



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

TO: All FLRA Employees
FROM: Rebecca J. Osborne, Director of Legislative Affairs and Program Planning
DATE: November 15, 2024
RE: Whistleblower Protection/Prohibited Personnel Practices

The purpose of this memorandum is to ensure that all Federal Labor Relations Authority (FLRA) employees are aware of, and understand, the prohibited personnel practices and whistleblower protections available to federal employees.

The U.S. Office of Special Counsel (OSC) is an independent agency that protects federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC also provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

The Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 provide the right for all covered federal employees to make whistleblower disclosures and to ensure that employees are protected from whistleblower retaliation. The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and OSC's Reauthorization Act of 2017 further enhanced and reinforced these rights and protections.

Whistleblowing is defined as the disclosure of information that an employee reasonably believes evidences: a violation of any law, rule or regulation; gross mismanagement; gross waste of funds; an abuse authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis. Employees may make lawful disclosures to anyone, including, for example, management officials, the [FLRA's Inspector General](#), and/or [OSC](#).

You will find attached and hyperlinked below two documents prepared by OSC. FLRA employees also receive these two documents in the initial employee orientation materials. The first is the fact sheet, [Your Rights as a Federal Employee](#), which provides detailed information on the fourteen prohibited personnel practices and employees' rights to file complaints with OSC. Additionally, you should review [Your Rights When Reporting Wrongs](#), which describe different avenues for making whistleblower disclosures as federal employees. More information can also be found on the [OSC website](#).

Employees should also be aware of posters the OSC has created to inform employees of their rights and responsibilities. They are:

"Whistleblower Channel": Describes the secure channel that current federal employees, former employees, and applicants for federal employment may use to disclose: a violation of any law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; of censorship related to scientific research (if the censorship meets one of the other categories of wrongdoing).

"Whistleblower Retaliation": Answers the question of, "What is whistleblower retaliation?" Reminds employees that they may not take, fail to take, or threaten to take any personnel action against an employee because of protected whistleblowing.

"Prohibited Personnel Practices" (PPPs): Lists the 14 prohibited personnel practices, including: whistleblower retaliation; discrimination for engaging in conduct unrelated to work performance, such as discrimination based on gender identity or sexual orientation; and hiring and promotion offenses that offend the merit system. 5 U.S.C. § 2302(b)(1)- (b)(14).

Materials describing permitted and prohibited activities under the Hatch Act, including:

- [The Hatch Act: Permitted and Prohibited Activities for Most Federal Employees](#)
- [The Hatch Act and Further Restricted Employees](#)
- [The Hatch Act and State, D.C., and Local Employees](#)
- [The Hatch Act Social Media Use Refresher](#)

Federal employees have the right to be free from prohibited personnel practices, including retaliation for whistleblowing. The FLRA is committed to making sure that all employees are aware of their rights as well as the safeguards that are in place to protect them. If you have any questions regarding this notice, please contact the Office of Legislative Affairs and Program Planning at 771-444-5778 or email your questions to: olapp@flra.gov. You can also visit the OSC website at: <https://osc.gov/Services/>.

Attachments



Your Rights as a Federal Employee

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

Prohibited Personnel Practices

Prohibited personnel practices (PPPs) are employment-related activities that are banned in the federal workforce because they violate the merit system through some form of employment discrimination, whistleblower retaliation, improper hiring practices, or failure to adhere to laws, rules, or regulations that directly concern the merit system principles. Under 5 U.S.C. § 2302(b)(1)-(b)(14) a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

Discriminate (including discrimination based on marital status and political affiliation).

Ex: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is single. **NOTE:** OSC does not generally investigate Title VII discrimination. 5 U.S.C. § 2302(b)(1)

Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.

Ex: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent. 5 U.S.C. § 2302(b)(2)

Coerce the political activity of any person or take action against any employee as reprisal for refusing to engage in political activity.

Ex: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate. 5 U.S.C. § 2302(b)(3)

Deceive or willfully obstruct any person from competing for employment.

Ex: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get hired for a job in Headquarters. 5 U.S.C. § 2302(b)(4)

Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.

Ex: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified. 5 U.S.C. § 2302(b)(5)

Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.

Ex: Supervisor Jane specifies that Spanish-speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills. 5 U.S.C. § 2302(b)(6)

Engage in nepotism: Ex: Second-level Supervisor Jane asks First-level Supervisor Joe to hire or promote her son. Supervisor Denise serves as the first-line supervisor for her uncle Anthony. 5 U.S.C. § 2302(b)(7)

Take, fail to take, or threaten (to take or fail to take) a personnel action against an employee for making protected disclosures.

