



Federal Managers Association
Advocating Excellence in Public Service

United States Marshals Service
Chapter 373

July 29, 2020

The Honorable Donald W. Washington
Director
United States Marshals Service
Washington, D.C. 20530-1000

SUBJECT: National Whistleblower Appreciation Day 2020

Dear Director Washington:

Earlier this month, as they have each year since 2013, the United States Senate passed a Resolution designating July 30, 2020, as **National Whistleblower Appreciation Day**. The resolution aims to encourage federal agencies to acknowledge employees who call attention to fraud, waste, abuse, and violations of laws and regulations, and to remind employees of their rights as whistleblowers.

We recognize more work must be done to raise awareness and educate employees at the United States Marshals Service (USMS) about whistleblower rights. Based on apparent underreporting of mandatory No Fear Act data on violations of whistleblower protection laws, punishment for managers who retaliate against employees for making protected disclosures also continues to be work in progress. That said, we acknowledge you for last year issuing a Memorandum to agency employees on Whistleblower Protection/Prohibited Personnel Practices, dated August 20, 2019.

On behalf of the USMS chapter of the Federal Managers Association, we respectfully request you consider issuing a statement to the workforce—to *publish tomorrow, July 30th*—recognizing the bravery and contributions of whistleblowers in the USMS. We believe this will go a long way toward additional progress to increase employee awareness of their rights. It will also serve to deter managers from engaging in prohibited personnel practices involving reprisal by reinforcing your *zero tolerance* standard for retaliating against whistleblowers that aims to hold *all* employees accountable, regardless of rank.

You are aware in recent years the USMS has benefited from courageous men and women who have “blown the whistle” about serious misconduct, to include by some of the most senior agency officials. There can be no tolerance for disregarding the serious risk imparted to the men and women of our agency who put their lives on the line every day for a more secure Nation. Acknowledging those employees who have honorably

brought attention to fraud, waste, abuse, and violations of laws and regulations—as well as gross mismanagement—is essential to excellence in public service.

Sincerely,

Dave Barnes

Dave Barnes
President

Jason R. Wojdylo

Jason R. Wojdylo
Vice-President for
Law Enforcement Operations

cc: The Honorable Michael E. Horowitz
Inspector General
United States Department of Justice

The Honorable Charles E. Grassley
Senate President Pro Tempore
Chairman, Senate Whistleblower Protection Caucus
United States Senate

Derrick Driscoll
Deputy Director
United States Marshals Service

116TH CONGRESS
2D SESSION

S. RES. 634

Designating July 30, 2020, as “National Whistleblower Appreciation Day”.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2020

Mr. GRASSLEY (for himself, Mr. WYDEN, Mr. TILLIS, Ms. HIRONO, Mr. BOOZMAN, Mr. PETERS, Mr. ENZI, Mr. CARPER, Ms. COLLINS, Mr. MARKEY, Ms. ERNST, Mr. DURBIN, Mrs. FISCHER, Ms. BALDWIN, Mr. MORAN, Ms. DUCKWORTH, Mr. JOHNSON, Ms. SINEMA, and Mrs. BLACKBURN) submitted the following resolution; which was referred to the Committee on the Judiciary

JULY 1, 2020

Committee discharged; considered and agreed to

RESOLUTION

Designating July 30, 2020, as “National Whistleblower Appreciation Day”.

Whereas, in 1777, before the passage of the Bill of Rights, 10 sailors and Marines blew the whistle on fraud and misconduct that was harmful to the United States;

Whereas the Founding Fathers unanimously supported the whistleblowers in words and deeds, including by releasing government records and providing monetary assistance for the reasonable legal expenses necessary to prevent retaliation against the whistleblowers;

Whereas, on July 30, 1778, in demonstration of their full support for whistleblowers, the members of the Continental Congress unanimously passed the first whistleblower legislation in the United States that read: “*Resolved*, That it is the duty of all persons in the service of the United States, as well as all other the inhabitants thereof, to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge” (legislation of July 30, 1778, reprinted in *Journals of the Continental Congress, 1774–1789*, ed. Worthington C. Ford et al. (Washington, DC, 1904–37), 11:732);

Whereas whistleblowers risk their careers, jobs, and reputations by reporting waste, fraud, and abuse to the proper authorities;

