

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



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