

# STATE OF COLORADO

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John W. Hickenlooper  
Governor

November 1, 2016

The Honorable Millie Hamner  
Colorado House of Representatives  
200 East Colfax  
Denver, Colorado 80203

The Honorable Michael Foote  
Colorado House of Representatives  
200 East Colfax  
Denver, Colorado 80203

The Honorable Millie Hamner and the Honorable Michael Foote,

As directed by SB 16-056 ("SB 56" or the "Bill"), the Governor convened a working group to examine protections for state employees who disclose confidential information that is the subject of whistleblowing. As required by SB 56, the working group consisted of a designee of the Executive Director of the Department of Personnel and Administration (Legislative Liaison, Jack Wylie); one representative of the Attorney General's Office (Chief Deputy Attorney General, David Blake); a designee of the Director of the Office of Legislative Legal Services (Assistant Director, Bart Miller); and one representative of the Governor's Office (Senior Deputy Legal Counsel, Mark Bolton).

The working group hereby submits this report pursuant to the requirements of the Bill.

The tasks assigned to the working group include:

1. Examining whistleblower protection laws of the federal government and those of other states, and comparing those laws to Colorado's whistleblower protection laws;
2. Determining whether there are means of broadening whistleblower protections in Colorado for situations where the subject of whistleblowing involves confidential information that would need to be disclosed; and
3. Determining whether there are methods by which confidential information could be disclosed while preserving the confidential nature of the information.

SB 56 became effective upon signature of the Governor on June 10, 2016; therefore, at the time of filing this report, the law has been in effect for less than five months. For that reason, it is premature to recommend further amendments to the Colorado State Employee Protection Act ("CSEPA") at this time. However, the new law that creates a narrow procedure for a whistleblower to disclose information that is otherwise closed to public inspection under the Colorado Open Records Act ("CORA") or confidential under any other provision of law in the course of reporting waste, fraud and abuse will repeal on May 15, 2018. Therefore, we recommend that the laws enacted by SB 56 remain unchanged and in effect for the next year.

The General Assembly can revisit the issue prior to the 2018 legislative session at which time there will be more information regarding how to fundamentally improve the process established in SB 56. At this point, we recommend that the Attorney General's Office (the "AGO") coordinate with the Office of Legislative Legal Services ("OLLS") prior to the 2017 legislative session to ensure that members of the General Assembly receive training regarding the new procedures created in SB 56 so that members are aware of what to do upon receipt of a whistleblower complaint that appears to contain confidential information.

To date, there has been just one public case involving a whistleblower submitting confidential information to the AGO for review pursuant to the procedures established in SB 56. In that instance, the whistleblower contacted a member of the General Assembly by e-mail to raise concerns regarding the state facility where she worked. The member of the General Assembly was concerned that the whistleblower's complaint included confidential information, so he informed her of the new law and referred her to the AGO. The whistleblower then submitted information for review to the AGO by sending an encrypted e-mail through the AGO's website. The AGO had thirty days from the date of receipt to issue a written determination regarding whether the information was closed to public inspection under CORA or confidential under any other provision of law. Although the AGO encountered a few unexpected logistical issues, it found that the process was a success overall in that it allowed the whistleblower a process by which she could turn over sensitive information for review while preserving the protections of the CSEPA for herself.

The result was that – to the best of the AGO's knowledge – the whistleblower did not disseminate the sensitive information to the media or another public source and was therefore found by the whistleblower review agency designee to be in substantial compliance with and afforded the protections of CSEPA. After thirty days, the AGO issued a letter to the whistleblower which contained a written determination that some of the information contained in the whistleblower's e-mails were protected from disclosure under the Health Insurance Portability and Accountability Act of 1996 and applicable state law. Enclosed with the letter were copies of the communications sent by the whistleblower to the AGO in which all confidential information had been redacted. Furthermore, the state agency in charge of the facility was provided a copy of the written determination after expiration of the thirty day time period.

As previously indicated, in light of the relatively short period of time between the effective date of the new law and the required submission date for this report, and without significant empirical data available to examine the effectiveness of the new law, the working group determined it is premature to recommend further amendments to the CSEPA at this time.

Finally, in addition to the information contained herein, the working group also determined that there would be significant value to the General Assembly in providing a comprehensive analysis of existing whistleblower protections under Colorado law, federal law and the laws of other states. Those documents are attached.

On behalf of each member of the working group, I thank you for your attention to this matter.

Sincerely,



Mark Bolton  
Senior Deputy Legal Counsel

cc: Senator Kent Lambert  
Representative Pete Lee

## **Purpose of the Colorado State Employee Protection Act**

The Colorado State Employee Protection Act (“Act”)—Colorado’s whistleblower act—prohibits an appointing authority or supervisor from initiating or administering any disciplinary action against an employee who discloses information about state agencies’ actions which are not in the public interest. C.R.S. §§ 24-50.5-101-08 (2016). The purpose of the Act is detailed in the Legislative Declaration which provides as follows:

The general assembly declares that the people of Colorado are entitled to information about the workings of state government in order to reduce the waste and mismanagement of public funds, to reduce abuses in government authority, and to prevent illegal and unethical practices. The general assembly further declares that employees of the state of Colorado are citizens first and have a right and a responsibility to behave as good citizens in our common efforts to provide sound management of governmental affairs. To help achieve these objectives, the general assembly declares that state employees should be encouraged to disclose information on actions of state agencies that are not in the public interest and that legislation is needed to ensure that any employee making such disclosures shall not be subject to disciplinary measures or harassment by any public official.

*Id.* § 101(1). Originally enacted in 1982, the Act was recently amended in 2016 to ensure that employees disclosing confidential information are protected from retaliation, as long as the employee follows a specific procedure which ensures the confidentiality of the information is maintained.

## **Disclosure of Information**

The threshold determination is whether an employee’s disclosure of information falls within the protection of the Act. *Ward v. Indus. Comm’n*, 699 P.2d 960, 967 (Colo. 1985). The Act defines “disclosure of information” as “the written provision of evidence to any person, or the testimony before any committee of the general assembly, regarding any action, policy, regulation, practice, or procedure, including, but not limited to, the waste of public funds, abuse of authority, or mismanagement of any state agency.” C.R.S. §24-50.5-102(2) (2016).

The Colorado Supreme Court has concluded that oral or verbal disclosures are protected, reasoning that “[p]rotection should not depend upon the means or method of disclosure.” *Ward*, 699 P.2d at 967. In addition, disclosures must inherently touch upon matters of public concern. *Ferrel v. Colo. Dep’t of Corr.*, 179 P.3d 178, 186 (Colo. App. 2007).

Furthermore, the Act protects an employee of one state agency that discloses information about another state agency. *Lanes v. O’Brien*, 746 P.2d 1366, 1371 (Colo. App. 1987).

However, the Act does not extend to employees of a home rule city created under article XX, section 6 of the Colorado Constitution because home rule cities are not agencies or subdivisions of the state. *Clark-Wine v. City of Colo. Springs*, 556 F. Supp. 2d 1238, 1249 (D. Colo. 2008).

There are two protected pathways for the disclosure of information: the original process and the whistleblower review agency process for disclosure of confidential information.

#### **A. Original Process**

Under the original process, an employee “is obligated to make a good-faith effort to provide to his or her supervisor or appointing authority or member of the general assembly the information to be disclosed” before the employee may disclose the information elsewhere. C.R.S. § 24-50.5-103(2). However, an employee is not protected by the Act if he or she discloses any of the following:

- (a) Information that he or she knows to be false or [information disclosed] with disregard for the truth or falsity of the information.
- (b) Information from public records that are closed to public inspection pursuant to section 24-72-204 [pertaining to the public’s right to inspect public records under certain circumstances].
- (c) Without lawful authority, information that is confidential under any other provision of law or closed to public inspection under section 24-72-204(2)(a)(I) and (2)(a)(VIII) [pertaining to the right of inspection of records of investigations for law enforcement purposes and records involving specialized details of security arrangements or investigations].

*Id.* § 103(1). Under the original process, and employee is protected from retaliation so long as the employee meets these criteria.

#### **B. Whistleblower Review Agency Process**

An employee also has the option of disclosing information directly to a whistleblower review agency. If an employee chooses this process, the employee does not have to first make a good-faith effort to provide a supervisor, appointing authority, or general assembly member the information to be disclosed. *Id.* § 103(3). The other key difference is that the whistleblower review agency process allows an employee an exclusive outlet for disclosing information that is confidential or that is from public records and closed to public inspection pursuant to C.R.S. 24-72-204. *Id.* It is important to note that the Act still does not protect the employee’s disclosure of false information or information disclosed with disregard for the truth or falsity of the information.

There are three whistleblower review agencies: the Attorney General or the Attorney General's designee; the Director of the Office of Legislative Legal Services or the Director's Designee; and the State Court Administrator and the Administrator's designee. *Id.* § 102(6). The Act creates whistleblower review agencies for the following purpose:

to provide a mechanism for determining whether information about state operations or conduct provided by a state employee may be made public by a state employee whistleblower, either to members of the general assembly or ultimately to the public, while protecting that state employee from punitive action and while maintaining the confidential nature of information where required by law.

*Id.* § 101(2).

An employee entering the whistleblower review agency process must disclose the information to the Attorney General or the Attorney General's designee, unless the information disclosed involves an officer or employee of the Department of Law. *Id.* § 103(4). In such cases, the employee may disclose the information to any whistleblower review agency. *Id.* The whistleblower review agency must limit access to the information to only those persons reviewing the information. *Id.*

Within 30 days, the whistleblower review agency must then determine in writing whether the disclosed information is either closed to public inspection under C.R.S. § 24-72-204 or confidential under any other provision of law. *Id.* § 103(5)(a)(I). If the information should be closed to public inspection or is confidential, then the review agency must maintain the confidential nature of the information. *Id.* § 103(5)(a)(II). Likewise, if the review agency determines that any of the information includes trade secrets or confidential commercial, financial, geological, or geophysical data, the agency must maintain the confidential nature of such information. *Id.* § 103(5)(b).

However, if there is a substantial likelihood that disclosed information will be released to the public, the whistleblower review agency shall immediately give written notice to the owner of the information explaining that the agency is in possession of the information in connection with a disclosure. *Id.* § 103(5)(c)(I). Reasons for releasing the information include “that the information is not confidential, that a request for inspection of the information exists under part 2 of article 72 of this title, or that a person requests a court to compel release of the information...” *Id.* The whistleblower review agency shall not release any information through this process until 30 days after the owner is given written notice, which must contain the agency's determination as to whether information is confidential as well as the circumstances constituting a substantial likelihood that the information will be released to the public. *Id.* § 103(5)(c)(I)-(II).

