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MSPB Report Identifies Challenges for Whistleblowers Seeking Protection from Retaliation

In the most recent report by the U.S. Merit Systems Protection Board (MSPB), [Whistleblower Protections for Federal Employees](#), MSPB describes the requirements for a Federal employee's disclosure of wrongdoing to be legally protected as whistleblowing under current statutes and case law.

To qualify as a whistleblower under the Whistleblower Protection Act, a Federal employee or applicant for employment must disclose: 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.

However, this disclosure alone is not enough to obtain protection under the law. The individual also must: avoid using normal channels if the disclosure is in the course of the employee's duties; make the report to someone other than the wrongdoer; and suffer a personnel action, the agency's failure to take a personnel action, or the threat to take or not take a personnel action. Lastly, the employee must seek redress through the proper channels before filing an appeal with the MSPB.

A potential whistleblower's failure to meet even one of these criteria will deprive the MSPB of jurisdiction, meaning that by law, MSPB will be unable to provide any redress in the absence of a different (non-whistleblowing) appeal right.

In the past, the MSPB has issued reports related to whistleblowing, including barriers to Federal employees blowing the whistle. However, this is the first MSPB report to address in such depth the legal challenges that whistleblowers face, including the MSPB's own case law.

“Our agency has the responsibility to adjudicate whistleblower retaliation claims in accordance with the laws and the decisions of our reviewing court,” Chairman Susan Tsui Grundmann explains. “If the employee’s situation is not one covered by the statutes, we lack the authority to reach the merits of a potential whistleblower’s appeal. That is why it is so important for Federal employees to understand how the whistleblower protections work and for Congress to be aware of the difficulties a potential whistleblower may encounter when navigating the law.”

This report is one in a series of reports the MSPB is undertaking under its studies authority to draw attention to prohibited personnel practices (PPPs) such as whistleblower retaliation. In addition to this new report, and a report on PPPs issued earlier this year, the agency is currently working on an update to its 1993 study of employee perceptions of barriers to blowing the whistle as well as a report on employee perceptions regarding the other PPPs.

The U.S. Merit System Protection Board (MSPB) is an independent, quasi-judicial agency that protects Federal merit systems and the rights of individuals within those systems. The MSPB also conducts studies of the civil service and other merit systems in the Executive Branch. To request a printed copy of a report, email STUDIES@mspb.gov; call (202) 653-6772, ext 1350; or write to the U.S. Merit Systems Protection Board, Office of Policy and Evaluation, 1615 M Street NW, Washington, DC 20419.