



# 2302(c) CERTIFICATION PROGRAM, PROHIBITED PERSONNEL PRACTICES, & WHISTLEBLOWER PROTECTION

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# Topics



**U.S. Office of Special Counsel**

**2302(c) Certification Program**

**Supervisory Training**

**Prohibited Personnel Practices**

**Whistleblower Protection**

# Office Of Special Counsel (OSC)

5 U.S.C. §§ 1211-19; 5 C.F.R. PART 1800



## Authorized to

- Investigate prohibited personnel practices (PPPs)
- Seek corrective action for employees
- Seek disciplinary action against officials
- Provide safe channel for whistleblower disclosures
- Advise and enforce Hatch Act provisions on political activity by federal, state, and local government employees
- Protect reemployment rights of military veterans and reservists under USERRA

# Responsibilities of Agency Officials

5 U.S.C. § 2302(c)



Agency heads and officials with delegated personnel management authority are responsible for

- Preventing prohibited personnel practices
- Following and enforcing civil service laws, rules, and regulations
- Ensuring that employees are informed of rights and remedies (in consultation with OSC)

# OSC's 2302(c) Certification Program



- ❑ OSC's Certification Program allows federal agencies to meet the statutory obligation to inform their workforces about the rights and remedies available to them under the
  - Civil Service Reform Act (CSRA),
  - Whistleblower Protection Act (WPA),
  - Whistleblower Protection Enhancement Act (WPEA), and related laws
- ❑ The certification process may take up to six months
- ❑ Agencies must recertify every three years

# 2302(c) Certification Process



The 2302(c) Certification Program consists of 3 steps:

**Step 1:** Registering by submitting a registration form

**Step 2:** Completing the five requirements outlined on the next slide

**Step 2:** Requesting certification by submitting a compliance form and supporting documentation

# Five Certification Requirements



1. Place informational posters at agency facilities
2. Provide information about the 13 PPPs and whistleblower disclosures to new employees as part of the orientation process
3. Provide information to current employees about the 13 PPPs and whistleblower disclosures
4. Train supervisors on the 13 PPPs and whistleblower disclosures
5. Display a link to OSC's website on the agency's website or intranet

# Supervisory Training



- ❑ The fourth requirement, supervisory training, may be completed in several ways including
  - In-person training conducted by an OSC speaker
  - OSC's training quiz located on the OSC website
  - Other training materials approved in advance by OSC
- ❑ Each agency works in consultation with OSC to select a training method
- ❑ Supervisory training ensures that supervisors understand their responsibilities under the PPP and whistleblower protection provisions of Title 5

# Prohibited Personnel Practices: Overview



## 13 Prohibited Personnel Practices — four general categories:

- Discrimination
- Hiring practices that offend merit system
- Retaliation for protected whistleblower disclosures and protected activity
- Catch-all: violation of a law, rule, or regulation that implements merit systems principles (including constitutional rights)

# Discrimination

5 U.S.C. §§ 2302 (b)(1), (b)(10)



(b1) & (b)(10) prohibit discrimination based on

- race, color, nationality, religion, sex (including pregnancy and gender identity), handicapping condition, age, marital status, or political affiliation
- “conduct which does not adversely affect the performance of the employee or applicant, or the performance of others” including sexual orientation and gender identity

# Political Activity

5 U.S.C. § 2302(b)(3)



## (b)(3) prohibits

- Coercing political activity of any person, which includes providing any political contribution or service
- Reprising against an employee or applicant for the refusal of any person to engage in political activity

# Hiring Offenses

5 U.S.C. §§ 2302(b)(2), (4-7), (11)



(b)(2), (b)(4-7), & (b)(11) prohibit

- Obstructing the right to compete
- Influencing withdrawal from competition
- Unauthorized preferences and advantages
- Nepotism
- Considering improper (political) job references
- Knowingly violating veterans' preference

# Catch-all Prohibited Personnel Practices

5 U.S.C. §§ 2302(b)(12), (b)(13)



- ❑ (b)(12) prohibits taking or failing to take a personnel action in violation of a law, rule, or regulation that implements or directly concerns a merit system principle
- ❑ Intent is **not required** for some violations
- ❑ Examples:
  - Failing to evaluate employees' performance on an annual basis
  - Terminating an employee for exercising his or her First Amendment rights
- ❑ (b)(13) pertains to nondisclosure agreements

# Nondisclosure Agreements

5 U.S.C. § 2302(b)(13)



According to (b)(13),

- Nondisclosure agreements, policies, or forms must include a statement clarifying that agency restrictions on disclosures are superseded by statutory whistleblower rights
- Implementing or enforcing a nondisclosure agreement that fails to provide this required notification of whistleblower rights is a PPP

# Retaliation

5 U.S.C. §§ 2302(b)(8), (b)(9)



(b)(8) & (b)(9) prohibit taking, failing to take, or threatening to take or fail to take personnel action for

- ❑ Protected whistleblower disclosures
- ❑ Protected activity

# Protected Activity

5 U.S.C. §§ 2302(b)(9), 1213



## Protected Activity:

- Exercise of appeal, complaint, or grievance rights
- Testimony or other assistance to person exercising such rights
- Cooperation with or disclosures to Special Counsel or Inspector General
- Refusal to obey an order that would require violation of law

# Protected Whistleblower Disclosures

5 U.S.C. §§ 2302(b)(8), 1213



## Disclosure Categories:

- Violation of any law, rule, or regulation
- Gross mismanagement – substantial risk of significant impact on mission
- Gross waste of funds – more than debatable expenditure
- Abuse of authority
- Substantial & specific danger to public health & safety
- Censorship related to research, analysis, or technical information (scientific integrity)

# Proving Retaliation

5 U.S.C. §§ 1214(b)(4)(a)-(b), 1221(e)



## All 4 elements must be met:

- A *reasonable belief* that the employee has made a protected disclosure of information under 5 U.S.C. § 2302(b)(8) or protected activity under 5 U.S.C. § 2302(b)(9)
- Personnel action taken, not taken, or threatened (broader than *adverse action*)
- Actual or constructive knowledge of protected disclosure or protected activity
- Protected disclosure or protected activity was contributing factor in personnel action
  - Knowledge and timing alone can be sufficient
  - 5 U.S.C. § 2302(b)(9)(A)(ii) (exercise of appeal, complaint, or grievance right other than complaints remedying protected whistleblowing) still requires a significant factor test

# Protected Whistleblower Disclosures

5 U.S.C. §§ 2302(b)(8), 1213



- Generally protected when made to any person
- Need not be accurate to be protected, employee must only reasonably believe that it is true — test is both objective and subjective
- Whistleblower's personal motivation does not negate reasonable belief
- No requirement to go through chain of command
- Still protected if employer mistakenly believes he or she is a whistleblower

# Protected Whistleblower Disclosures

5 U.S.C. §§ 2302(b)(8), 1213



Disclosure not protected (unless made to OSC or IG) when

- Prohibited by law, or
- Required by Executive Order to be secret for national security or foreign affairs

# OSC Contact Information & Website



Complaints Examining Unit:

(202) 254-3670  
(800) 872-9855

Disclosure Hotline:

(202) 254-3640  
(800) 572-2249

Hatch Act Unit:

(800) 85-hatch  
(202) 254-3650  
[hatchact@osc.gov](mailto:hatchact@osc.gov)

OSC Website:

[www.osc.gov](http://www.osc.gov)

OSC Speaker Requests

(202) 254-3600

2302(c) Certification

(703) 466-0259  
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