

Whistleblower Protections – RIGHTS OF EMPLOYEES [5 U.S.C. §2302 (b)(8)]

The Whistleblower Protection Act [5 U.S.C. §2302 \(b\)\(8\)](#) is the most commonly known statute to define Federal employee whistleblowing and provide protections from adverse actions due to whistleblowing. This law provides in part that:

Whistleblower definition: A protected whistleblower is an employee who discloses information which the employee reasonably believes evidences:

- 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.

Protection Against Retaliation

5 U.S.C. § 2302(b)(8) prohibits a federal supervisor from taking or failing to take, or threatening to take or fail to take, a **personnel action** because of a protected disclosure.

Examples of personnel action (not all inclusive):

- Appointment
- Promotion
- Detail, transfer, or reassignment
- Reinstatement
- Reemployment
- Decision concerning pay, benefits, or awards
- Any other significant change in duties, responsibilities, or working conditions
- Suspension or other disciplinary action

Legal Standards/Definitions

To receive protection under 5 U.S.C. §2302, an employee/whistleblower must show, by preponderance of the evidence, that:

- They made a protected disclosure; and
- The disclosure was a contributing factor in the personnel action.

If the employee/whistleblower does this, then the burden falls upon the Agency/Employer, which must show by clear and convincing evidence that it would have taken the same action in the absence of the protected disclosure.

Legal Standards/Definitions (continued):

Abuse of authority -

- “An arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.”
- Harassment or intimidation of other employees;
- Assigning a grievance to a management official named as a subject in the grievance;
- Providing preferential treatment to an employee with whom the supervisor was perceived as having an intimate relationship.

A violation of any Law, Rule, or Regulation:

- Not something that a reasonable person would consider “arguably minor and inadvertent mistakes in the conscientious conduct of assigned duties.”

Gross Mismanagement or Gross Waste of funds:

- Affects Agency's ability to accomplish its mission;
- Creates a substantial risk of significant adverse impact on Department’s ability to accomplish its mission.

Substantial and specific danger to public health or safety:

- Hinges on likelihood of harm resulting from the danger (not whether the danger could only result in harm under speculative or improbable conditions).
- Key: Not just speculation that it is possible for some danger at some point in the future.

QUESTIONS? Contact AmeriCorps OGC (ogc@cns.gov)

Report waste, fraud, abuse, violations of law, substantial/specific dangers to health & safety to:

AmeriCorps OIG: Hotline 1-800-452-8210, e-mail hotline@cncsoig.gov

Office of Special Counsel (OSC): <https://osc.gov/>