U.S. Office of Special Counsel (OSC)

Information Sheet

Accessing Medical Records – 5 U.S.C. § 2302(b)(14)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(14)**. 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)(14)?

Established by the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, section 2302(b)(14) prohibits an official with the authority to take or influence a personnel action from accessing the medical record of an employee or applicant, as part of, or in furtherance of the prohibited conduct described in sections 2302(b)(1) through (b)(13). An OSC finding that an official violated section 2302(b)(14) triggers a requirement for the agency to propose discipline in accordance with 5 U.S.C. § 7515.

WHAT IS PROHIBITED?

Depending on the particular facts, the following may violate section 2302(b)(14):

- A supervisor accessing an employee's medical records and disclosing information about the employee having an autoimmune disorder to a prospective employer to obstruct the employee's right to compete for employment under section 2302(b)(4).
- An employee takes medical leave under the Family and Medical Leave Act (FMLA) for a serious health condition. A few months after the employee returns from leave, the employee discloses concerns about the supervisor violating federal contracting regulations when awarding contracts. In response, the supervisor accesses the employee's FMLA documentation and reassigns the employee to another position in violation of section 2302(b)(8).

TIPS AND RECOMMENDATIONS

1. Safeguard employee medical information and privacy by training employees on medical confidentiality under the Health Insurance Portability and Accountability Act, the Rehabilitation Act, and the Family Medical Leave Act.
2. Establish clear policies to limit access to medical records to authorized personnel only. For example, as a best practice, supervisors should not be privy to an employee's medical records during the reasonable accommodation (RA) process. Instead, supervisors should rely on the Disability Program Manager or RA Coordinator to assess whether the employee's medical condition qualifies for accommodation, ensuring confidentiality.
3. Ensure that employee medical records are stored securely and kept separate from any supervisory or personnel files.
4. Implement regular audits of access to medical records to ensure that only authorized individuals are accessing sensitive information and there is no abuse or unauthorized access.