U.S. Office of Special Counsel (OSC)

Information Sheet

Nondisclosure Forms, Policies & Agreements – 5 U.S.C. § 2302(b)(13)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(13)**. 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)(13)?

Section 2302(b)(13) prohibits an official with the authority to take or influence a personnel action from implementing or enforcing a non-disclosure form, policy, or agreement that fails to include a specific statutory notice clarifying that the agency (or supervisor's) restrictions are superseded by the employee's statutory whistleblower rights. This provision also bars any form, policy, agreement, email, or other communication that prohibits or restricts protected disclosures or protected activity.

WHAT IS PROHIBITED?

Depending on the particular facts, the following may violate section 2302(b)(13):

- A supervisor requiring all employees in their program to sign a non-disclosure agreement that prohibits the employees from discussing the program and fails to notify employees of their right to make disclosures.
- Chilling whistleblowing by telling employees that contacting the Occupational Health and Safety Administration is like an act of sabotage against the unit and will be punished accordingly.
- Disciplining an employee for failing to follow the chain of command based on the employee making a disclosure during an all-hands meeting.

TIPS AND RECOMMENDATIONS

1) Remind employees of their right to make protected disclosures (those not prohibited by law or classified) and engage in protected activity. Whistleblowers play a vital role in keeping the Federal Government honest and accountable.
2) Remember that protected disclosures may be made to *anyone,* including outside of the agency, and employees are not required to follow the chain of command.
3) Add the following statutory language to any written form, policy, agreement, email, or other communication that includes a nondisclosure provision:

> "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."

4) Remember that supervisory instructions can serve as informal policies. If instructing employees to refrain from disclosing information, the communication must include the statutory section 2302(b)(13) language.

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*.