

Improper Governmental Actions (Whistleblower Act)

OVERVIEW

This section provides a brief summary of the Washington State Whistleblower Program, and its applicability at Washington State University.

Federal Grants and Contracts

Additional protections and reporting procedures apply to whistleblower assertions related to federal grants or contracts. See [Federal Whistleblower Program](#) for a summary of the federal program for employee whistleblower protections.

DEFINITIONS

Whistleblower Program

The Whistleblower Act, enacted by the Washington State Legislature in 1982 and amended in 1999 and 2008, provides an avenue for state employees to report suspected improper governmental actions, under *RCW* Chapter 42.40.

The Legislative intent is to encourage state employees to report improper governmental actions. The law makes retaliation against people who file whistleblower assertions unlawful and authorizes remedies should it occur. The Washington State Auditor's Office investigates and reports on assertions of improper governmental actions. The Human Rights Commission has sole responsibility for investigating asserted retaliatory actions.

State employees may report improper governmental actions to the Washington State Auditor's Office (SAO) or any state employee designated as a *public official*. See [Public Official](#) for the definition of a public official. (The SAO also refers to public officials as *whistleblower designees*.)

The SAO has sole authority to determine whether or not to initiate an investigation of an assertion of improper government action. The SAO must initiate an investigation in order for an employee who files an assertion to be considered a whistleblower under the Act.

Improper Governmental Action

An improper governmental action is defined as any action by an employee undertaken in the performance of an employee's official duties that includes any of the following:

- Is a gross waste of public funds or resources
- Is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature
- Is of substantial and specific danger to the public health or safety

Improper Governmental Actions (Whistleblower Act)

Improper Governmental Action (cont.)

- Is gross mismanagement
- Prevents dissemination of scientific opinion or alters technical findings

Improper governmental actions do not include personnel actions for which other remedies exist, e.g., appointments, promotions, transfers, assignments, reassignments, performance evaluations, employee grievances, and other personnel related complaints.

Public Official

A *public official* is defined as:

- The director or equivalent in the agency where the employee works.
- One of an appropriate number of individuals designated by the University President to receive whistleblower reports.
- The Attorney General's designee or designees.
- The Executive Ethics Board.

WSU Public Officials

The following positions are designated as public officials for Washington State University:

- Chancellor, WSU Spokane
- Chancellor, WSU Tri-Cities
- Chancellor, WSU Vancouver
- Dean, WSU North Puget Sound at Everett
- Chief Audit Executive, Internal Audit

Whistleblower

A *whistleblower* is an employee who:

- Reports an alleged improper governmental action to the State Auditor's Office (SAO) or another public official, initiating an investigation; *or*
- Is perceived by his or her employer as reporting an alleged improper governmental action to the SAO or another public official, initiating an investigation, whether or not the employee made such a report.

Any current Washington state employee may report a suspected improper governmental action through the Whistleblower Program. This includes temporary employees (including students in employment positions), classified employees (civil service and

Improper Governmental Actions (Whistleblower Act)

Whistleblower (cont.)

collective bargaining unit), exempt employees (administrative professional and faculty), and elected officials.

Volunteers, customers, contractors, and University partners are not employees. Nonemployees may report allegations of improper governmental actions through the [SAO Citizen Hotline](#).

Good Faith

Whistleblowers must file assertions in *good faith*. In order to report in good faith, an employee may not knowingly report false, malicious, or frivolous information, recklessly disregard the truth, or omit relevant information. The identity of any person who, in good faith, provides information in a whistleblower investigation is kept confidential.

An employee must make a reasonable attempt to ascertain the correctness of the information furnished. Knowingly furnishing false information may make an employee subject to disciplinary actions.

STATUTE OF LIMITATIONS

A state employee must report the asserted action within a year of occurrence.

RETALIATION/ INTERFERENCE

To encourage the reporting of improper governmental actions, employees are protected from retaliation by the provisions of state law. (*RCW* 42.40) See [Retaliatory Actions](#).

Employees may not directly or indirectly use, or attempt to use, their official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting these influences for the purpose of interfering with the right of an individual to disclose information to the State Auditor or other public official.

SUBMITTING A WHISTLEBLOWER ASSERTION REPORT

Directions for submitting a report of improper governmental action may be found at:

www.sao.wa.gov/investigations/Pages/FileWhistleblower.aspx

Employees may file reports of improper governmental action by one of the methods listed below.

Submit to Public Official

Submit a written report of assertion to the designated public official at the agency, who forwards the written report to the SAO within 15 calendar days of receipt (see [WSU Public Officials](#)).

Improper Governmental Actions (Whistleblower Act)

Submit to State Auditor's Office (SAO)

Submit a written report of assertion directly to the SOA by:

- Telephone: 360-725-5358
- E-mail: whistleblower@sao.wa.gov
- Web:
www.sao.wa.gov/investigations/Pages/FileWhistleblower.aspx
- Mail: Washington State Auditor's Office
ATTN: State Employee Whistleblower Program
P.O. Box 40031
Olympia, WA 98504-0031

Written Report Requirements

Include the following information in the written assertion report:

- A detailed description of the improper governmental action or actions.
- The name of each employee who is involved in the alleged improper governmental action.
- The identity of the agency, division and location where the action or actions occurred.
- Details that may be important for the investigation, e.g., witnesses, documents, and evidence.
- If known, the specific law or regulation that has been violated.
- The name, home address, and contact telephone number of the person submitting the report (optional).