Whereas, in providing the proper authorities with lawful disclosures, whistleblowers save the taxpayers of the United States billions of dollars each year and serve the public interest by ensuring that the United States remains an ethical and safe place; and

Whereas it is the public policy of the United States to encourage, in accordance with Federal law (including the Constitution of the United States, rules, and regulations) and consistent with the protection of classified information (including sources and methods of detection of classified information), honest and good faith reporting of misconduct, fraud, misdemeanors, and other crimes to the appropriate authority at the earliest time possible: Now, therefore, be it

1 *Resolved*, That the Senate—

1 (1) designates July 30, 2020, as “National
2 Whistleblower Appreciation Day”; and

3 (2) ensures that the Federal Government imple-
4 ments the intent of the Founding Fathers, as re-
5 flected in the legislation passed on July 30, 1778
6 (relating to whistleblowers), by encouraging each ex-
7 ecutive agency to recognize National Whistleblower
8 Appreciation Day by—

9 (A) informing employees, contractors work-
10 ing on behalf of the taxpayers of the United
11 States, and members of the public about the
12 legal right of a United States citizen to “blow
13 the whistle” to the appropriate authority by
14 honest and good faith reporting of misconduct,
15 fraud, misdemeanors, or other crimes; and

16 (B) acknowledging the contributions of
17 whistleblowers to combating waste, fraud,
18 abuse, and violations of laws and regulations of
19 the United States.

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U.S. Department of Justice

United States Marshals Service

Office of the Director

Washington, DC 20530-0001

August 20, 2019

MEMORANDUM TO: United States Marshals Service Employees

FROM: Donald W. Washington
Director

A handwritten signature in blue ink, reading "Donald W. Washington", is placed over the printed name of the Director.

SUBJECT: Whistleblower Protection/Prohibited Personnel Practices

All United States Marshals Service (USMS) employees must be aware of and understand prohibited personnel practices, including retaliation for whistleblowing, and, in general, understand the whistleblower protections and rights available for Federal employees. Whistleblowing activity is protected by law, and the USMS will assure the anti-retaliation provisions of the law are honored and enforced.

On June 7, 2016, Assistant Attorney General for Administration Lee J. Lofthus issued a [memorandum](#) addressing this subject and restating the Department of Justice's (DOJ) commitment to protecting its employees from retaliation if they report possible waste, fraud, or abuse.

Like DOJ, the USMS is committed to ensuring that all employees conduct themselves in a manner consistent with law and regulation, as well as DOJ and USMS policies. This includes strictly enforcing the laws prohibiting retaliation for protected disclosures by Federal employees. Substantiated violations of the Whistleblower Protection Enhancement Act will be treated as misconduct, and may subject the offending employee to disciplinary action by the USMS or disciplinary action and/or a civil penalty imposed by the Merit Systems Protection Board.

To ensure that employees are aware of the requirements under the Whistleblower Protection Enhancement Act and what constitutes whistleblowing and protected disclosure, all employees are required to annually complete whistleblower training developed by the Office of Inspector General through LearnUSMS. If you are not familiar with the provisions related to prohibited personnel practices and whistleblower protections, I recommend reviewing the attached documentation and/or review of the Whistleblower Annual Training Video 2019 found on LearnUSMS.

Attachment



U.S. Department of Justice

JUN 7 2016

Washington, D.C. 20530

MEMORANDUM FOR ALL DEPARTMENT OF JUSTICE EMPLOYEES

FROM: Lee J. Lofthus
Assistant Attorney General
for Administration

SUBJECT: Whistleblower Protection/Prohibited Personnel Practices

The purpose of this memorandum is to ensure that all Department employees are aware of and understand the Prohibited Personnel Practices, including retaliation for whistleblowing, and in general understand the whistleblower protections available to Federal employees.

The Whistleblower Protection Act of 1989 and the Whistleblower Protection Enhancement Act of 2012 protect Federal employees who disclose evidence of waste, fraud, or abuse. "Whistleblowing" is defined as the disclosure of information that an employee reasonably believes shows: a violation of any law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or analysis. Employees' disclosures to a range of officials are protected, including management officials, the Department's Office of Inspector General (OIG), or the U.S. Office of Special Counsel (OSC). Whistleblower protections for FBI employees are set forth at 28 C.F.R. Part 27.

