U.S. Office of Special Counsel (OSC)

Information Sheet

Retaliation for Making a Protected Disclosure – 5 U.S.C. § 2302(b)(8)

PURPOSE

This information sheet provides general guidance and background information on **5 U.S.C. § 2302(b)(8)**. 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)(8)?

Section 2302(b)(8) is a key provision of the Whistleblower Protection Act, prohibiting 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 disclosing information that the employee ***reasonably believes*** evidences:

1. A violation of a law, rule, or regulation;
2. Gross mismanagement;
3. A gross waste of funds;
4. An abuse of authority;
5. A substantial or specific danger to public health or safety; or
6. Censorship related to scientific integrity or research if censorship falls into one of the other categories of wrongdoing.

Protected disclosures may be made to numerous entities including 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 IS PROHIBITED?

Depending on the particular facts, the following may violate section 2302(b)(8):

- Shortly after an employee reports mismanagement of contract funds to their second line supervisor, their first line suspends them for arriving late by a few minutes even though similar infractions by other employees have been routinely ignored.
- After an employee discloses workplace safety violations to agency leadership, their supervisor contacts the hiring official for a promotional opportunity that the employee applied to and provides a negative reference specifically intended to undermine the employee's candidacy.

TIPS AND RECOMMENDATIONS

1. 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.
2. 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.