The Act contains special provisions for written notice regarding information that arguably constitutes trade secrets or confidential commercial, financial, geological, or geophysical data. In such circumstances, the Act provides notified persons that could be harmed by the information 30 days to commence a civil action for an injunction prohibiting the release of the information. *Id.* § 103(6). Written notice in these circumstances also tolls the time period for inspection of records under C.R.S. 24-72-203(3) until a reasonable time after the 30 days a notified person has to commence a civil action that would then span until the conclusion of any such legal proceeding. *Id.* § 103(5)(c)(I).

Moreover, immediately upon sending written notice regarding arguable trade secrets and the like, a whistleblower review agency must also notify the disclosing employee's supervisor or appointing authority that the disclosed information has been received and that no retaliatory actions may be taken against the employee. *Id.* § 103(7)(a). Within 60 days of the initial disclosure of information, a review agency may confer with and transfer the information to the entity having jurisdiction or authority to investigate alleged unlawful behavior. *Id.* § 103(7)(b).

After having following the whistleblower review agency process, the agency may release any information not deemed to be confidential or closed to public inspection to the General Assembly or public upon request. *Id.* § 103(8). If a review agency becomes aware that information that is confidential or closed to public inspection is disclosed without lawful authority, the agency shall make reasonable efforts to notify the owner of the information within a reasonable time. *Id.* § 103(10).

The entirety of the whistleblower review agency process is to be repealed, effective May 15, 2018.

### **Disciplinary Action**

Assuming an employee has properly followed either of the two processes outlined above, the Act protects an employee from “any disciplinary action on account of the employee’s disclosure of information.” *Id.* § 103(1). “Disciplinary action” is defined as “any direct or indirect form of discipline or penalty, including, but not limited to, dismissal, demotion, transfer, reassignment, suspension, corrective action, reprimand, admonishment, unsatisfactory or below standard performance evaluation, reduction in force, or withholding of work, or the threat of any such discipline or penalty.” *Id.* § 102(1).

Disciplinary action includes an agency’s opposition to a terminated employee’s receipt of unemployment benefits. *Ward*, 699 P.2d at 967. In contrast, it has not included an employee’s alleged invasion of privacy resulting from an employer’s discussion of a whistleblower grievance with third parties that did not clearly impact the employee. *Conde v. Colorado State Dep’t of Personnel*, 872 P.2d 1381, 1387 (Colo. Ct. App. 1994).

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Alabama  Ala. Code §§ 36-26A-1, et seq.	State employees	A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a state employee regarding the state employee's compensation, terms, conditions, or privileges of employment if the state employee, reports, under oath or in the form of an affidavit, a violation of a law, a regulation, or a rule, promulgated pursuant to the laws of this state, or a political subdivision of this state, to a public body.	A state employee shall bring a civil action within two years after the occurrence of the alleged violation of this chapter.  A civil action may be brought in Montgomery County [the state capitol's county], or in the county in which the supervisor against whom the civil complaint is filed resides.	A court, in rendering a judgment in an action brought pursuant to this chapter, may order, where appropriate, payment of back wages, front wages, and compensatory damages, or any combination of these remedies.	Statute is silent on this subject.
Alaska  AS §§ 39.90.100, et seq.	Public employees	A person is not entitled protection unless the person: <ul style="list-style-type: none"> <li>a. reasonably believes that the information reported is or is about to become a matter of public concern; <b>and</b></li> <li>b. reports the information in good faith.</li> </ul> Person is entitled to protection only if the matter of public concern: <ul style="list-style-type: none"> <li>a. is not the result of conduct by the person seeking protection;</li> <li><b>or</b></li> <li>b. is the result of conduct by the person that was required by</li> </ul>	As part of its written personnel policy, a public employer may require that, before an employee initiates a report, the employee shall submit a written report concerning the matter to the employer. However, the employee is not required to submit a report if the employee <ul style="list-style-type: none"> <li>a. reasonably believes that reports to the employer will not result in prompt action to remedy the matter of public concern;</li> <li>b. believes with reasonable certainty</li> </ul>	Person alleging violation may bring civil action—court may grant appropriate relief, including punitive damages.  Violator or attempted violator is liable for a civil fine of not more than \$10,000. Enforced by the AG.  A person who attempts to prevent another from making a report or otherwise participating in a matter is liable for a fine of no more than \$10,000.	Specifically excludes disclosure of information that is legally required to be kept confidential.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>the person's employer</p>	<p>that the activity, policy, or practice is already known to one or more supervisors;</p> <p>c. reasonably believes that an emergency is involved; <b>or</b></p> <p>d. reasonably fears reprisal or discrimination as a result of disclosure.</p>		
<p>Arizona  A.R.S. § 38-532</p>	<p>Public officers &amp; employees</p>	<p>It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body that the employee reasonably believes evidences:</p> <ul style="list-style-type: none"> <li>a. A violation of any law.</li> <li>b. Mismanagement, a gross waste of monies or an abuse of authority.</li> </ul>	<p>The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:</p> <ul style="list-style-type: none"> <li>a. The date of the disclosure.</li> <li>b. The name of the employee making the disclosure.</li> <li>c. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.</li> <li>d. If possible, the date or</li> </ul>	<p>An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.</p>	<p>An employee does not commit a prohibited personnel practice if he takes reprisal against an employee who discloses information in a manner prohibited by law or the materials or information are <b>prescribed as confidential by law.</b></p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
			<p style="text-align: center;">range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.</p>		
<p>Arkansas A.C.A. §§ 21-1-601, et seq.</p>	<p>Public employees</p>	<p>A public employer shall not take adverse action against a public employee because the public employee or a person authorized to act on behalf of the public employee communicates in good faith to an appropriate authority:</p> <ul style="list-style-type: none"> <li>a. The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; <b>or</b></li> <li>b. A violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state.</li> </ul> <p>A public employer shall not take an adverse action against a public employee because the employee</p>	<p>The employee's communication shall be made at a time and in a manner which gives the public employer reasonable notice of need to correct the waste or violation.</p> <p>A public employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation. Good faith is lacking when the public employee does not have personal knowledge of a factual basis for the communication or when the public employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous.</p>	<p>A court in rendering judgment under this subchapter may order any/all of the following remedies:</p> <ul style="list-style-type: none"> <li>a. An injunction to restrain continued violation of the provisions of this subchapter;</li> <li>b. The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position;</li> <li>c. The reinstatement of full fringe benefits and retirement service credit;</li> <li>d. The compensation for lost wages, benefits, and any other remuneration;</li> <li>e. The payment by the public employer of reasonable court costs and attorney's</li> </ul>	<p>Shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.</p>		<p>fees.</p> <p>A public employee shall not be assessed attorney's fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the public employee files a voluntary nonsuit concerning the employer within sixty (60) calendar days after determining that the employer would not be liable for damages.</p>	
<p>California CA LABOR §1102</p>	<p>Public and private employees</p>	<p>Cannot retaliate for, or prevent employee from, disclosing to government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.</p>	<p>The office of the Attorney General shall maintain a whistleblower hotline to receive calls from persons who have information regarding possible violations of state or federal statutes, rules, or regulations, or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors, or employees.</p> <p>The Attorney General shall refer calls received on the whistleblower hotline to the appropriate government authority for review and possible investigation.</p>	<p>Employer liable for civil damages of no more than \$10,000. Employee may recover damages.</p>	<p>Employees who violate, the confidentiality of the lawyer-client privilege or the physician-patient privilege or trade secret information are not protected.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Connecticut  C.G.S.A. §31-51m	Public and private employees	It is unlawful for a public or private employer to discriminate against an employee, including discharge, discipline or penalty, for reporting to a public body or participating in an investigation of a violation or suspected violation of any state, federal , or local law.	Statute is silent.	Employee may bring civil action within 90 days of the date of the final administrative determination or within ninety days of the violation, whichever is later. Before bringing civil action, the employee must exhaust administrative remedies.	Statute is silent on this subject.
Delaware  29 Del.C. § 5115	Public Employees	No public employee shall be discharged, threatened or otherwise discriminated against with respect to the terms or conditions of employment because that public employee reported a violation or suspected violation of a law or regulation unless the employee knows that the report is false.	Contemplates a report “in a written or oral communication to an elected official.”	An employee who alleges a violation of this section may bring a civil action for appropriate injunctive relief, actual damages, or both, within 90 days after the occurrence of the alleged violation of this section.	Statute is silent on this subject.
District of Columbia  DC ST § 1-615.51-59	Employees of the District government	A supervisor shall not threaten to take retaliatory or any other prohibited personnel action against an employee because of the employee’s protected disclosure or because an employee refuses to comply with an illegal order.  Except in cases where the communication would be unlawful, a person shall not interfere with or deny the right of employees, individually or collectively, to furnish information to the Council, a Council committee, or a Councilmember.	Statute seems to contemplate disclosure to any parties, though the City Council is mentioned expressly.	Employee may seek relief and damages in the following forms: <ul style="list-style-type: none"> <li>a. injunction</li> <li>b. Reinstatement</li> <li>c. restoration or lost benefits</li> <li>d. back pay + interest</li> <li>e. compensatory damages</li> <li>f. reasonable costs &amp; attorney fees.</li> </ul> Mayor may pay a reward in any amount between \$5,000 and \$50,000 to the person who made the protected disclosure.	Nothing in this section shall be construed to permit the invasion of the individual privacy of other employees or of citizens of the United States.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		Violation of this prohibition constitutes a complete affirmative defense for a whistleblower to a prohibited personnel action in an administrative review, challenge, or adjudication of that action.			
Florida F.S.A. § 448.101-103	Public and private employees, does not include private contractors	An employer may not take retaliatory personnel action against an employee because the employee has <ol style="list-style-type: none"> <li>a. disclosed or threatened to disclose to a government agency an activity, policy or practice that is in violation of a law or adverse to public health; or</li> <li>b. testified before an entity conducting an investigation into possible violations; or</li> <li>c. refused to participate in an action that is in violation of a law, rule or regulation.</li> </ol>	Statute is silent.	Civil action should be filed by aggrieved employee within 2 years of discovering that the alleged retaliatory personnel action occurred or within 4 years after the personnel action was taken— whichever is earlier. Relief: <ol style="list-style-type: none"> <li>a. Injunction</li> <li>b. reinstatement</li> <li>c. restoration or lost benefits</li> <li>d. back pay + interest</li> <li>e. compensatory damages</li> </ol>	Statute is silent on this subject.
Georgia Ga. Code Ann., § 45-1-4	Public employees	No public employer shall make, adopt, or enforce any policy or practice preventing a public employee from disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency.  No public employer shall retaliate	A public employer may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the	May institute civil action within one year of discovering the retaliation or within three years of the retaliation, whichever is earlier. Relief: <ol style="list-style-type: none"> <li>a. Injunction</li> <li>b. Reinstatement</li> <li>c. restoration or lost benefits</li> </ol>	Protections do not extend to employees who violate privilege or confidentiality obligations recognized by constitutional, statutory, or