The attached fact sheet, "Your Rights as a Federal Employee," (<https://osc.gov/Resources/Your%20Rights%20as%20a%20Federal%20Employee.pdf>) provides detailed information on the thirteen Prohibited Personnel Practices and employees' right to file complaints with OSC if an employee believes he or she has been subject to a Prohibited Personnel Practice (including retaliation for whistleblowing). I also encourage you to review the following materials: "Know Your Rights When Reporting Wrongs," (<https://osc.gov/Resources/Know%20Your%20Rights%20When%20Reporting%20Wrongs.pdf>) and "The Role of the U.S. Office of Special Counsel" (<https://osc.gov/Resources/oscrole.pdf>), which describe different avenues for making whistleblower disclosures and OSC's role in accepting complaints from Federal employees.

The Department is committed to protecting its employees from retaliation if they report possible waste, fraud, or abuse. To that end, OIG created a Whistleblower Ombudsperson Program with a focus on educating Department personnel about

whistleblower rights and protections. The OIG, working in conjunction with the Office of Legal Education and the Justice Television Network (JTN), created a brief video outlining the important rights and protections for persons who “blow the whistle” on wrongdoing. Understanding these rights and protections is an important responsibility for all Department personnel. Accordingly, I encourage all employees to view the video entitled “Reporting Wrongdoing: Whistleblowers and their Rights and Protections” (<https://oig.justice.gov/multimedia/video-10-10-13.htm#top>). Managers and supervisors are required to complete mandatory training every three years as part of the OSC Certification process and viewing this video satisfies that requirement. Components may also develop their own training materials.

In addition to investigating disclosures of waste, fraud and abuse, the OIG also investigates allegations of retaliation for making such disclosures (whistleblower retaliation). Complaints of whistleblower retaliation can be submitted to the OIG through its hotline, which is available on the OIG’s website, www.usdoj.gov/oig. Additional information about whistleblower rights and protections and the OIG Whistleblower Ombudsperson Program is available at the same site. If you have questions about whistleblower rights and protections, you may also contact the OIG Ombudsperson Program at OIG.Whistleblower.Ombudsperson.Program@usdoj.gov.

Department employees should also remember that they may report to their supervisor or the Office of Professional Responsibility (OPR) any evidence or non-frivolous allegation of misconduct against a Department attorney when that misconduct relates to the attorney’s authority to investigate, litigate, or provide legal advice. Just as with those who make a whistleblower complaint, the Department is committed to protecting from retaliation anyone who makes a report of possible attorney misconduct. If you have questions about whether something should be reported to OPR, or about OPR’s procedures for handling complaints, you may contact OPR’s senior Associate Counsel at OPR.Hotline@usdoj.gov.

Attachment

YOUR RIGHTS AS A FEDERAL EMPLOYEE

ENFORCED BY

THE U.S. OFFICE OF SPECIAL COUNSEL

I. THE U.S. OFFICE OF SPECIAL COUNSEL (OSC) is an independent agency that investigates and prosecutes allegations of prohibited personnel practices (PPP).

WHAT IS A PROHIBITED PERSONNEL PRACTICE (PPP)?:

Under 5 U.S.C. §2302(b)(1)-(b)(13) a federal employee authorized to take, direct others to take, recommend or approve any personnel action may not:

