.S.C. § 2302(b)(8), (b)(9), or (b)(14).

*For more information on prohibited personnel practices (PPPs), including retaliation, go to [www.osc.gov/ppp](http://www.osc.gov/ppp). To learn more about filing a whistleblower disclosure with OSC, go to [www.osc.gov/disclose](http://www.osc.gov/disclose). To file a PPP complaint or whistleblower disclosure with OSC, go to [www.osc.gov/efile](http://www.osc.gov/efile).*

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