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or a government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity.</p> <p>No public employer shall retaliate against a public employee for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation.</p>	<p>jurisdiction of such public employer.</p>	<p>d. back pay + interest e. compensatory damages</p>	<p>common law.</p>
<p>Hawaii HRS § 378-64</p>	<p>All employees</p>	<p>Cannot discharge, threaten, or otherwise discriminate because employee or their representative:</p> <ul style="list-style-type: none"> <li>a. reports or is about to report to public body a violation or suspected violation of law or rule or</li> <li>b. is requested by public body to participate in a hearing, investigation, inquiry, or court action unless employee knows report is false</li> </ul>	<p>Statute contemplates the employee reporting to the employer or a “public body.”</p>	<p>Must file civil action within 2 years after occurrence of alleged violation. Relief:</p> <ul style="list-style-type: none"> <li>a. Injunction</li> <li>b. Reinstatement</li> <li>c. restoration or lost benefits</li> <li>d. back pay + interest</li> <li>e. compensatory damages</li> <li>f. reasonable attorney and witness fees</li> </ul>	<p>Statute does not permit disclosure of confidential communications where statute or common law provides such protection.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Idaho  I.C. §§ 6-2101-2109	Employees employed by state of Idaho	<p>An employer may not take adverse action against an employee because the employee</p> <ul style="list-style-type: none"> <li>a. reports the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation;</li> <li>b. participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review; or</li> <li>c. objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation. An employer may not implement a policy that would restrict an employee from taking this action.</li> </ul>	The employee must give the employer reasonable opportunity to correct the waste or violation before reporting.	<p>Must file civil suit within 180 days after violation.</p> <p>Relief:</p> <ul style="list-style-type: none"> <li>a. Injunction</li> <li>b. Reinstatement</li> <li>c. restoration or lost benefits</li> <li>d. back pay + interest</li> <li>e. compensatory damages</li> <li>f. reasonable attorney's and witness fees.</li> </ul>	Shall not be construed...to permit disclosures which would diminish or impair the rights of any person to the continued protection of <b>confidentiality</b> of communications where statute or common law provides such protection

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Illinois  20 ILCS 415/19c.1	State employees	<p>State employees cannot be disciplined for</p> <ul style="list-style-type: none"> <li>a. disclosing information that they reasonably believe shows a violation of any rule, law, or regulation.</li> <li>b. a disclosure related to mismanagement, waste of funds, abuse of authority, or specific and substantial danger to public health or safety as long as the disclosure is not specifically prohibited by law.</li> </ul> <p>The reporting employee's name cannot be disclosed without their consent during any investigation of a part (b) disclosure.</p>	The statute is silent on this subject.	The statute is silent on this subject.	The statute is silent on this subject.
Indiana  IN ST §4-15-10-4	State employees	An employer may not dismiss, withhold promotions or benefits, transfer or reassign, deny salary increases to, or demote an employee for reporting the existence of a violation of law, federal, state, or municipal, or misuse of public resources.	Employee must make a reasonable attempt to ascertain the correctness of any information reported.	Must file civil suit no later than 30 days after employee becomes aware of the violation.	The statute is silent on this subject.
Iowa  I.C.A. § 70A.28	State employees	It is unlawful to discharge or take personnel action against a state employee in reprisal for a disclosure of a violation of a law or rule,	The disclosure must be made to a member or employee of the general assembly, the office of ombudsman, or any other public official or law	Employer is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems	The statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		mismanagement, abuse of fund, abuse of authority, or substantial and specific danger to public health or safety, unless such disclosure is specifically prohibited by law.	enforcement agency.	appropriate, including attorney fees and costs. Employee or attorney general can sue for injunctive relief from a proposed disciplinary action. Employees not on the merit system and not covered by a collective bargaining agreement can pursue an administrative remedy.	
Kansas K.S.A. 75-2973	State employees	State employees cannot be disciplined for discussing the operations of the agencies or other matters of public concern including matters relating to public health, safety and welfare with a member of the legislature. State employees also cannot be disciplined for reporting a violation of state or federal laws, rules, or regulations.	Employees are not required to inform their supervisors before reporting the violation. Employees can be required to inform their supervisors of legislative requests and the nature of the testimony they will provide.	Aggrieved state employees can seek relief in court or before the state civil service board. The employee must file wither with the civil service board or with a court within 90 days of the disciplinary action.	The statute does not prohibit disciplinary action of an employee who discloses information which is confidential or privileged under statute or court rule.
Kentucky KRS § 61.102	Public employees	No employer may retaliate, in any manner, against an employee who in good faith discloses information regarding an abuse of power, government waste, a danger to the public, fraud, or mismanagement to the appropriate government authority. Employers may not retaliate against any employee who assists in substantiating or reporting the wrongdoing.	Employees do not have to give notice prior to making a disclosure. Employees can be required to inform their supervisors about official requests for information or the substance of testimony they will provide The disclosure must be to members of the legislature, members of the judiciary, law enforcement or “any other appropriate body or authority.”	An employee may bring a civil action for appropriate injunctive relief and/or punitive damages within 90 days after the occurrence of the alleged violation.	The statute does not prohibit disciplinary action of an employee who discloses information which is confidential under any other provision of law.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Louisiana  LSA-R.S. 42:1169	Public Employees & contractors	Any public employee who reports information which she reasonably believes indicates a violation of any law or of any order, rule, or regulation issued in accordance with law or any other alleged acts of impropriety related to the scope or duties of public employment shall be free from discipline, reprisal, or threats of discipline or reprisal by the public employer for reporting such acts of alleged impropriety.  The report must be made to "a person or entity of competent authority or jurisdiction."	The statute is silent on this subject.	A public employee who is wrongfully suspended, demoted, or dismissed shall report such action to the board.  The employee then shall be entitled to reinstatement of his employment and entitled to receive any lost income and benefits for the period of any suspension, demotion, or dismissal.	The statute is silent on this subject.
Maine  26 M.R.S.A. § 833	Public and Private Employees	An employer may not fire, threaten, retaliate, or otherwise discriminate against an employee who in good faith reported, testified about, or refused to participate in a violation of the law, a medical error, a risk to public health or safety. The employee must have reasonable cause to believe that one of the above violations has occurred.	An employee must report the violation to a supervisor and allow a reasonable opportunity to correct the violation before disclosing information to the public.  A report to a supervisor is not required if the employee has specific reason to believe that reports will not result in promptly correcting the violation.	An employee may bring a complaint before the Maine Human Rights Commission for action.	The statute is silent on this subject.
Maryland  MD Code, State Personnel and Pensions, § 5-	Employees of the Executive Branch of Maryland Government	An employer cannot take or refuse to take any personnel action as reprisal if the applicant or employee discloses information reasonably believed to evidence abuse of authority, gross mismanagement or waste of money,	If the disclosure is specifically prohibited by law, it must be made exclusively to the Attorney General.	An employee may file a complaint with the Secretary. The complaint must be filed within 6 months after the complainant first knew of or reasonably should have known of the violation.	The statute allows for the disclosure of information specifically prohibited by law. I think

