U.S. Office of Special Counsel (OSC)

Information Sheet

Retaliation for Engaging in Protected Activity – 5 U.S.C. § 2302(b)(9)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(9)**. This document does not serve as legal advice and should not be cited as legal authority. Rather, the statute and current case law control with respect to matters discussed here.

WHAT IS 2302(b)(9)?

Section 2302(b)(9) prohibits an official with the authority to take or influence a personnel action from taking or failing to take, or threatening to take or fail to take, a personnel action with respect to any employee or applicant for employment for engaging in any of the following protected activity:

1. Filing a complaint, grievance, or appeal;
2. Testifying for or helping someone else with these activities;
3. Cooperating with or disclosing information to OSC, an Inspector General (IG), or any other agency component responsible for internal investigation or review; or
4. Refusing to obey an order that would require the individual to violate a law, rule, or regulation.

WHAT IS PROHIBITED?

Depending on the particular facts, the following may violate section 2302(b)(9):

- A supervisor directs the geographic reassignment of an employee after learning that the employee filed a complaint with the IG.
- After cooperating with an OSC investigation, an employee is denied the ability to attend a training that is required for advancement at the agency. The denial blocks the employee from qualifying for an upcoming promotional opportunity.
- After appealing a performance rating that the employee believes was lowered in retaliation for raising concerns about a supervisor's abuse of authority, the employee is removed from a high-profile position and reassigned to a marginal position with vague duties, effectively sidelining them and limiting future advancement.

TIPS AND RECOMMENDATIONS

1. Supervisors should not take complaints or disclosures personally. Supporting the ability of employees to report misconduct and be shielded from retaliation builds trust and protects the integrity of the federal government.
2. Be consistent and objective when managing employee performance and conduct. Apply the same standards to all employees and ensure whistleblowers are treated neutrally, not favorably or unfavorably.
3. Knowledge is your first line of defense! Familiarize yourself with the Whistleblower Protection Act and related laws. OSC provides free training on whistleblower retaliation and the best practices for responding to disclosures of wrongdoing and allegations of retaliation. For free training, please contact certification@osc.gov.