

## **Reprisal (Military Whistleblowers Protection)**

File complaints with one of the following:

[Department of the Defense Inspector General](#) or the [Inspector General of the Marine Corps](#)

### **What is Military Whistleblower protection?**

The Military Whistleblower Protection Act, Title 10 U.S.C. 1034, as amended, prohibits interference with a military member's right to make protected communications to members of Congress; Inspectors General; members of DoD audit, inspection, investigation or law enforcement organizations; and other persons or organizations (including the chain of command) designated by regulation or administrative procedures. A protected communication is any lawful communication to a Member of Congress or an IG, as well as any communication made to a person or organization designated under competent regulations to receive such communications, which a member of the Armed Services reasonably believes reports a violation of law or regulation (including sexual harassment, unlawful discrimination, mismanagement, a gross waste of funds or other resources, abuse of authority, or a substantial or specific danger to public health or safety).

### **What is Reprisal?**

When a responsible management official takes (or threatens to take) an adverse personnel action or withholds a favorable personnel action or withholds a favorable personnel action from a service member because he/she made or was thought to have made a protected communication.

### **What are the four questions that an investigator must examine before conducting a reprisal complaint?**

- Protected Communication?
- Adverse Personnel Action
- Management Knowledge
- Reprisal or Independent Basis for Action

### **What is a protected communication?**

Any lawful communication made to:

- Members of Congress
- Inspectors General

These communications do not have to disclose information concerning wrongdoing.

### **What is a personnel action?**

- A personnel action is any action taken on a member of the Armed Forces that affects or has the potential to affect that service member's current position or career.

- Examples of personnel actions include:
- Performance evaluations;
- Transfer or reassignment;
- Changes to duties or responsibilities;
- Disciplinary or other corrective actions;
- Denial of reenlistment or separation;
- Decisions concerning awards, promotions or training;
- Decisions concerning pay or benefits; or,
- Referrals for mental health evaluation.
- Additional examples of personnel actions are revocation of:
- Access to classified material;
- Authorization to carry weapons;
- Flying status; or,
- Personnel Reliability Program certification (Key: Was the action discretionary?)

### **What employees are covered?**

Members of the Armed Forces of the United States.

### **Is there a time limit within which a service member must file a complaint?**

60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

### **What are the applicable statutes/regulations/instructions that apply to Military Whistleblower protection?**

[10 U.S.C. § 1034, Military Whistleblower Act](#)

[DoDD 7050.6, Military Whistleblower Act](#)

[SECNAVINST 5370.7C, Military Whistleblower Protection](#)

[SECNAVINST 5370.8, Military Reprisal Investigations](#)

**To whom do I report a complaint if someone has taken an adverse personnel action against me as a result of making a protected communication?**

Report violations of the Military Whistleblower Protection Act to the [Department of the Defense Inspector](#)

[General](#): Department of Defense  
Office of the Inspector General  
400 Army Navy Drive  
Arlington, VA 22202-470

Call Toll Free 1-800-424-9098

Hearing impaired:

[GSA Federal Relay Service](#)

Com: 1-800-877-8339

Fax: 703-604-8567, DSN 664-8567

or, contact the [Naval Inspector General](#)

Office of the Naval Inspector General  
1254 Ninth Street SE Building 172  
Washington Navy Yard DC 20374-5006

Call Toll Free 1-800-522-3451

## **Reprisal (Civilian Employees Whistleblower Protections)**

File complaints with the Office of Special Counsel, Toll Free 1-800- 872-9855

### **What regulations/ statutes apply to Whistleblower Protection for appropriated fund employees?**

Civil Service Reform Act (CSRA) as codified in 5 U.S.C. §§ 1213, 1214, 1221, Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

### **Who is covered?**

Civilian government employees except for non-career SES, Schedule C employees, certain intelligence agencies such as FBI and CIA, and non-appropriated fund employees.