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
305		violation of law or substantial and specific danger to public health or safety.		Remedies include reinstatement, back pay, seniority, or action against the violator.	confidential information would be covered under this provision.
Massachusetts M.G.L.A. 149 § 185	Public and private employees	An employer may not retaliate against employees who report violations of law or risks to public health, safety or the environment. Employees must reasonably believe that violations are occurring. Retaliation includes discharge, suspension, demotion, or other adverse action taken in terms or conditions of employment.	An employee must bring the violation to the attention of the supervisor and allow for reasonable opportunity to correct the violation — unless the situation is an emergency, the employee fears physical harm as a result of the disclosure provided, or the disclosure is to report a crime.	An employee may file civil suit within two years of the grievance. Any party to the action is entitled to a jury trial and all common law remedies available in tort actions are available, including attorney and court fees.	The statute is silent on this subject.
Michigan M.C.L.A. 15.362	Public officers and employees	An employer cannot discriminate against an employee for reporting the violation of a law, regulation or rule unless the employee knows that the report is false.	The statute is silent on this subject.	An employee may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act.	Employees are not permitted to disclose confidential communications that are protected by law.
Minnesota M.S.A. § 181.932	Public and Private employees	An employer may not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee because the employee in good faith reports a violation, suspected violation, or planned violation of any federal or state law or rule; refuses to perform an action ordered by the employer which would violate a law; reports a scientific or technical study that the employer	The disclosure must be made to a governmental body or law enforcement official.	An employee may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court.	Employees cannot disclose confidential communications protected under common law.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		believes is accurate; reports a risk to public health; or an employee in the classified service of state government discloses information that relates to state services and financing of those services. Employees are not permitted to make disclosures that are knowingly false or in reckless disregard for the truth.			
Mississippi  Miss. Code Ann. s25-9-173	Public employees	No agency shall dismiss or otherwise adversely affect the compensation or employment status of any public employee because the public employee testified or provided information to a state investigative body. The information must be provided in good faith.	The information must be provided to a state investigative body.	Any agency which violates the provisions shall be liable to the public employee for back pay and reinstatement. In addition, an employee whose employment is suspended or terminated or who is subjected to adverse personnel action in violation is entitled to sue for injunctive relief, compensatory damages, court costs and reasonable attorney's fees.	The statute is silent on this subject.
Missouri  V.A.M.S. 105.055	State employees	Employers may not:  Prohibit a state employee from or take any disciplinary action whatsoever against a state employee for the disclosure of any alleged prohibited activity under investigation or any related activity, or for the disclosure of information which the employee reasonably believes evidences: a. A violation of any law, rule or regulation; or	Employers may not require prior notification before the employee makes her report but can require the substance of any testimony to be made. The report can be made to any member of the legislature, state auditor, attorney general, or any state official or body charged with investigating such alleged misconduct.	A person who alleges a violation of this section may file an administrative appeal within thirty days of the alleged discriminatory action or bring a civil action for damages within ninety days after the occurrence of the alleged violation.  A court, in rendering a judgment in an action brought pursuant to this section, shall order, as the court considers appropriate, actual	Employees are not allowed to disclose information that is closed or is confidential under the provisions of the open meetings law or any other law.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>b. Mismanagement, a gross waste of funds or abuse of authority, or a substantial and specific danger to public health or safety, if the disclosure is not specifically prohibited by law</p>		<p>damages, and may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees.</p>	
<p>Montana M.C.A §§39-2-904 &amp; 905, 911&amp;912</p>	<p>All employees</p>	<p>Cannot discharge or otherwise terminate employee in retaliation if employee refused to violate constitutional provision, statute or administrative rule regarding public health, safety, or welfare or reports a violation of the same.</p>	<p>Statute is silent on this subject.</p>	<p>Back pay and fringe benefits (for a maximum 4 years, less interim earnings) and punitive damages if employer engaged in fraud or malice in discharging.</p>	<p>Statute is silent on this subject.</p>
<p>Nebraska Neb. Rev. St. § 81-2702</p>	<p>State employee</p>	<p>The identity of the whistleblower will be anonymous, unless they consent to the release.</p> <p>Any person with authority to affect personnel action shall not take personnel action against employee because of:</p> <ul style="list-style-type: none"> <li>a. the disclosure of information by the employee to the Public Counsel or an official which the employee reasonably believes evidences wrongdoing;</li> <li>b. the submission of an allegation of wrongdoing or a violation of this section to the Public Counsel or official by such</li> </ul>	<p>Statute is silent on this subject.</p>	<p>An employee who has been or is about to be injured by a violation shall be entitled to maintain a cause of action pursuant to the Administrative Procedure Act for damages, reinstatement, back pay, and such other relief, including preliminary relief, as the court may deem appropriate. An employee who prevails in an action under this subsection shall receive reasonable attorney's fees incurred during the action.</p>	<p>Statute is silent on this subject.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		employee; or c. the disclosure of information or testimony, pursuant to an investigation or hearing.			
Nevada  N.R.S. §§281.631 & 641	Gov't employees	A state or local government officer or employee shall not use or attempt to use their official authority or influence, threaten, coerce, command, influence or attempt to intimidate, threaten, coerce, command or influence another state officer or employee or another local governmental officer or employee, as applicable, in an effort to interfere with or prevent the disclosure of information concerning improper governmental action.	Statute is silent on this subject.	If the hearing officer determines that the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing the proper person to desist and refrain from engaging in such action.	Statute is silent on this subject.
New Hampshire  N.H. Rev. Stat. §§275-E:1, et seq.	All employees, with additional protections for public employees	No governmental entity shall threaten, discipline, demote, fire, transfer, reassign, or discriminate against a public employee who files a complaint or otherwise discloses or threatens to disclose activities or information that the employee reasonably believes violates law, represents a gross mismanagement or waste of public funds, property, or manpower, or evidences an abuse of authority or a danger to the public health and safety.  *§275-E:2 addresses protections for	The department of labor shall have the authority to receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, or abuse in the expenditure of any public funds by the state.	Reinstatement of the employee, the payment of back pay, fringe benefits and seniority rights, any appropriate injunctive relief, or any combination of these remedies.	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		all employees.			
New Jersey  N.J.S.A. 34:19-1, et seq.	All employees	<p>An employee may disclose, or threaten to disclose, to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception or misrepresentation; fraudulent or criminal activity.</p> <p>*Specific protections for various types of employees apply.</p>	<p>Employee must have brought the activity, policy or practice in violation of a law, or a rule or regulation to the attention of a supervisor of the employee by written notice and has afforded the employer time to cure.</p> <p>Disclosure isn't required where the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors or where the employee reasonably fears physical harm as a result of the disclosure.</p>	<p>All remedies available in common law tort actions shall be available to prevailing plaintiffs—in addition to any legal or equitable relief provided by this act or any other statute. The court shall also order, where appropriate:</p> <ol style="list-style-type: none"> <li>a. An injunction to restrain any violation of this act;</li> <li>b. The reinstatement of the employee to the same position;</li> <li>c. The reinstatement of full fringe benefits and seniority rights;</li> <li>d. The compensation for all lost wages, benefits and other remuneration; and</li> <li>e. Punitive damages, not greater than treble damages, or may assess a civil fine.</li> </ol>	Statute is silent on this subject.
New Mexico  N. M. S. A. 1978, §§ 10-16C, et seq.	Public employees, including gov't contractors	An employer shall not take any retaliatory action against a public employee because the employee communicates information to the public employer, or a third party, or testifies about an action or a failure to act that the public employee believes	Statute is silent on this subject.	Actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		in good faith constitutes an unlawful or improper act.		a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.  Any additional remedies provided for in any other law or common law.	
New York  McKinney's Civil Service Law § 75-b	Public employee <i>excluding</i> judges and any member of the courts	Public employee protected for reporting a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. "Improper governmental action."	Statute is silent on this subject.	Reinstate the employee with back pay, and, in the case of an arbitration procedure, take other appropriate action as is permitted in the collectively negotiated agreement.	Statute is silent on this subject.
North Carolina  N.C.G.S.A. §§ 126-84, et seq.	State employees	State employees shall not be intimidated, harassed, or retaliated against when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels about: violation of law, rule or regulation; fraud; misappropriation of State resources; substantial and specific danger to the public health and safety; or gross	Statute is silent on this subject.	Injunction, damages, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, reasonable attorney's fees or any combination of these.	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		mismanagement, a gross waste of monies, or gross abuse of authority.			
North Dakota  NDCC, 34-01-20	All employees	An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because the employee reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official. The same may not be done to an employer who participates in an investigation, hearing or inquiry.	Statute is silent on this subject.	Civil action for injunctive relief or actual damages, or both. Additionally, the court may order reinstatement of the employee, back pay, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. In any action under this section, the court may award reasonable attorney's fees to the prevailing party.	Statute is silent on this subject.
Ohio  R.C. §§ 4113.51, et seq.	All employees	Employer is prohibited from: removing or suspending the employee from employment; withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled; transferring or reassigning the employee; denying the employee a promotion that otherwise would have been received; reducing the employee in pay or position.	If an employee becomes aware of a violation by the employer or another employee, the employee shall verbally notify the supervisor of the violation and then file with that supervisor a written report to describe the violation. If the employer does not make reasonable effort to cure within 24 hours, the employee may file a report with a prosecuting authority.	Employee may file civil action for injunction or other remedies. Other remedies include: reinstatement of the employee, back wages, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies.	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
<p>Oklahoma</p> <p>Okla. St. Ann. tit. 74 § 840-2.5</p>	<p>State employees</p>	<p>Employer may not take disciplinary action against state employees for the following reasons:</p> <ul style="list-style-type: none"> <li>a. Disclose public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;</li> <li>b. Report a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;</li> <li>c. Discuss the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media or other persons in a position to investigate or initiate corrective action; or</li> <li>d. Take any of the above actions without giving prior notice to the</li> </ul>	<p>Statute is silent on the subject.</p>	<p>If there is a violation, the Oklahoma Merit Protection Commission or the ALJ shall order corrective action. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge.</p> <p>No mention of employee remedies but the corrective actions are not limited to the list, so restoring the whistleblower to their job would most likely be a corrective procedure.</p>	<p>Employee cannot get whistleblower protection for disclosing information which the employee knows to be confidential pursuant to law.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		employee's supervisor or anyone else in the command chain			

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
<p>Oregon</p> <p>Or. Rev. Stat. § 659A.199, § 659A.203, § 240.560; HB4067</p>	<p>All employees but special provisions for public and non-profit employees.</p>	<p>No employer discharge, demote, suspend or in any manner discriminate or retaliate against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information that the employee believes is evidence of a violation of a state or federal law, rule or regulation.</p> <p>Public employees are also protected from disciplinary action for disclosure of any information that the employee reasonably believes is evidence of:</p> <ul style="list-style-type: none"> <li>a) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;</li> <li>b) Mismanagement, gross waste of funds or abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or</li> <li>c) Subject to ORS 659A.212 (2), the fact that a person</li> </ul>	<p>Each public employer may adopt rules, consistent with Bureau of Labor and Industries rules, that apply to that public employer and that also implement ORS 659A.200 to 659A.224.</p> <p>A public employer may establish by rule an optional procedure whereby an employee who wishes to disclose information described in ORS 659A.203 (1)(b) may disclose information first to the supervisor, or if the supervisor is involved, to the supervisor next higher, but the employer must protect the employee against retaliatory or disciplinary action by any supervisor for such disclosure.</p>	<p>The employee shall be reinstated to the position and shall not suffer any loss in pay.</p>	<p>Whistleblowing in good faith will be an affirmative defense to disclosure of lawfully accessed information related to the violation, including information that is exempt from disclosure as provided in ORS 192.501 to 192.505 or by employer policy if the information is disclosed to the any of the following:</p> <ul style="list-style-type: none"> <li>(a) A state or federal regulatory agency;</li> <li>(b) A law enforcement agency;</li> <li>(c) A manager employed by the public or nonprofit employer of the employee; or</li> </ul>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by this state, any other state, the federal government, or any territory, commonwealth or governmental instrumentality of the United States.</p>			<p>(d) An attorney licensed to practice law in this state if a confidential communication is made in connection with the alleged violation described in this section and in furtherance of the rendition of professional legal services to the employee that are subject to ORS 40.225.<sup>1</sup></p>
<p>Pennsylvania 43 Pa. Stat. and Cons. Stat. Ann. § 1423, et seq.</p>	<p>Public employees and employees who are employed by companies being paid to do work or services</p>	<p>No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of</p>	<p>Employee must have had reported or was about to report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer or an appropriate authority.</p>	<p>Reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court shall also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the complainant prevails in the civil</p>	<p>Statute is silent on this subject. However case law indicates release of confidential information is ok as long as released to employers or appropriate authorities.</p>

<sup>1</sup> This confidential section was just passed by the legislature and comes into effect 01/01/2017

