WORKING WITH STATE AND LOCAL WHISTLEBLOWERS

This guidance document identifies key considerations and resources when working with state and local whistleblowers. House offices that have questions about involvement in matters outside of Congress' jurisdiction can consult the House Ethics Committee and House Office of General Counsel for guidance.

INVOLVEMENT IN STATE AND LOCAL MATTERS

An office's involvement in whistleblower matters at the state and local level may be informed by its priorities, capacity, and jurisdiction. For instance, is the state entity that is the subject of the alleged misconduct receiving federal funds? Even in circumstances where there is no federal nexus, offices may utilize their network of state and local resources as appropriate to try and assist the whistleblower. In some circumstances you may choose to act as a liaison with state or local agencies on behalf of a whistleblower to help direct their concerns to the appropriate office. However, before sharing the individual's information or taking actions on their behalf, coordinate and seek their permission to avoid unintended harm. Further, compliance with state or local privacy protections may be required, akin to a federal Privacy Act release.

KEY CONSIDERATIONS

An office can support the whistleblower through measures that do not require direct involvement or a credibility determination, including general guidance as well as identification of relevant referrals and statutes. While it is not Congress' role to provide legal advice, it is appropriate to recommend that the individual consult experienced counsel for guidance. The Office of the Whistleblower Ombuds' **Resources for Whistleblowers** page provides related guiding resources that can be shared with the whistleblower.

REFERRALS

This section identifies key categories for state whistleblower referrals to augment an office's existing network of resources.

SUPPORT ORGANIZATIONS

Nonprofit **whistleblower support organizations** may be able to provide general assistance, legal representation, or attorney referral lists. State and local labor organizations will be familiar with state-level workplace protections. Further, partnering with issue-specific public interest organizations will help the whistleblower to funnel their knowledge to those who should be benefiting from it and may be in a position to further expose the misconduct and support corrective actions.

STATE LEVEL WATCHDOGS

State and local legislatures are uniquely positioned to conduct oversight over matters within their jurisdiction. Moreover, states may have designated Offices of Inspectors General or whistleblower offices that are established to receive reports of misconduct and retaliation. The Government Accountability Office **FraudNet** hotline, which supports accountability across the federal government, will refer allegations to federal, state, or local agencies or departments, as appropriate.

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OFFICE OF THE WHISTLEBLOWER OMBUDS

202-226-6638 | whistleblower.house.gov
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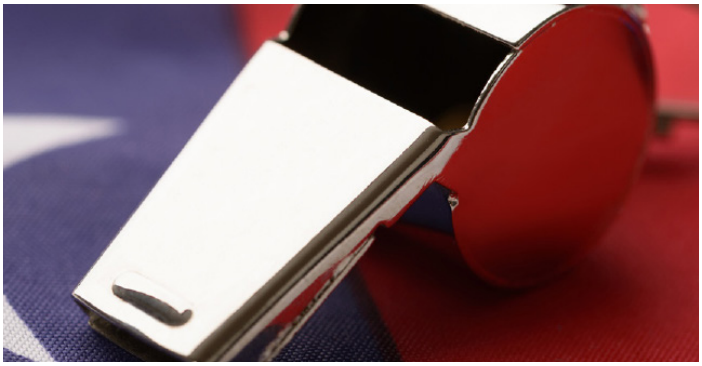
OSHA STATE PLANS

Under the federal Occupational Safety and Health Act (OSH Act), employees have a right to report workplace health and safety violations free of retaliation. Many states have enacted similar laws for private sector and state and local government workers, which may be administered by OSHA State Plans. Per **guidance** by the Occupational Safety and Health Administration (OSHA), State Plans are OSHA-approved workplace safety and health programs operated by individual states or U.S. territories. For example, if an employee of a warehouse in Maryland was terminated after they reported hazardous workplace conditions, they could file an anti-retaliation claim with the Maryland Occupational Safety and Health.

STATUTES

There exists a vast patchwork of state whistleblower protection laws for public and private sector employees. Individuals considering filing a related claim should first consult experienced counsel.



STATE PUBLIC SECTOR WHISTLEBLOWER LAWS

Certain state statutes prohibit retaliation against public-sector whistleblowers who report waste, fraud, abuse, or other misconduct. A Congressional Research Service (CRS) **survey** provides a representative sample of such statutes, including circumstances involving retaliation against an employee for reporting violations related to equal pay, minimum wage, and occupational safety and health, among other subjects.

FALSE CLAIMS ACT

Under the False Claims Act, individuals with evidence of fraud against federal programs or contracts can sue the wrongdoer on behalf of the federal government. Many states have passed comparable laws to deter fraud of state and local funds. Under those laws, whistleblowers may have access to monetary rewards and rights against retaliation. Moreover, there may be circumstances when state claims intersect with the federal False Claims Act, such as with respect to fraudulent Medicaid spending.

FIRST AMENDMENT

Most federal, state, and local public employees have a constitutional right under the First Amendment to communicate with Congress free of retaliation, when they are exposing matters of public concern in their private (non-work) capacity. However, enforcement of these rights depends on a balancing test that the public benefits of the communication outweigh any disruption to the government.

ADDITIONAL RESOURCES

- CRS Survey – **Selected State Statutes on Whistleblower Protections and False Claims**
- CRS Report – **Casework in a Congressional Office: Background, Rules, Laws, and Resources**

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