

Whistleblower Retaliation Investigations

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Where Do Whistleblower Protections Come From?

Enacted Law:

- Whistleblower Protection Act (WPA) of 1989
 - Applies to federal employees
- Whistleblower Protection Enhancement Act (WPEA) of 2012
 - Strengthens protections for federal employees disclosing fraud, waste and abuse
- National Defense Authorization Act (NDAA) of 2013
 - Codified in 41 U.S.C. Section 412
 - Expands whistleblower protections in the WPA and WPEA to contractors, grantees and their employees



Who Qualifies for What Protections?

The NDAA essentially provides the following:

- An employee of a contractor, subcontractor, grantee or subgrantee
- Who makes a Protected Disclosure
- May not be discharged, demoted or otherwise discriminated against;
- For whistleblowing!



What's a Protected Disclosure?

Two steps to classify a complaint as a Protected Disclosure.

- First, the whistleblowers complaint must have a reasonable belief that the subject matter of the complaint is evidence of:
 - Gross mismanagement of a federal contract of grant;
 - Gross waste of federal funds;
 - Abuse of authority relating to a federal contract or grant;
 - Substantial and specific danger to public health or safety; **OR**
 - Violation of law, rule or regulation related to a federal contract or grant.
 - *Includes the competition for or negotiation of a contract*



To Whom Do You Direct Protected Disclosures?

The second part is that the Protected Disclosure must have been provided to the proper party.

- For contractor/grantee whistleblowers, their complaint must have been made to:
 - A member of Congress, or a representative of a committee of Congress;
 - The Office of the Inspector General;
 - The Government Accountability Office;
 - A federal employee at the relevant agency responsible for contract/grant oversight or management;
 - A management official or other employee of the contractor/grantee who has the responsibility to investigate or address misconduct;
 - An authorized official of the Department of Justice or other Law Enforcement Agency; **OR**
 - Court or a Grand Jury.



What Does Retaliation Look Like?

The NDAA looks at retaliatory actions broadly, to include:

- Discharge
- Demotion
- Otherwise discriminating against the employee
- In essence:
 - Courts have interpreted similar language to mean any actions that may dissuade a reasonable employee from making a protected disclosure.



How Do We Review Whistleblower Complaints?

Statutes contain timelines for the review of Whistleblower complaints.

- All told, we have 180 days to complete our investigation, but we can request an additional 180 days if needed.
- This includes conducting a jurisdictional analysis at the outset of the case.
- Conducting the investigative work
- Drafting a Report of Investigation, which will be sent to NSF for its review and ultimate decision



Questions ?



Where Can I Find More Information?

At our website's Whistleblower Information landing page, you can:

- Consult resources for additional information
- File a Whistleblower Complaint
- <https://oig.nsf.gov/resources-outreach/whistleblower-information>