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
	for a “public body”.	wrongdoing or waste by a public body or an instance of waste by any other employer as defined in this act, or because the employee is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.		action.  Also fine the person who violated the whistleblower protections no more than 10,000. If person is not elected official, court may suspend person from public service for no more than 7 years.	
Rhode Island  28 R.I. Gen. Laws Ann. § 28-50-1, et seq.	All employees	An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment: a) Because the employee, or a person acting on behalf of the employee, reports or is about to report to a public body, verbally or in writing, a violation which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the law of this state, a political subdivision of this state, or the United States, unless the employee knows or has reason to know that the report is false, or	Whistleblower is to verbally or in writing report either to a public body or employer. If reported to employer verbally, employee has to establish report was made by clear and convincing evidence.	Injunctive relief, or actual damages, or both.  “Damages” means damages for injury or loss caused by each violation of this chapter.  A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including attorneys' fees if the court determines that the award is appropriate.	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>b) Because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action, or</p> <p>c) Because the employee reports verbally or in writing to the employer or to the employee's supervisor a violation, which the employee knows or reasonably believes has occurred or is about to occur, of a law or regulation or rule promulgated under the laws of this state, a political subdivision of this state, or the United States, unless the employee knows or has reason to know that the report is false.</p>			
<p>South Carolina S.C. Code Ann. § 8-27-10, et seq.</p>	<p>State employee</p>	<p>No public body may dismiss, suspend from employment, demote, or decrease the compensation of an employee of a public body because the employee files a report with an appropriate authority of wrongdoing. If the appropriate authority</p>	<p>Employee must make a report with:</p> <p>a. A written or oral allegation of waste or wrongdoing that contains the following information: the date of</p>	<p>The employee may institute a nonjury trial for reinstatement to his former position; lost wages; actual damages not to exceed fifteen thousand dollars; and reasonable attorney fees as determined by the court, but this</p>	<p>Statute is silent on this subject.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>determines the employee's report is unfounded, or amounts to a mere technical violation, and is not made in good faith, the public body may take disciplinary action including termination. Any public body covered by this chapter may impose disciplinary sanctions, in accordance with its internal disciplinary procedures, against any of its direct line supervisory employees who retaliate against another employee for having filed a good faith report under this chapter.</p>	<p>disclosure, the name of the employee making the report, and the nature of the wrongdoing and the date or range of dates on which the wrongdoing allegedly occurred. A report must be made within one hundred eighty days of the date the reporting employee first learns of the alleged wrongdoing; or</p> <p>b. Sworn testimony regarding wrongdoing, regardless of when the wrongdoing allegedly occurred, given to any standing committee, subcommittee of a standing committee, oversight committee, oversight subcommittee, or study committee of the Senate or the House of Representatives.</p>	<p>award of attorney fees may not exceed ten thousand dollars for any trial and five thousand dollars for any appeal.</p>	
<p>South Dakota S.D. Codified</p>	<p>Public employees</p>	<p>An employee may not be disciplined for the reporting of any violation of state or federal law to any local, state</p>	<p>Must report through "chain of command" of employee's department or to the attorney</p>	<p>The employee is entitled to reinstatement, back pay, and back benefits.</p>	<p>Statute is silent on this subject.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
Laws § 3-6D-5, 17, 22		or federal authority;	general's office		
Tennessee  Tenn. Code Annotated § 50-1-304, § 4-21-313	All employees	No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities.	Statute is silent on this subject.	Employee is entitled to statutorily defined compensatory damages for non-pecuniary losses and reasonable attorney fees and costs.	Statute is silent on this subject.
Texas  Tex. Gov't Code Ann. § 554.001A, Ch. 554, et seq.	Public employees	A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.	A report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to: a) regulate under or enforce the law alleged to be violated in the report; or b) investigate or prosecute a violation of criminal law.	The employee can sue for injunctive relief, actual damages, court costs, and reasonable attorney fees. Also the employee can ask for reinstatement to the employee's former position or an equivalent position, compensation for wages lost during the period of suspension or termination, and reinstatement of fringe benefits and seniority rights lost because of the suspension or termination.	Statute is silent on this subject.
Utah  Utah Code Ann. § 67-21-1, et seq.	Public employees	An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith: a. the waste or misuse of public funds, property, or manpower; b. a violation or suspected violation of a law, rule, or regulation adopted under the	An employee can comply with this statute in good faith by either writing or otherwise formally communicating the conduct at issue to a person in authority over the alleged wrongdoer, Attorney General's office, law enforcement. Depending on where the employee works, they may also be able to go to specific	A court, in rendering a judgment in an action brought under this chapter, may order reinstatement of the employee at the same level, the payment of back wages, full reinstatement of fringe benefits and seniority rights, damages, or any combination of these remedies.  A court shall award the	Statute is silent on this subject.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>law of this state, a political subdivision of this state, or any recognized entity of the United States; or</p> <p>c. as it relates to a state government employer:</p> <ul style="list-style-type: none"> <li>i. gross mismanagement;</li> <li>ii. abuse of authority; or</li> <li>iii. unethical conduct.</li> </ul>	people	complainant all or a portion of the costs of litigation, which are defined to include reasonable attorney fees and witness fees, if the court determines that the complainant prevails.	
<p>Vermont</p> <p>Vt. Stat. Ann. tit. 3, § 971, et seq.</p>	State employees	<p>A State agency, department, appointing authority, official, or employee shall not engage in retaliatory action against a State employee because the State employee refuses to comply with an illegal order or engages in any of the following:</p> <ul style="list-style-type: none"> <li>a. Providing to a public body a good faith report or good faith testimony that alleges an entity of State government, a State employee or official, or a person providing services to the State under contract has engaged in a violation of law or in waste, fraud, abuse of authority, or a threat to the health of</li> </ul>	Provide good faith report or good faith testimony to a department head or employee specifically designated or assigned to receive a complaint that constitutes protected activity under this chapter, a board or commission of State government, the Vermont State Auditor, a State or federal agency that oversees the activities of a State agency, a law enforcement officer as defined in <a href="#">20 V.S.A. § 2358(d)(1)</a> , a federal or State court, grand jury, petit jury, law enforcement agency, or prosecutorial office, the General Assembly or the U.S. Congress, or an officer or	A State employee who brings a claim in Superior Court may be awarded the following remedies: reinstatement of the employee to the same position, seniority, and work location held prior to the retaliatory action, back pay, lost wages, benefits, and other remuneration, in the event of a showing of a willful, intentional, and egregious violation of this subchapter, an amount up to the amount of back pay in addition to the actual back pay, other compensatory damages, interest on back pay, appropriate injunctive relief; and reasonable costs and attorney's fees.	No employee may divulge information that is confidential under State or federal law. An act by which an employee divulges such information shall not be considered protected activity under this section.

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>employees, the public, or persons under the care of the State.</p> <p>b. Assisting or participating in a proceeding to enforce the provisions of this subchapter.</p>	employee of an entity listed in this subdivision (3) when acting within the scope of his or her duties.		
Virginia Va. Code Ann. § 2.2-3009, et seq.	Citizens and Public employees	<p>No governmental agency may threaten or otherwise discriminate or retaliate against a citizen whistleblower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.</p> <p>No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower whether acting on his own or through a person acting on his behalf or under his direction.</p>	Good faith disclosure to a federal, state, or local agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse; or a member, officer, agent, representative, or supervisory employee of the agency or organization. The term also includes the Office of the Attorney General, the Office of the State Inspector General, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse.	<p>In a proceeding commenced against any employer under this section, the court, if it finds that a violation was willfully and knowingly made, may impose upon such employer that is a party to the action, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than \$500 nor more than \$2,500, which amount shall be paid into the Fraud and Abuse Whistle Blower Reward Fund.</p> <p>The court may also order appropriate remedies, including reinstatement to the same position or, if the position is filled, to an equivalent position, back pay, full reinstatement of fringe benefits and seniority rights, or any combination of these remedies. The whistle blower may be entitled to recover reasonable attorney fees and costs.</p>	Disclosures that are reckless or that the citizen knew or should have known were confidential shall not be deemed good faith reports and shall not be protected.
Washington	State	An employee shall not directly or	In order to be investigated, an	Any person who is a whistleblower,	Nothing in this

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
West's RCWA 42.40.010, et seq.	Employees	<p>indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to:</p> <ol style="list-style-type: none"> <li>a. Disclose to the auditor (or representative thereof) or other public official, as defined in RCW 42.40.020, information concerning improper governmental action; or</li> <li>b. identify rules warranting review or provide information to the rules review committee.</li> </ol>	assertion of improper governmental action must be provided to the auditor or other public official within one year after the occurrence of the asserted improper governmental action.	as defined in RCW 42.40.020, and who has been subjected to workplace reprisal or retaliatory action is presumed to have established a cause of action for the remedies provided under chapter 49.60 RCW.	section authorizes an individual to disclose information otherwise prohibited by law, except to the extent that information is necessary to substantiate the whistleblower complaint, in which case information may be disclosed to the auditor or public official, as defined in RCW 42.40.020, by the whistleblower for the limited purpose of providing information related to the complaint. Any information provided to the auditor or public official under this subsection may not be further

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
West Virginia  W. Va. Code Ann. § 6C-1-1, et seq.	Public employees	No employer may discharge, threaten or otherwise discriminate or retaliate against an employee by changing the employee's compensation, terms, conditions, location or privileges of employment because the employee, acting on his own volition, or a person acting on behalf of or under the direction of the employee, makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.	An employee must report in good faith, verbally or in writing, an instance of wrongdoing or waste to the employer, a federal, state, county or municipal government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the office of the attorney general, the office of the state auditor, the commission on special investigations, the Legislature and committees of the Legislature having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste.	A court shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.	disclosed.  Statute is silent on this subject.
Wisconsin  Wis. Stat. Ann. § 230.80, et	Government employees	No appointing authority, agent of an appointing authority or supervisor may initiate or administer, or threaten to initiate or administer, any	However, to obtain protection under <a href="#">s. 230.83</a> , before disclosing that information to any person other than his or	The following remedies are available for whistleblowers who have been retaliated against: a. Order reinstatement or	Any disclosure of information by an employee to his or her attorney,

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
seq.		retaliatory action against an employee.	<p>her attorney, collective bargaining representative or legislator, the employee shall do either of the following:</p> <p>a) Disclose the information in writing to the employee's supervisor.</p> <p>b) After asking the division of equal rights which governmental unit is appropriate to receive the information, disclose the information in writing only to the governmental unit that the division of equal rights deems appropriate. The division of equal rights may not designate the department of justice, the courts, the legislature or a service agency under subch. IV of ch. 13 as an appropriate governmental unit to receive information. Each appropriate governmental unit shall designate an employee to receive this information.</p>	<p>restoration of the employee to his or her previous position with or without back pay.</p> <p>b. Order transfer of the employee to an available position for which the employee is qualified within the same governmental unit.</p> <p>c. Order expungement of adverse material relating to the retaliatory action or threat from the employee's personnel file.</p> <p>d. Order payment of the employee's reasonable attorney fees by a governmental unit respondent, or by a governmental unit employing a respondent who is a natural person if that governmental unit received notice and an opportunity to participate in proceedings before the division of equal rights.</p>	collective bargaining representative or legislator or to a legislative committee or legislative service agency is a lawful disclosure under this section and is protected under <a href="#">s. 230.83</a> .

