HOLDING RETALIATORS ACCOUNTABLE

Congress' oversight work relies on vital disclosures from whistleblowers, and these individuals often seek support from their Member of Congress or the relevant committee. To that end, Congress created penalties for individuals who try to interfere with lawful whistleblower communications or engage in retaliation. This guidance document identifies laws that offices can leverage to protect their sources and constituents as well as hold retaliators accountable.

NOTE: It is important to weigh the circumstances involved in each case and manage expectations around your office's involvement. For instance, an office may be willing to send a support letter on behalf of the whistleblower but not willing to serve as a witness in subsequent litigation. Conversely, an office may choose not to place limitations around their support. House offices can consult the House Office of General Counsel on their options.

PROTECTIONS FOR WITNESSES

Any effort to intimidate federal witnesses or restrict them from communicating with a congressional office, including through retaliation, is illegal under federal criminal law and may constitute an obstruction of justice.

- The penalty for obstructing proceedings before Congress is a fine and imprisonment up to five years[i]
- The penalty for retaliating against a witness to law enforcement is a fine or imprisonment of up to ten years[ii]
- The penalty for tampering with a witness is a fine or imprisonment of up to twenty years.[iii]

SALARY CUTOFF FOR INTERFERING WITH CONGRESSIONAL COMMUNICATIONS

Interfering with congressional communications can have employment consequences within the federal government. Specifically, federal law prohibits funds from being used to pay the salary of a federal officer or employee who interferes with or retaliates against a federal employee for communicating with Congress, or makes related threats. Offices can enforce this provision by requesting that the Government Accountability Office (GAO) investigate the alleged violation. If a violation is found, GAO will request a return of the official's salary up to the duration of the violation.[iv]

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DISCIPLINARY PENALTIES UP TO REMOVAL

Congressional offices can place pressure on agency leadership to hold supervisors accountable when they engage in whistleblower retaliation. If a violation is found, the agency head is required to propose disciplinary penalties for the retaliator. Penalties may include suspension and potential reduction in grade or pay for the first offense and proposed removal for the second offense.[v] Agencies must also report on disciplinary actions related to findings of discrimination, including retaliation, publicly online and through a written report to the Equal Employment Opportunity Commission.[vi]

APPROPRIATIONS CANNOT BE USED TO IMPLEMENT GAG-ORDERS

Any nondisclosure policy, form, or agreement created by the executive branch or a federal contractor must notify employees that their right to communicate with Congress and engage in whistleblowing supersedes the employer's restrictions. Accordingly, no appropriated funds may be used to implement or enforce a nondisclosure policy or form that excludes the required notification. Offices can enforce this provision by requesting that GAO investigate a possible violation of the Antideficiency Act — which prohibits a federal official from spending non-appropriated funds.[vii]

ENDNOTES

[i] 18 U.S.C. § 1505

[ii] 18 U.S.C. § 1513(e)

[iii] 18 U.S.C. § 1512

[iv] Pub. L. No. 118-47, div. B, tit. VII, § 713. For an example of how Congress has implemented this provision, see the May 3, 2017, letter from the Chairman of the Senate Committee on the Judiciary and the Chairman of the House Committee on Oversight and Government Reform, to the Secretary of the U.S. Dept. of Health and Human Services, **https://www.judiciary.senate.gov/imo/media/doc/2017-05-03%20CEG%20JC%20BG%20to%20HUD%20(GAO).pdf**, and the GAO opinion supporting that letter, **https://www.gao.gov/assets/b-325124.2.pdf**.

[v] 5 U.S.C. § 7515

[vi] Pub. L. No 116-283, div. A, tit. XI, subtit. B, § 1131 - 1138

[vii] Pub. L. No. 118-47, div. B, tit. VII, § 743

ADDITIONAL RESOURCES

- Office of the Whistleblower Ombuds — **Sample Letter to Employer** (HouseNet)
- Office of the Whistleblower Ombuds — **Whistleblower Retaliation Deep Dive** (Staff Academy)
- The Notre Dame Law Review — **Article: Oversight Riders**

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