U.S. POSTAL SERVICE WHISTLEBLOWING

OFFICE OF THE WHISTLEBLOWER OMBUDS
COACHING THE HOUSE ON BEST PRACTICES

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OVERVIEW

U.S. Postal Service (USPS) employees are not covered under the **Whistleblower Protection Act** (WPA)—the whistleblower law that protects most executive branch employees. Instead, USPS maintains a unique set of whistleblower policies.

Individuals considering blowing the whistle should do so under advisement of a whistleblower attorney.

USPS WHISTLEBLOWER POLICIES

USPS whistleblower policies are laid out in the agency's Employee and Labor Relations Manual (ELM) sections 666.18 and 666.3. The ELM is supplemented by federal law governing USPS, Office of Inspector General (OIG) policies, and by requirements under the Inspector General Act. USPS has modeled its policies after the WPA.

Scope of Protections

The ELM prohibits individuals from taking or threatening a personnel action against a USPS employee or applicant because of the employee or applicant's protected whistleblower disclosure or exercise of any appeal right.

A protected disclosure is one that the employee or applicant believes evidences:

- A violation of any law, rule, or regulation; or
- A gross waste of funds, gross mismanagement, an abuse of authority, or a substantial and specific danger to public health or safety

Disclosures: Authorized Recipients

The ELM does not list the authorized recipients for protected disclosures. In other words, disclosures that meet the criteria above will likely be protected if made internally to co-workers or supervisors, to Congress, to the OIG, or even publicly. However, the ELM specifies that disclosures of information specifically prohibited by law will only be protected if they are made to the USPS OIG.

Further, the ELM states that disclosures to the OIG are protected unless "the complaint was made, or the information disclosed, with the knowledge that it was false or with willful disregard for its truth or falsity."

Retaliation: Enforcement of Rights

Section 666.3 of the ELM lays out the processes for a protected employee to enforce their rights through the USPS OIG. The process can be initiated through the **OIG's complaint form**. Because USPS employees are not covered by the WPA, employees cannot file a complaint through OSC to challenge whistleblower retaliation. However, USPS employees can file with OSC to **challenge unlawful nepotism** as a prohibited personnel practice.

Once a retaliation complaint is filed, the OIG will make an initial determination whether investigation is warranted. If the OIG moves forward, it then has 120 days to investigate and will either substantiate or not substantiate the retaliation complaint in an investigative report sent to USPS leadership.

Seeking a Stay

The OIG may also recommend to USPS that the agency "stay" (i.e., pause) a pending personnel action during the OIG's investigation. The agency must approve the OIG's stay request within three business days "unless such a stay would be inappropriate."

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Where a stay is denied, or where it is issued but later terminated, the OIG can seek a 45-day stay from a USPS administrative law judge (ALJ). The ALJ is required to issue the stay if they find reasonable grounds to believe that retaliation occurred.

Decision and Appeal Rights

Once the OIG's report is finalized, the agency's leadership determines how to proceed—including whether to order relief for the whistleblower.

Under certain circumstances, nonbargaining unit employees can appeal an adverse decision from the agency in a hearing before a USPS ALJ. For instance, ELM section 666.37 states that the whistleblower may appeal an adverse decision on their retaliation claim if the USPS OIG has "found a prima facie case of reprisal for whistleblowing," among other conditions.

If the judge finds in favor of the whistleblower and orders corrective action, the judge will strive to order the relief necessary to make the whistleblower "whole" (i.e., as if the retaliation had not happened). However, the judge cannot order relief for the whistleblower if USPS successfully demonstrates that it would have taken the same personnel action regardless of the whistleblower's disclosures—in other words, that the agency's actions were legitimate.

If relief is denied, a second level of review is also available before another USPS ALJ. However, there is no secondary hearing at that level, merely a decision on whether to send the case back to USPS for reconsideration.

Alternative Outlets to Seek Relief

Employees may seek relief through alternative channels depending on their employment status and the nature of their complaint. For example, ELM Section 666.23 allows certain nonbargaining unit employees to file an appeal with the Merit Systems Protection Board when they face a personnel action such as removal, reduction in pay, or suspension for more than 14 days. See also ELM Sections 666.24-26.

ROLE OF POSTAL UNIONS

Many USPS employees are members of **collective bargaining units**. Unions may offer guidance on making a whistleblower disclosure and/or a reprisal complaint to the USPS OIG. However, USPS OIG investigations are separate from union grievance procedures. Knowledgeable counsel may offer guidance on various options for relief. See also ELM section 666.24 on grievance procedures.

OTHER RELEVANT FEDERAL LAWS

USPS employees and contractors are covered under the Occupational Safety and Health Act's **whistleblower provision**, which allows employees to challenge reprisal they face due to disclosures regarding workplace health and safety concerns.

USPS contractor employees are covered under **unique statutory whistleblower protections** that also require the whistleblower to seek enforcement of their rights through the USPS OIG.

ADDITIONAL RESOURCES

- Office of the Whistleblower Ombuds Fact Sheet: **Whistleblowers and Offices of Inspectors General**
- U.S. Postal Service Employee and Labor Relations Manual: **Prohibited Personnel Practices**
- U.S. Postal Service Office of Inspector General: **Whistleblower Retaliation FAQ**