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
<p>Wyoming</p> <p>Wyo. Stat. Ann. § 27-11-109; § 9-11-101, et seq.</p>	<p>State employees and private employees</p>	<p>No state employer may discharge, discipline or retaliate against an employee by unreasonably altering the terms, location or conditions of employment because the employee acting in good faith and within the scope of duties of employment:</p> <ul style="list-style-type: none"> <li>a. Reports in writing to the employer what the employee has reasonable cause to believe is a demonstration of fraud, waste or gross mismanagement in state government office;</li> <li>b. Reports in writing to the employer what the employee has reasonable cause to believe is a violation of a law, regulation, code or rule adopted under the laws of this state or the United States;</li> <li>c. Reports in writing to the employer what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual</li> <li>d. Participates or is requested to participate in any investigation, hearing or inquiry; or</li> </ul>	<p>Written report of demonstration of fraud, violation of law, etc. has to go to the employer.</p> <p>Prior notice to a person having supervisory authority is not required if the employee reasonably believes that the report may not result in prompt correction of the violation, condition or practice. In such cases, the employee shall report the violation, condition or practice to the department or agency director of the state entity with which he is employed or to the office of the governor.</p>	<p>An employee's recovery from any action under this section shall be limited to reinstatement of his previous job, payment of back wages and re-establishment of employee benefits to which he would have otherwise been entitled if the violation had not occurred. In addition, the court may allow the prevailing party his costs together with reasonable attorney's fees to be taxed by the court.</p>	<p>Statute is silent on this subject.</p>

## Whistleblower Protections by State

State	Covered	Protections	Procedure	Remedies	Confidential
		<p>e. Has refused to carry out a directive which is beyond the scope, terms and conditions of his employment that would expose the employee or any individual to a condition likely to result in serious injury or death, after having sought and been unable to obtain a correction of the dangerous condition from the employer.</p> <p>No employer shall discharge or in any manner discriminate against any employee because such employee has filed any notice of complaint or has instituted, or caused to be instituted, any proceeding under or related to this act or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of himself or others any right afforded by this act.</p>			

**TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES**  
**PART II - CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES**  
**CHAPTER 12 - MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION**  
**SUBCHAPTER II - OFFICE OF SPECIAL COUNSEL**

**§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters**

- (a) This section applies with respect to—
- (1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—
    - (A) a violation of any law, rule, or regulation; or
    - (B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and
  - (2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—
    - (A) a violation of any law, rule, or regulation; or
    - (B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.
- (c) (1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—
  - (A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and
  - (B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—
  - (A) an employee, former employee, or applicant for employment in the agency which the information concerns; or
  - (B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.
- (d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—
  - (1) a summary of the information with respect to which the investigation was initiated;

- (2) a description of the conduct of the investigation;
  - (3) a summary of any evidence obtained from the investigation;
  - (4) a listing of any violation or apparent violation of any law, rule, or regulation; and
  - (5) a description of any action taken or planned as a result of the investigation, such as—
    - (A) changes in agency rules, regulations, or practices;
    - (B) the restoration of any aggrieved employee;
    - (C) disciplinary action against any employee; and
    - (D) referral to the Attorney General of any evidence of a criminal violation.
- (e)
- (1) Any such report shall be submitted to the Special Counsel, and the Special Counsel shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.
  - (2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—
    - (A) the findings of the head of the agency appear reasonable; and
    - (B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.
  - (3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President and the congressional committees with jurisdiction over the agency which the disclosure involves.
  - (4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President and the congressional committees with jurisdiction over the agency which the disclosure involves together with a statement noting the failure of the head of the agency to file the required report.
- (f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—
- (1) the report shall not be transmitted to the complainant; and
  - (2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.
- (g)
- (1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head.
  - (2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.
  - (3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of—

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

- (A) the reasons why the disclosure may not be further acted on under this chapter; and
  - (B) other offices available for receiving disclosures, should the individual wish to pursue the matter further.
- (h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.
- (i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—
- (1) specifically prohibited from disclosure by any other provision of law; or
  - (2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.
- (j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 101–12, § 3(a)(13), Apr. 10, 1989, 103 Stat. 21; amended Pub. L. 104–316, title I, § 103(a), Oct. 19, 1996, 110 Stat. 3828; Pub. L. 107–304, § 3, Nov. 27, 2002, 116 Stat. 2364.)

### Amendments

2002—Subsec. (g)(1). Pub. L. 107–304, § 3(1), struck out at end “If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.”

Subsec. (g)(3). Pub. L. 107–304, § 3(2), added par. (3) and struck out former par. (3) which read as follows: “If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

“(A) return any documents and other matter provided by the individual who made the disclosure; and

“(B) inform the individual of—

“(i) the reasons why the disclosure may not be further acted on under this chapter; and

“(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.”

1996—Subsec. (e)(3). Pub. L. 104–316, § 103(a)(1), substituted “President and” for “President,” and struck out “, and the Comptroller General” before period at end.

Subsec. (e)(4). Pub. L. 104–316, § 103(a)(2), substituted “President and” for “President,” and struck out “, and the Comptroller General” before “together with a”.

## TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

### PART III - EMPLOYEES

#### Subpart A - General Provisions

#### CHAPTER 23 - MERIT SYSTEM PRINCIPLES

#### § 2302. Prohibited personnel practices

- (a) (1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b).
- (2) For the purpose of this section—
- (A) “personnel action” means—
- (i) an appointment;
  - (ii) a promotion;
  - (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
  - (iv) a detail, transfer, or reassignment;
  - (v) a reinstatement;
  - (vi) a restoration;
  - (vii) a reemployment;
  - (viii) a performance evaluation under chapter 43 of this title;
  - (ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;
  - (x) a decision to order psychiatric testing or examination; and
  - (xi) any other significant change in duties, responsibilities, or working conditions;
- with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;
- (B) “covered position” means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—
- (i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or
  - (ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and
- (C) “agency” means an Executive agency and the Government Printing Office, but does not include—
- (i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);
  - (ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
  - (iii) the Government Accountability Office.
- (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

- (1)** discriminate for or against any employee or applicant for employment—
  - (A)** on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);
  - (B)** on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);
  - (C)** on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d));
  - (D)** on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or
  - (E)** on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;
- (2)** solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—
  - (A)** an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
  - (B)** an evaluation of the character, loyalty, or suitability of such individual;
- (3)** coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4)** deceive or willfully obstruct any person with respect to such person’s right to compete for employment;
- (5)** influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6)** grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7)** appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110 (a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110 (a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8)** take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—
  - (A)** any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
    - (i)** a violation of any law, rule, or regulation, or
    - (ii)** gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
  - (B)** any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
    - (i)** a violation of any law, rule, or regulation, or

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- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—
  - (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
  - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
  - (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
  - (D) for<sup>1</sup> refusing to obey an order that would require the individual to violate a law;
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- (11) (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
  - (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

- (1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
  - (2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
  - (3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 (d)), prohibiting discrimination on the basis of sex;
  - (4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or
  - (5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.
- (e) (1) For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law:

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- (A) Sections 2108, 3305 (b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317 (b), 3318, 3320, 3351, 3352, 3363, 3501, 3502 (b), 3504, and 4303 (e) and (with respect to a preference eligible referred to in section 7511 (a)(1)(B)) subchapter II of chapter 75 and section 7701.
- (B) Sections 943 (c)(2) and 1784 (c) of title 10.
- (C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
- (D) Section 301(c) of the Foreign Service Act of 1980.
- (E) Sections 106 (f),<sup>2</sup> 7281 (e), and 7802 (5)<sup>2</sup> of title 38.
- (F) Section 1005 (a) of title 39.
- (G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.
- (H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.
- (2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

### Footnotes

<sup>1</sup> So in original. The word "for" probably should not appear.

<sup>2</sup> See References in Text note below.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101–12, § 4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101–474, § 5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102–378, § 2(5), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103–94, § 8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103–359, title V, § 501(c), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103–424, § 5, Oct. 29, 1994, 108 Stat. 4363; Pub. L. 104–197, title III, § 315(b)(2), Sept. 16, 1996, 110 Stat. 2416, Pub. L. 104–201, div. A, title XI, § 1122(a)(1), title XVI, § 1615(b), Sept. 23, 1996, 110 Stat. 2687, 2741; Pub. L. 105–339, § 6(a), (b), (c)(2), Oct. 31, 1998, 112 Stat. 3187, 3188; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

### References in Text

Section 1308(b) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (e)(1)(C), is classified to section 3198 (b) of Title 16, Conservation.

Section 301(c) of the Foreign Service Act of 1980, referred to in subsec. (e)(1)(D), is classified to section 3941 (c) of Title 22, Foreign Relations and Intercourse.

Section 106 (f) of title 38, referred to in subsec. (e)(1)(E), was enacted subsequent to the enactment of subsec. (e) of this section.

Section 7802 (5) of title 38, referred to in subsec. (e)(1)(E), was redesignated section 7802 (e) of title 38 by Pub. L. 108–170, title III, § 304(b)(3), Dec. 6, 2003, 117 Stat. 2059.

### Amendments

2008—Subsec. (a)(2)(C)(ii). Pub. L. 110–417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2004—Subsec. (a)(2)(C)(iii). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

1998—Subsec. (a)(1). Pub. L. 105–339, § 6(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For purposes of this title, ‘prohibited personnel practice’ means the following:

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

“(A) Any action described in subsection (b) of this section.

“(B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c (a) of title 10.”

Subsec. (b)(10) to (12). Pub. L. 105–339, § 6(a), struck out “or” at end of par. (10), added par. (11), and redesignated former par. (11) as (12).

Subsec. (e). Pub. L. 105–339, § 6(b), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104–201, § 1615(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the purpose of this title, ‘prohibited personnel practice’ means any action described in subsection (b) of this section.”

Subsec. (a)(2)(C)(ii). Pub. L. 104–201, § 1122(a)(1), substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

Subsec. (b)(2). Pub. L. 104–197 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303 (f);”.

1994—Subsec. (a)(2)(A). Pub. L. 103–424, § 5(a)(3), in concluding provisions, inserted before semicolon “, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31”.

Subsec. (a)(2)(A)(x), (xi). Pub. L. 103–424, § 5(a)(1), (2), added cls. (x) and (xi) and struck out former cl. (x) which read as follows: “any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level;”.

Subsec. (a)(2)(B). Pub. L. 103–424, § 5(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “ ‘covered position’ means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

“(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.”

Subsec. (a)(2)(C)(i). Pub. L. 103–424, § 5(c), inserted before semicolon “, except in the case of an alleged prohibited personnel practice described under subsection (b)(8)”.

Subsec. (a)(2)(C)(ii). Pub. L. 103–359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency,”.

Subsec. (c). Pub. L. 103–424, § 5(d), inserted before period at end of first sentence “, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title”.

1993—Subsec. (b)(2). Pub. L. 103–94 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

“(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

“(B) an evaluation of the character, loyalty, or suitability of such individual;”.

1992—Subsec. (b)(8)(B). Pub. L. 102–378 substituted “Special Counsel” for “Special Counsel of the Merit Systems Protection Board”.

1990—Subsec. (a)(2)(C). Pub. L. 101–474 struck out “, the Administrative Office of the United States Courts,” after “means an Executive agency”.

1989—Subsec. (b)(8). Pub. L. 101–12, § 4(a), in introductory provision inserted “, or threaten to take or fail to take,” after “fail to” and substituted “because of” for “as a reprisal for”, in subpar. (A) substituted “any disclosure” for “a disclosure”, in subpar. (A)(ii) inserted “gross” before “mismanagement”, in subpar. (B) substituted “any disclosure” for “a disclosure”, and in subpar. (B)(ii) inserted “gross” before “mismanagement”.

Subsec. (b)(9). Pub. L. 101–12, § 4(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;”.

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### **Effective Date of 1996 Amendments**

Amendment by section 1122(a)(1) of Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

Section 315(c) of Pub. L. 104–197 provided that: “This section [amending this section and section 3303 of this title] shall take effect 30 days after the date of the enactment of this Act [Sept. 16, 1996].”

