OVERVIEW

The legal landscape around state whistleblowing is vast, and there may be limitations around actions Congress can take to intervene in matters that fall under the jurisdiction of state or local governments. This guidance document identifies key considerations and resources when working with state and local whistleblowers. House offices that have questions about their involvement in matters outside of federal Congress’ jurisdiction can consult the House Ethics Committee and House Office of General Counsel for guidance.

IN INVOLVEMENT IN STATE AND LOCAL MATTERS

An office’s involvement in 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 plausible 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 surprises and unintended harm. Further, compliance with state or local privacy protections may be required, akin to a federal Privacy Act release.

KEY CONSIDERATIONS FOR GUIDANCE

An office can take supportive 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’ Whistleblower Audience page provides general resources, including Whistleblower Survival Tips as well as a menu of governmental and nongovernmental resources. The following sections focus on referrals and state laws.

REFERRALS

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

SUPPORT ORGANIZATIONS

National 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.
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. There are 22 State Plans covering private sector and state and local government workers, and there are six State Plans covering only state and local government workers.

STATUTES

There exists a vast patchwork of state whistleblower protection laws for public and private sector employees. The strength and scope of the laws varies significantly. This section focuses on state-level public sector whistleblower laws as well as laws that protect disclosures of fraud or “false claims” in state spending, informed by a Congressional Research Service (CRS) survey. The survey, requested by the Office of the Whistleblower Ombuds, includes citations to statutes on this topic, categories of employees to whom the laws apply, and information on remedies for the employee.

STATE PUBLIC SECTOR WHISTLEBLOWER LAWS

Certain state statutes prohibit retaliation against public-sector whistleblowers who report waste, fraud, abuse, or other misconduct. Research conducted by CRS 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.

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. Individuals considering filing a related claim should consult experienced counsel, as discussions with external parties about existing lawsuits may disqualify the claimant from award eligibility.

ADDITIONAL RESOURCES

- CRS Survey (2021) – Selected State Statutes on Whistleblower Protections and False Claims
- CRS Report (2021) – Casework in a Congressional Office: Background, Rules, Laws, and Resources
- American Review of Public Administration - Whistleblowing Policies in American States: A Nationwide Analysis

Legal Disclaimer: This document is for general informational purposes only. Its contents are not legal advice.