- **Discriminate (including discrimination based on marital status and political affiliation).** *EXAMPLE: Supervisor Joe refuses to promote Employee Jane because Jane is a registered Republican; or his refusal is because she is a single mother. (OSC will generally defer Title VII discrimination allegations to the EEO process, rather than duplicating already existing procedures.)*
- **Solicit or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics.** *EXAMPLE: Selecting Official Joe hires Applicant Jack based on Senator Smith's recommendation that Jack be hired because Jack is a constituent; or fails to hire Applicant Jane because of Congressman Smith's recommendation based on the Congressman's friendship with Jane's parents.*
- **Coerce the political activity of any person, or take action against any employee as reprisal for refusing to engage in political activity.** *EXAMPLE: Supervisor Jane takes away significant job duties of Employee Jack because Jack will not make a contribution to Jane's favorite candidate.*
- **Deceive or willfully obstruct any person from competing for employment.** *EXAMPLE: Supervisor Joe, located in Headquarters, orders that no vacancy announcements be posted in the field office where Employee Jack works because he does not want Jack to get a new job; or falsely states that there will be extensive travel in the position when he knows that there is no travel.*
- **Engage in nepotism.** *EXAMPLE: Second-level Supervisor Jane asks First-level Supervisor Joe to hire her son; or to promote her daughter.*
- **Take a personnel action against an employee because of whistleblowing.** *EXAMPLE: Supervisor Joe directs the geographic reassignment of Employee Jack because Jack reported safety violations to the agency's Inspector General; or because employee Jill reported a gross waste of funds to the Office of Internal Affairs.*
- **Take a personnel action against any employee because of the exercise of an appeal, complaint, or grievance right.** *EXAMPLE: Supervisor Jane places Employee Jack on an undesirable detail because Employee Jack filed an administrative grievance about his performance rating.*
- **Discriminate against an employee on the basis of conduct, which does not adversely affect the performance of the employee, including discrimination based on sexual orientation.** *EXAMPLE: Jack's employment is terminated because he attended a "Gay Pride" march; or he attended a "Pro-Life" event; or he attended an animal rights rally; or he attended a gun-owners' rights meeting.*
- **Take or fail to take a personnel action, if such action would violate a veterans' preference requirement.** *Example: Supervisor Jane hired Employee Jack, without considering Veteran Jennifer, who was included on the list of eligible employees. (OSC's jurisdiction is for disciplinary actions only; the Dept. of Labor has jurisdiction to investigate for corrective actions.)*

- Influence any person to withdraw from competition for a position to improve or injure the employment prospects of any other person.
EXAMPLE: Supervisor Jane, in an effort to hire Employee Joe, tells Employee Jack that he should not apply for a position because he is not qualified and will never be selected. Employee Jack is qualified.
- Give an unauthorized preference to a person to improve or injure the employment prospects of any particular employee or applicant.
EXAMPLE: Supervisor Jane specifies that Spanish-speaking skills are necessary for a vacant position, for the purpose of selecting Employee Jack, who speaks fluent Spanish. The position, however, does not require Spanish-speaking skills.
- Take a personnel action against an employee which violates a law, rule, or regulation which implements a merit systems principle.
EXAMPLE: Supervisor Joe terminates the probationary appointment of Employee Jack because of Jack's letter to the editor criticizing affirmative action - a valid exercise of First amendment rights, a law implementing a merit system principle.
- Implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights. *EXAMPLE: A manager requires all employees in his program to sign a non-disclosure agreement that prohibits the employees from discussing the program in any way and fails to notify employees of protected channels for making disclosures.*

What can you do if you believe a PPP has been committed?

An employee who believes a PPP has been committed can file a written complaint with the U.S. Office of Special Counsel. Complaint forms are available on the Web at www.osc.gov. Employees do not need attorneys to file a complaint. OSC is an independent and prosecutorial agency. It will investigate allegations of prohibited personnel practices, and seek any corrective and disciplinary action.

II. The U.S. Office of Special Counsel also receives confidential disclosures and enforces the Hatch Act

RECEIVING CONFIDENTIAL DISCLOSURES (5 U.S.C. §1213):

Current and former federal employees and applicants can confidentially report information evidencing a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. The OSC has the authority to require the head of the agency concerned to investigate the matter if OSC determines that a disclosure has been made.

ENFORCING THE HATCH ACT (5 U.S.C. §7321-26):

The Office of Special Counsel is authorized to issue advisory opinions that respond to federal employee questions about whether or not they may engage in specific political activities under the Act. The OSC also prosecutes violations of the Hatch Act before the Merit Systems Protection Board. These violations include: using official authority to interfere with an election result; soliciting, accepting or receiving political contributions; soliciting or discouraging political activity of persons before the employing agency; and running for public office in a partisan political election.

Need additional information?

- Information on filing a complaint: 202-254-3600 or 800-872-9855.
- Information on making a disclosure: 202-254-3640 or 800-572-2249.
- Updated and detailed information on OSC and its procedures- visit our web page: www.osc.gov.



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