### **Effective Date of 1993 Amendment; Savings Provision**

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

### **Effective Date of 1989 Amendment**

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

### **Savings Provision**

Pub. L. 105–339, § 6(d), Oct. 31, 1998, 112 Stat. 3188, provided that: “This section [amending this section and repealing section 1599c of Title 10, Armed Forces] shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act [Oct. 31, 1998].”

### **Federal Benefits and Non-Discrimination**

Memorandum of President of the United States, June 17, 2009, 74 F.R. 29393, provided:

Memorandum for the Heads of Executive Departments and Agencies

Millions of hard-working, dedicated, and patriotic public servants are employed by the Federal Government as part of the civilian workforce, and many of these devoted Americans have same-sex domestic partners. Leading companies in the private sector are free to provide to same-sex domestic partners the same benefits they provide to married people of the opposite sex. Executive departments and agencies, however, may only provide benefits on that basis if they have legal authorization to do so. My Administration is not authorized by Federal law to extend a number of available Federal benefits to the same-sex partners of Federal employees. Within existing law, however, my Administration, in consultation with the Secretary of State, who oversees our Foreign Service employees, and the Director of the Office of Personnel Management, who oversees human resource management for our civil service employees, has identified areas in which statutory authority exists to achieve greater equality for the Federal workforce through extension to same-sex domestic partners of benefits currently available to married people of the opposite sex. Extending available benefits will help the Federal Government compete with the private sector to recruit and retain the best and the brightest employees.

I hereby request the following:

Section 1. Extension of Identified Benefits. The Secretary of State and the Director of the Office of Personnel Management shall, in consultation with the Department of Justice, extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law.

Sec. 2. Review of Governmentwide Benefits. The heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees. The results of this review shall be reported within 90 days to the Director of the Office of Personnel Management, who, in consultation with the Department of Justice, shall recommend to me any additional measures that can be taken, consistent with existing law, to provide benefits to the same-sex domestic partners of Federal Government employees.

Sec. 3. Promoting Compliance with Existing Law Requiring Federal Workplaces to be Free of Discrimination Based on Non-Merit Factors. The Office of Personnel Management shall issue guidance within 90 days to all executive departments and agencies regarding compliance with, and implementation of, the civil service laws, rules, and

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regulations, including 5 U.S.C. 2302 (b)(10), which make it unlawful to discriminate against Federal employees or applicants for Federal employment on the basis of factors not related to job performance.

Sec. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) Authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 5. Publication. The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.

## **Extension of Benefits to Same-Sex Domestic Partners of Federal Employees**

Memorandum of President of the United States, June 2, 2010, 75 F.R. 32247, provided:

Memorandum for the Heads of Executive Departments and Agencies

For far too long, many of our Government's hard-working, dedicated LGBT employees have been denied equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of our Federal workforce, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies), in consultation with the Office of Personnel Management (OPM), to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

Section 1. Immediate Actions To Extend Benefits. Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

(i) clarify that the children of employees' same-sex domestic partners fall within the definition of "child" for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;

(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as "family members";

(iii) issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as "family members" for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;

(iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339 (k)(1), 8420;

(v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522-5523; Folio: 1632 [sic]

(vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on "Expanded Family and Medical Leave Policies" to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs, may be used to meet the needs of an employee's same-sex domestic partner or the same-sex domestic partner's children; and

(vii) clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of "immediate family" and "dependent" appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300-304, to include same-sex

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domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees' spouses and their children to employees' same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees' spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees' same-sex domestic partners and their children.

Sec. 2. Continuing Obligation To Provide New Benefits. In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners' children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

Sec. 3. Monitoring and Guidance. The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form Folio: 1633 [sic] and manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

Sec. 4. Reporting. By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

Sec. 5. General Provisions. (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

- (i) authority granted by law or Executive Order to an agency, or the head thereof; or
  - (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.
- (c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. Publication. The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

[United States Code Annotated](#)  
[Title 5. Government Organization and Employees \(Refs & Annos\)](#)  
[Appendix 3. Inspector General Act of 1978 <sup>1</sup> \(Refs & Annos\)](#)

Inspector General Act of 1978, § 8H, 5 U.S.C.A. App. 3

§ 8H. Additional Provisions with Respect to Inspectors General of the Intelligence Community--

Effective: July 7, 2014

[Currentness](#)

**(a)(1)(A)** An employee of the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, or the National Security Agency, or of a contractor of any of those Agencies, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Defense (or designee).

**(B)** An employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community, who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General of the Intelligence Community.

**(C)** An employee of the Federal Bureau of Investigation, or of a contractor of the Bureau, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the Department of Justice (or designee).

**(D)** Any other employee of, or contractor to, an executive agency, or element or unit thereof, determined by the President under [section 2302\(a\)\(2\)\(C\)\(ii\) of title 5, United States Code](#), to have as its principal function the conduct of foreign intelligence or counterintelligence activities, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the appropriate Inspector General (or designee) under this Act, section 17 of the Central Intelligence Agency Act of 1949 [[50 U.S.C.A. § 3517](#)], or section 103H(k) of the National Security Act of 1947 ([50 U.S.C. 3033\(k\)](#)).

**(2)** If a designee of an Inspector General under this section receives a complaint or information of an employee with respect to an urgent concern, that designee shall report the complaint or information to the Inspector General within 7 calendar days of receipt.

**(3)** The Inspectors General of the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, and the National Security Agency shall be designees of the Inspector General of the Department of Defense for purposes of this section.

**(b)(1)** Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection (a), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the head of the establishment notice of that determination, together with the complaint or information.

**(2)** If the head of an establishment determines that a complaint or information transmitted under paragraph (1) would create a conflict of interest for the head of the establishment, the head of the establishment shall return the complaint or information to the Inspector General with that determination and the Inspector General shall make the transmission to the Director of National Intelligence and, if the establishment is within the Department of Defense, to the Secretary of Defense. In such a case, the requirements of this section for the head of the establishment apply to each recipient of the Inspector General's transmission.

**(c)** Upon receipt of a transmittal from the Inspector General under subsection (b), the head of the establishment shall, within 7 calendar days of such receipt, forward such transmittal to the intelligence committees, together with any comments the head of the establishment considers appropriate.

**(d)(1)** If the Inspector General does not find credible under subsection (b) a complaint or information submitted to the Inspector General under subsection (a), or does not transmit the complaint or information to the head of the establishment in accurate form under subsection (b), the employee (subject to paragraph (2)) may submit the complaint or information to Congress by contacting either or both of the intelligence committees directly.

**(2)** The employee may contact the intelligence committees directly as described in paragraph (1) only if the employee--

**(A)** before making such a contact, furnishes to the head of the establishment, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the intelligence committees directly; and

**(B)** obtains and follows from the head of the establishment, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

**(3)** A member or employee of one of the intelligence committees who receives a complaint or information under paragraph (1) does so in that member or employee's official capacity as a member or employee of that committee.

**(e)** The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.

**(f)** An action taken by the head of an establishment or an Inspector General under subsections (a) through (e) shall not be subject to judicial review.

**(g)(1)** The Inspector General of the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

**(A)** The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the office of such Inspector General in such fiscal year.

**(B)** The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

**(C)** An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

**(D)** Any matters that such Inspector General considers appropriate regarding the independence and effectiveness of the office of such Inspector General.

**(2)** The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947 [[50 U.S.C.A. § 3106](#)].

**(3)** In this subsection, the term “congressional intelligence committees” shall have the meaning given that term in section 3 of the National Security Act of 1947 ([50 U.S.C. 401a](#)) [[50 U.S.C.A. § 3003](#)].

**(h)** An individual who has submitted a complaint or information to an Inspector General under this section may notify any member of the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate, or a staff member of either such Committee, of the fact that such individual has made a submission to that particular Inspector General, and of the date on which such submission was made.

**(i)** In this section:

**(1)** The term “urgent concern” means any of the following:

**(A)** A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

**(B)** A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(C) An action, including a personnel action described in [section 2302\(a\)\(2\)\(A\) of Title 5](#), constituting reprisal or threat of reprisal prohibited under [section 7\(c\)](#) in response to an employee's reporting an urgent concern in accordance with this section.

(2) The term “intelligence committees” means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

**CREDIT(S)**

([Pub.L. 95-452](#), § 8H, as added [Pub.L. 105-272, Title VII, § 702\(b\)\(1\)](#), Oct. 20, 1998, 112 Stat. 2415; amended [Pub.L. 107-108, Title III, § 309\(b\)](#), Dec. 28, 2001, 115 Stat. 1400; [Pub.L. 107-306, Title VIII, § 825](#), Nov. 27, 2002, 116 Stat. 2429; [Pub.L. 110-417, Div. A, Title IX, § 931\(b\)\(2\)](#), Oct. 14, 2008, 122 Stat. 4575; [Pub.L. 111-259, Title IV, § 431\(b\)](#), Oct. 7, 2010, 124 Stat. 2731; [Pub.L. 113-126, Title III, § 310, Title VI, § 603\(a\)](#), July 7, 2014, 128 Stat. 1398, 1420.)

Footnotes

1 Number and order of Appendixes editorially supplied.

Inspector General Act of 1978, § 8H, 5 U.S.C.A. App. 3, 5 USCA APP. 3 § 8H

Current through P.L. 114-244.

**Occupational Safety and Health Administration  
 Directorate of Whistleblower Protection Programs (DWPP)  
 Whistleblower Statutes Desk Aid**

Act/OSHA Regulation	Days to file	Respondents covered	Days to complete	Kick-Out Provision	Allowable Remedies				Appeal		Burden of Proof
					Backpay	Preliminary Reinstatement	Compensatory	Punitive	Days	Venue	
<b>Section 11(c) of the Occupational Safety &amp; Health Act (OSHA) (1970)</b> [29 U.S.C. § 660(c)]. Protects employees from retaliation for exercising a variety of rights guaranteed under the Act, such as filing a S&H complaint with OSHA or their employers, participating in an inspection, etc. <b>29 CFR 1977</b>	30	Private sector U.S. Postal Service Certain tribal employers	90	No	Yes	No	Yes	Yes	15	OSHA	But for
<b>Asbestos Hazard Emergency Response Act (AHERA) (1986)</b> [15 U.S.C. § 2651]. Protects employees from retaliation for reporting violations of the law relating to asbestos in public or private non-profit elementary and secondary school systems. <b>29 CFR 1977</b>	90	Private sector State and local government Certain DoD schools Certain tribal schools	90	No	Yes	No	Yes	Yes	15	OSHA	But for
<b>International Safe Container Act (ISCA) (1977)</b> [46 U.S.C. § 80507]. Protects employees from retaliation for reporting to the Coast Guard the existence of an unsafe intermodal cargo container or another violation of the Act. <b>29 CFR 1977</b>	60	Private sector Local government Certain state government and interstate compact agencies	30	No	Yes	No	Yes	Yes	15	OSHA	But for
<b>Surface Transportation Assistance Act (STAA) (1982)</b> [49 U.S.C. § 31105]. Protects truck drivers and other covered employees from retaliation for refusing to violate regulations related to the safety or security of commercial motor vehicles or for reporting violations of those regulations, etc. <b>29 CFR 1978</b>	180	Private sector	60	210	Yes	Yes	Yes	Yes 250K cap	30	ALJ	Contributing

