

## Filing Complaints at the Office of Special Counsel

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The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial type agency. The OSC principally investigates two types of cases brought by federal employees: (1) complaints involving prohibited personnel practices by federal agencies (including whistleblower retaliation); and (2) complaints involving Hatch Act (political activities of federal employees) violations. The OSC also maintains a disclosure unit where illegal activities can be reported and investigates Uniformed Services Employment and Reemployment Rights Act (USERRA) complaints that could not be resolved by the Department of Labor.

Based on our firm's experience, the majority of OSC cases involve prohibited personnel practices where federal employees reported wrongdoing or government waste and later suffered retaliation by their federal agency or supervisors as a result. Some examples of prohibited personnel practices include:

- A federal employee reports theft from an agency and is then transferred to an undesirable position.

- A federal employee reports nepotism regarding his supervisor and is disciplined (i.e., a short suspension that does not fall under the Merit Systems Protection Board appeals process) in retaliation.

Federal employees should first determine whether they should file a complaint with the OSC or a federal agency's Office of Inspector General (OIG). An initial disclosure of illegal activity can potentially be brought to either forum. However, there can be advantages to filing an allegation of retaliation for whistleblowing with the OSC. To determine the best forum in which to file a whistleblower complaint, federal employees should speak to an attorney before proceeding since a number of issues can arise.

### Filing the Initial OSC Complaint

The first step in filing a complaint with the OSC is to complete and submit the following OSC forms:

- Form 11 – Prohibited Personnel Practices (PPP) Complaint

- Form 12 – Whistleblower Disclosure Complaint

- Form 13 – Hatch Act Violation Complaint

PPP and Whistleblower Disclosure complaints can generally be submitted online at [www.osc.gov](http://www.osc.gov) through the OSC e-filing system or by mail. Hatch Act Violation complaints typically must be completed and submitted by mail to the OSC.

### The OSC Investigation Stage

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Once the OSC receives the complaint, it is reviewed by OSC staff and a letter will be sent to the complainant regarding the OSC investigation process and the name of the OSC investigator assigned to the case. The OSC investigator will generally request a response from the Agency prior to discussing the matter further with a complainant or the Agency.

The OSC investigator may then ask for additional information from either party during the investigation process. If it appears that the OSC is not going to make a finding on the federal employee's complaint, the investigator will generally send out a notice indicating his or her tentative conclusions and providing the complainant a chance to respond further before a final ruling is rendered.

There is also the potential for mediation of OSC complaints through the OSC mediation program in an attempt to resolve the complaints and avoid the longer investigation process.

### **Final Action by the OSC**

When the OSC completes its investigation, it can either take action or decline to take action depending on the type of case filed. If the OSC takes action, it will first report the investigation to the federal agency head and ask for certification that corrective action is being taken in the case. If the federal agency declines to take action, the OSC can seek corrective action at the Merit Systems Protection Board (MSPB) and the office will function much like a prosecutor's office. While criminal violations are referred by the OSC to the Department of Justice, the OSC can then attempt to seek corrective or disciplinary action against the federal employees involved in the prohibited personnel practices, improprieties, or illegal actions.

If the OSC declines to take action, which occurs in a majority of cases, then the complainant may have further appeal rights. For cases alleging whistleblower retaliation, the federal employee will be provided with notice of the right to take his or her whistleblower case to the MSPB for litigation. In many cases, it is a requirement for a federal employee to first take a reprisal complaint to the OSC prior to filing an Individual Right of Action (IRA) (whistleblower appeal) to the MSPB. See 5 U.S.C. § 1214. Circumstances vary, so legal counsel is important for specific legal advice. For other types of OSC complaints, there is usually no further right to appeal.

### **Contact Us**

If a federal employee is considering filing an OSC complaint against his or her federal agency and supervisor, it is important for him or her to seek legal advice from an attorney before proceeding. Our law firm advises and represents federal employees in OSC complaints. We can be contacted at [www.berrylegal.com](http://www.berrylegal.com) or by telephone at (703) 668-0070. Please also visit us on Facebook at [www.facebook.com/BerryBerryPllc](https://www.facebook.com/BerryBerryPllc).

### **Attorneys**

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**Practice Areas**

Whistleblower and Office of Special Counsel