Ex: Supervisor Joe directs the geographic reassignment of Employee Jill after Jill reported a gross waste of funds to the Office of Internal Affairs. 5 U.S.C. § 2302(b)(8)

Take, fail to take, or threaten (to take or fail to take) a personnel action against an employee for engaging in protected activity.

Ex: Supervisor Jack terminates Employee John after learning that John reported a gross waste of funds to the Office of Inspector General; or for refusing to obey an order that would require John to violate agency regulations. 5 U.S.C. § 2302(b)(9)

Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee.

Ex: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting. 5 U.S.C. § 2302(b)(10)

Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.

Ex: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. **NOTE:** OSC's jurisdiction is limited to disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions. *5 U.S.C. § 2302(b)(11)*

Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle.

Ex: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First amendment rights, a law implementing a merit system principle. *5 U.S.C. § 2302(b)(12)*

Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights.

Ex: A manager Issues a policy to all employees in his program that prohibits the employees from discussing the program in any way and fails to notify employees of protected channels for making disclosures. *5 U.S.C. § 2302(b)(13)*

Access the medical record of an employee or applicant, as part of, or in furtherance of any of the above-listed prohibitions.

Ex: An employee expresses interest in an open position to a hiring official, who wants to hire another applicant. The hiring official accesses the employee's medical records provided under a reasonable accommodation (RA) request and attempts to influence the employee to withdraw from competition by telling her that the stress of the new position will worsen a medical condition noted in her RA medical records. *5 U.S.C. § 2302(b)(14)*

WHAT CAN YOU DO IF YOU BELIEVE THAT A PPP HAS BEEN COMMITTED?

OSC is an investigative and prosecutorial agency. Current and former federal employees, including probationary employees, and applicants for federal employment can submit a complaint electronically to OSC at <https://osc.gov>. OSC will review the allegations to determine jurisdiction and investigate allegations of prohibited personnel practices. In complaints where OSC finds a violation, OSC has the authority to seek corrective and/or disciplinary action and/or file complaints with the Merit System Protection Board, where appropriate. 5 U.S.C. section 1212 and section 2302(b)(1)-(b)(14). You can learn more about prohibited personnel practices by watching [these](#) short videos.

WHAT CAN YOU DO IF YOU WANT TO REPORT GOVERNMENT WRONGDOING?

Current and former federal employees and applicants can confidentially report information evidencing a violation of any 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. OSC has the authority to require the head of the agency concerned to investigate the matter. While OSC does not have independent investigative authority in these cases, Congress has given OSC an important oversight role in reviewing government investigations of potential wrongdoing.

HOW DOES OSC ENFORCE THE HATCH ACT?

The Hatch Act Unit (HAU) enforces compliance with the Hatch Act, which limits certain political activities of federal executive branch employees. All employees, except for the President and Vice President, are prohibited from: (1) using their official authority or influence to affect the result of an election; (2) soliciting, accepting, or receiving political contributions from any person; (3) being candidates in partisan elections; (4) soliciting or discouraging the political activity of persons with business pending before their employing office; and (5) engaging in political activity while on duty or in the federal workplace. *See 5 U.S.C. §§ 7323-7324.* HAU investigates complaints to determine whether a Hatch Act violation has occurred. In cases where HAU concludes that an employee has violated this law, it will either issue a warning letter or seek disciplinary action by negotiating a settlement or prosecuting the case before the Merit Systems Protection Board. HAU also is responsible for a nation-wide program that provides federal, state, and local employees, as well as the public at large, with legal advice on the Hatch Act, enabling individuals to determine their coverage under the Act and whether their contemplated activities are permitted under the Act. To further its advisory and enforcement role, HAU is very active in OSC's outreach program and operates a hotline and dedicated email address for individuals to request and receive timely Hatch Act advice. In addition, HAU launched its own webinar series tailored to various audiences to address specific Hatch Act topics. You can learn more about the Hatch Act's prohibitions by watching [these](#) short videos.

For more information on filing a complaint or making a disclosure: 202-804-7000, 800-872-9855, or submit a question at info@osc.gov.

Please note that OSC may not provide advice regarding merit of a complaint or whether the allegation meets the statutory definitions.

Updated and detailed information on OSC and its procedures can be found on OSC's website at <https://osc.gov>.

For information about training and the 2302c Certification Program please contact OSC's Outreach Unit via email at certification@osc.gov.

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 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.

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