**Occupational Safety and Health Administration  
 Directorate of Whistleblower Protection Programs (DWPP)  
 Whistleblower Statutes Desk Aid**

Act/OSHA Regulation	Days to file	Respondents covered	Days to complete	Kick-Out Provision	Allowable Remedies				Appeal		Burden of Proof
					Backpay	Preliminary Reinstatement	Compensatory	Punitive	Days	Venue	
<b>Safe Drinking Water Act (SDWA) (1974)</b> [42 U.S.C. § 300j-9(i)]. Protects employees from retaliation for, among other things, reporting violations of the Act, which requires that all drinking water systems assure that their water is potable as determined by the Environmental Protection Agency. <b>29 CFR 24</b>	30	Private sector Federal, state and municipal Indian tribes	30	No	Yes	No	Yes	Yes	30	ALJ	Motivating
<b>Federal Water Pollution Control Act (FWPCA) (1972)</b> [33 U.S.C. § 1367]. Protects employees from retaliation for reporting violations of the law related to water pollution. This statute is also known as the Clean Water Act. <b>29 CFR 24</b>	30	Private sector State and municipal Indian tribes Federal sovereign immunity bars investigation of FWPCA complaints filed by federal employees	30	No	Yes	No	Yes	No	30	ALJ	Motivating
<b>Toxic Substances Control Act (TSCA) (1976)</b> [15 U.S.C. § 2622]. Protects employees from retaliation for reporting alleged violations relating to industrial chemicals currently produced or imported into the United States and supplements the Clean Air Act (CAA) and the Toxic Release Inventory under Emergency Planning & Community Right to Know Act (EPCRA). <b>29 CFR 24</b>	30	Private sector	30	No	Yes	No	Yes	Yes	30	ALJ	Motivating
<b>Solid Waste Disposal Act (SWDA) (1976)</b> [42 U.S.C. § 6971]. Protects employees from retaliation for reporting violations of the law that regulates the disposal of solid waste. This statute is also known as the Resource Conservation and Recovery Act. <b>29 CFR 24</b>	30	Private sector Federal, state and municipal Indian tribes	30	No	Yes	No	Yes	No	30	ALJ	Motivating

**Occupational Safety and Health Administration  
 Directorate of Whistleblower Protection Programs (DWPP)  
 Whistleblower Statutes Desk Aid**

Act/OSHA Regulation	Days to file	Respondents covered	Days to complete	Kick-Out Provision	Allowable Remedies				Appeal		Burden of Proof
					Backpay	Preliminary Reinstatement	Compensatory	Punitive	Days	Venue	
<b>Clean Air Act (CAA) (1977)</b> [42 U.S.C. § 7622]. Protects employees from retaliation for reporting violations of the Act, which provides for the development and enforcement of standards regarding air quality and air pollution. <b>29 CFR 24</b>	30	Private sector Federal, state and municipal	30	No	Yes	No	Yes	No	30	ALJ	Motivating
<b>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (1980)</b> [42 U.S.C. § 9610] A.k.a. "Superfund," this statute protects employees from retaliation for reporting violations of regulations involving accidents, spills, and other emergency releases of pollutants into the environment. The Act also protects employees who report violations related to the clean up of uncontrolled or abandoned hazardous waste sites. <b>29 CFR 24</b>	30	Private sector Federal, state and municipal	30	No	Yes	No	Yes	No	30	ALJ	Motivating

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<p><b>Energy Reorganization Act (ERA) 1974</b>            [42 U.S.C. § 5851]. Protects certain employees in the nuclear industry from retaliation for reporting violations of the Atomic Energy Act. Protected employees include employees of operators, contractors and subcontractors of nuclear power plants licensed by the Nuclear Regulatory Commission, and employees of contractors working with the Department of Energy under a contract pursuant to the Atomic Energy Act. <b>29 CFR 24</b></p>	180	<p>Statute provides coverage of NRC and its contractors and subcontractors, NRC licensees and applicants for licenses, including contractors and subcontractors Agreement state licensees Applicants for licenses from agreement states, including their contractors and subcontractors DOE and its contractors and subcontractors. However, ARB case law indicates federal sovereign immunity will bar investigation of ERA complaints filed against many but not all federal agencies.</p>	30	365	Yes	No	Yes	No	30	ALJ	Contributing
<p><b>Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) (2000)</b>[49 U.S.C. § 42121]. Protects employees of air carriers and contractors and subcontractors of air carriers from retaliation for, among other things, reporting violations of laws related to aviation safety. <b>29 CFR 1979</b></p>	90	Air carriers and their contractors and subcontractors	60	No	Yes	Yes	Yes	No	30	ALJ	Contributing

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<b>Sarbanes-Oxley Act (SOX) (2002)</b> [18 U.S.C. § 1514A]. Protects employees of certain companies from retaliation for reporting alleged mail, wire, bank or securities fraud; violations of the SEC rules and regulations; or violations of federal laws related to fraud against shareholders. The Act covers employees of publically traded companies, including those companies' subsidiaries, and employees of nationally recognized statistical rating organizations, as well as contractors, subcontractors, and agents of these employers. <b>29 CFR 1980</b>	180	Companies registered under §12 or required to report under §15(d) of the SEA and their consolidated subsidiaries or affiliates, contractors, subcontractors, officers, and agents, and nationally recognized statistical rating organizations	60	180	Yes	Yes	Yes	No	30	ALJ	Contributing
<b>Pipeline Safety Improvement Act (PSIA) (2002)</b> [49 U.S.C. § 60129]. Protects employees from retaliation for reporting violations of federal laws related to pipeline safety and security or for refusing to violate such laws. <b>29 CFR 1981</b>	180	Private sector employers, states, municipalities, and individuals owning or operating pipeline facilities, and their contractors and subcontractors	60	No	Yes	Yes	Yes	No	60	ALJ	Contributing
<b>Federal Railroad Safety Act (FRSA)</b> [49 U.S.C. § 20109]. Protects employees of railroad carriers and their contractors and subcontractors from retaliation for reporting a work-place injury or illness, a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety. In addition, the statute protects employees from retaliation for refusing to work when confronted by a hazardous safety or security condition. <b>29 CFR 1982</b>	180	Railroad carriers and their contractors, subcontractors, and officers	60	210	Yes	Yes	Yes	Yes 250K Cap	30	ALJ	Contributing

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<p><b>National Transit Systems Security Act (NTSSA)</b> [6 U.S.C. §1142]. Protects transit employees from retaliation for reporting a hazardous safety or security condition, a violation of any federal law relating to public transportation agency safety, or the abuse of federal grants or other public funds appropriated for public transportation. The Act also protects public transit employees from retaliation for refusing to work when confronted by a hazardous safety or security condition, or refusing to violate a federal law related to public transportation safety. <b>29 CFR 1982</b></p>	180	Public transportation agencies and their contractors and subcontractors, and officers	60	210	Yes	Yes	Yes	Yes 250K Cap	30	ALJ	Contributing
<p><b>Consumer Product Safety Improvement Act (CPSIA) (2008)</b> [15 U.S.C. § 2087]. Protects employees from retaliation for reporting to their employer, the federal government, or a state attorney general reasonably perceived violations of any statute or regulation within the jurisdiction of the Consumer Product Safety Commission (CPSC). CPSIA covers employees of consumer product manufacturers, importers, distributors, retailers, and private labelers. <b>29 CFR 1983</b></p>	180	Manufacturing, private labeling, distribution, and retail employers in the United States	60	210 or within 90 days of OSHA finding	Yes	Yes	Yes	No	30	ALJ	Contributing

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<b>Affordable Care Act (ACA) (2010)</b> [29 U.S.C. § 218c]. Protects employees from retaliation for reporting violations of any provision of title I of the ACA, including but not limited to discrimination based on an individual's receipt of health insurance subsidies, the denial of coverage based on a preexisting condition, or an insurer's failure to rebate a portion of an excess premium. <b>29 CFR 1984</b>	180	Private and public sector employers	60	210 or within 90 days of OSHA finding	Yes	Yes	Yes	No	30	ALJ	Contributing
<b>Seaman's Protection Act (SPA) (2010)</b> [46 U.S.C. § 2114]. Protects seamen from retaliation for reporting to the Coast Guard or another federal agency a violation of a maritime safety law or regulation. Among other things, the Act also protects seamen from retaliation for refusing to work when they reasonably believe an assigned task would result in serious injury or impairment of health to themselves, other seamen, or the public. <b>29 CFR 1986</b>	180	Private-sector employers—vessel on which seaman was employed must be American-owned, as defined; world-wide coverage	60	210	Yes	Yes	Yes	Yes 250 K Cap	30	ALJ	Contributing
<b>Consumer Financial Protection Act (CFPA) (2010)</b> [12 U.S.C. § 5567]. Protects employees performing tasks related to consumer financial products or services from retaliation for reporting reasonably perceived violations of any provision of title X of the Dodd-Frank Act or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial Protection, or any rule, order, standard, or prohibition prescribed by the Bureau. <b>29 CFR 1985</b>	180	Any person engaged in offering or providing a consumer financial product or service, a service provider to such person, or such person's affiliate acting as a service provider to it	60	210 or within 90 days of OSHA finding	Yes	Yes	Yes	No	30	ALJ	Contributing

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<b>FDA Food Safety Modernization Act (FSMA) (2011)</b> [21 U.S.C. § 1012]. Protects employees of food manufacturers, distributors, packers, and transporters from retaliation for reporting a violation of the Food, Drug, and Cosmetic Act, or a regulation promulgated under the Act. Employees are also protected from retaliation for refusing to participate in a practice that violates the Act. <b>29 CFR 1987</b>	180	Any entity engaged in the manufacture, processing, packing, transporting, distribution, reception, holding, or importation of food	60	210 or within 90 days of OSHA finding	Yes	Yes	Yes	No	30	ALJ	Contributing
<b>Section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (a provision of Division C's Title I, the Motor Vehicle and Highway Safety Improvement Act of 2012) (2012)</b> . [49 U.S.C. § 30171]. <i>Protects employees from retaliation by motor vehicle manufacturers, part suppliers, and dealerships for providing information to the employer or the U.S. Department of Transportation about motor vehicle defects, noncompliance, or violations of the notification or reporting requirements enforced by the National Highway Traffic Safety Administration (NHTSA), or for engaging in related protected activities as set forth in the provision.</i> <b>29 CFR 1988</b>	180	Motor vehicle manufacturer, part supplier, or dealership	60	210	Yes	Yes	Yes	No	30	ALJ	Contributing