

Employment and Labor

Whistleblower and Office of Special Counsel

The Whistleblower Protection Act (WPA) and the Whistleblower Protection Enhancement Act (WPEA) are laws that prohibit federal agencies from taking or threatening to take retaliatory personnel or adverse employment actions against federal employees, former federal employees or applicants for disclosing information concerning federal agency misconduct, illegal actions and waste, fraud and abuse.

A federal employee may file a complaint of misconduct against a federal agency reporting gross mismanagement, gross waste of funds, violation of laws or regulations, abuse of authority, danger to public health or safety, or workplace discrimination. If employees believe they have been subjected to reprisal for whistleblower activity they may, among other options, file a claim with the U.S. Office of Special Counsel (OSC).

The OSC is an independent federal agency that investigates federal employee whistleblower complaints, protects federal employees from prohibited personnel practices (PPP), and prosecutes allegations of PPPs such as reprisal for whistleblowing. The OSC must generally make a decision on whether to pursue a case based on the allegations made. For this purpose, the OSC conducts an investigation into the allegations.

Following a review by OSC, if it declines to accept the whistleblower case, they will provide a letter informing the federal employee of their right to take their case to the Merit Systems Protection Board (MSPB). These cases are referred to as Individual Right of Action (IRA) cases. Most complaints filed with the OSC are not accepted, so a federal employee should be prepared to move forward to the MSPB, which provides an administrative litigation forum to file one's whistleblower claims, conduct discovery and to present the case to an administrative judge.

Whistleblower claims can also be included in cases filed with the MSPB directly, when combined with another appealable action, such as a termination. For instance, if a federal employee is removed, but believes that he or she was the subject of retaliation for protected whistleblower activity, the action (usually referred to as an affirmative defense in this type of case) can be filed directly with the MSPB when the termination appeal is filed.

There are many new developments in this area of law since the enactment of the WPEA in December 2012, so there are likely to be changes and new interpretations of protected whistleblower activity in the next few years.

Legal action against a federal agency for whistleblower retaliation requires a comprehensive knowledge and understanding of the federal laws. If you believe you have a whistleblower retaliation claim, please [contact Berry & Berry, PLLC](#) to schedule a consultation with an attorney to discuss your individual circumstances since each whistleblower retaliation case is different.