### **Which agency is responsible for conducting an investigation?**

The statute gives the Office of Special Counsel (OSC) special authority to investigate allegations of reprisal made by civilian government employees and to ensure that the DoN takes appropriate corrective action, if substantiated.

The Whistleblower Protection Act of 1989 (Public Law No. 101-12) authorizes an appeal to the Merit Systems Protection Board (MSPB) if you allege that you were subject to an agency action that was taken or threatened because of certain legal disclosures of information, commonly known as whistleblowing. Unless the matter is directly appealable to the Board under law, rule, or regulation, you must first file a complaint with the Office of Special Counsel and exhaust the procedures of that office.

Also see Title 5 of the U.S. Code, section 1221, and the Board's regulations at Title 5 of the Code of Federal Regulations, Part 1209.

### **With whom does an appropriated fund employee file a complaint of reprisal?**

The complainant has the option of filing a reprisal complaint with the Navy first but should be aware the Navy IG has limited authority. If the complainant decides to file a complaint with OSC after we have initiated an investigation, the Navy would terminate its investigation. To avoid undermining OSC investigation and duplication of effort, the Navy will not conduct a concurrent investigation.

OSC regulations describing how to file a complaint of reprisal appear at 5 CFR. 1800.

### **How do I get more information about filing a complaint of reprisal?**

[Office of Special Counsel \(OSC\)](#)

Attn: Disclosure Unit  
1730 M Street N.W. Suite 201  
Washington DC 20036-4505  
Call:  
(800) 572-2249 or (202) 653-9125

## **Reprisal (NAF Employees Whistleblower Protection)**

File complaints directly with [Department of the Defense Inspector General](#).

### **What is Reprisal?**

When a responsible management official takes (or threatens to take) an adverse personnel action or withholds a favorable personnel action because he/she made or was thought to have made a protected communication.

### **What are the applicable regulations/statutes?**

**If the complaint is submitted to DoD IG:** DoD Directive 1401.3, "Reprisal Protection of Nonappropriated Fund Instrumentality Employees/Applicants," revised on October 16, 201, provides that DoD Component Inspectors General may accept reprisal allegations from nonappropriated fund employees.

**If the complaint is submitted to the Office of Special Counsel:** 5 U.S.C. 1213, Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters.  
<http://www4.law.cornell.edu/uscode/5/1213.html>

### **What are the four questions that an investigator must examine before conducting a reprisal complaint?**

- What was the protected communication?
- What was the adverse personnel action?
- Did management have knowledge that a protected communication was made?
- Did management take reprisal as an independent basis for action

### **What is a protected communication?** (Definition taken from DoD IG website)

A disclosure of information by an employee or applicant that the employee or applicant believes evidences a violation of any law or regulation; or mismanagement, a gross waste or 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 the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign

A disclosure by such an employee or applicant to any civilian employee or member of the Armed Forces designated by law or the Secretary of Defense to receive disclosures described above information which the employee or applicant reasonably believes evidences a violation of law or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a subsequent specific danger to public health and safety.

### **What is a personnel action?**

The term "personnel action", with respect to a non-appropriated fund instrumentality employee (or an applicant for a position as such an employee), means -

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action; (D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) 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, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

### **What are management officials?**

Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any non-appropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for -

- A disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences-

### **What is a protected communication?**

- A violation of any law, rule, or regulation; or
- 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 the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
- A disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense

**What employees are covered?**

Non-appropriated fund employee means a civilian employee who is paid from non-appropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from non-appropriated funds on account of the nature of the employee's duties.

**Is there a time limit within which a non-appropriated fund employee must file a Whistleblower Complaint?**

60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

**To whom does a non-appropriated fund employee report a Whistleblower complaint?**

A non-appropriated fund employee has the option of making a "whistleblower disclosure" to the Office of Special Counsel, Department of the Defense IG, or Department of the Navy IG.

**Where can I obtain more information about "Whistleblower Protection".**

[Office of Special Counsel Website](#)

[OSC Contact Information](#)