Employees may submit whistleblower reports anonymously.

The SAO sends acknowledgment to the employee submitting the assertion report within fifteen working days of receipt of the report. The acknowledgement states whether or not a preliminary investigation will be conducted.

State Auditor's Office (SAO) Citizen Hotline

State employees may also utilize the SAO Citizen Hotline to report government waste, inefficiency, and abuse. The Citizen Hotline is open to all citizens and government employees as a method to recommend ways to improve efficiency and report outstanding achievement and efficiency in government. The Citizen Hotline may be accessed by toll free number at 1-866-902-3900.

More information on the SAO Citizen Hotline may be accessed at:

www.sao.wa.gov/

Improper Governmental Actions (Whistleblower Act)

INVESTIGATION

Investigative Powers

At any stage of the investigation, the SAO may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence.

WSU Coordinating Office

The WSU Office of Internal Audit coordinates University whistleblower investigations with the SAO and central administrators. The Office of Internal Audit forwards investigation information to central administrators as the investigation progresses. If the SAO holds an entrance and/or exit meeting with unit personnel, a representative of the Office of Internal Audit attends the meeting.

Investigation by WSU

If WSU consents; the SAO may forward an assertion of improper governmental actions to WSU for investigation. WSU must perform a preliminary investigation and respond to the SAO no later than 60 working days after receipt of the allegations from the SAO.

During Investigation

WSU officials and employees are to cooperate fully in the investigation and take any necessary action to preclude the destruction of evidence.

Preliminary Investigation

Within 60 days of receipt of an assertion, the SAO must conduct a preliminary investigation of the matter as the auditor deems appropriate.

If it appears that the matter is unsubstantiated and no further action or investigation is warranted, one of the following actions is taken:

- If a contact address is provided, the auditor notifies the employee reporting the assertion of the decision to take no further action, summarizing the deficiencies in the allegations.
- If the report is made anonymously, a decision to not conduct further investigation is subject to review by a three-person panel convened as necessary by an SAO representative, a citizen volunteer, and a representative of the Attorney General's Office.

If further investigation is to occur, the state auditor must provide written notification of the nature of the assertions to the subjects and the agency head, i.e., the University's President.

Improper Governmental Actions (Whistleblower Act)

Preliminary Investigation (cont.)

Within 60 days after the preliminary investigation period, the auditor must complete the investigation and report the findings to the whistleblower, unless the state auditor furnishes written justification for the delay to the whistleblower, the President, and subjects of the investigation.

Obligation to Respond

Upon completion of investigation, the State Auditor's Office (SAO) submits a written final draft report to WSU. Within 15 working days of receiving the report, WSU must submit a response to the SAO, reporting any action taken regarding the allegations.

A representative of the Office of Internal Audit meets with unit personnel and verifies that the draft report is complete and accurate. The Office of Internal Audit gathers any additional information that may be pertinent to the investigation or to the response. The Office of Internal Audit prepares a draft response, which is submitted to central administrators for review, comment, and/or approval. Upon approval, the Office of Internal Audit submits the formal response on behalf of the University to the SAO. The SAO's draft report may be revised based upon information provided by the University.

Final Report

The SAO prepares a written final report that may include the WSU response. The final report is sent to the whistleblower, the President, and the subjects. The report is also available on the SAO website at:

www.sao.wa.gov/

If the SAO determines that there is reasonable cause to believe that an employee or employees engaged in improper governmental action, the SAO forwards reports of such findings to the Governor, the Secretary of the Senate, and the Chief Clerk of the House of Representatives.

CONFIDENTIALITY

If the SAO initiates an investigation into the assertion, the identity of the whistleblower is kept confidential. Although assertions of improper governmental action may be filed anonymously, providing a name and contact enables the auditor to contact the whistleblower for more information as needed in order to permit a thorough investigation.

Under state law, anyone who conducts a state employee whistleblower investigation must keep confidential at all times the identity and identifying characteristics of the whistleblower and

Improper Governmental Actions (Whistleblower Act)

CONFIDENTIALITY (cont.)

any person who, in good faith, provides information for a whistleblower investigation, unless consent for disclosure is provided by written waiver.

If the SAO does not, after preliminary review, initiate an investigation, the employee who filed the assertion is not a whistleblower, as defined by RCW 42.40.020(10)(a). The employee's name is exempt from public disclosure.

PROTECTION

Whistleblowers, and employees who in good faith provide information in connection with an investigation, are entitled to protection from reprisal or retaliatory action as the result of their status as whistleblowers. If a whistleblower or an employee providing information for a whistleblower investigation believes he or she has been the subject of retaliatory actions as a result of filing a report of improper governmental action or providing information, the whistleblower or employee may file a claim with the Washington State Human Rights Commission. To access the online claim form, contact the Human Rights Commission. Contact information is available at:

www.hum.wa.gov/

Retaliatory Actions

Reprisal or retaliatory action includes, but is not limited to:

- Denial of adequate staff to perform duties
- Frequent staff changes
- Frequent and/or undesirable office changes
- Refusal to assign meaningful work
- Unwarranted and unsubstantiated letters of reprimand and/or unsatisfactory performance evaluations
- Demotion
- Reduction in pay
- Denial of promotion
- Suspension
- Dismissal
- Denial of employment
- Supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower

NOTIFICATION OF PROCEDURES

Pursuant to *RCW* 42.40.070, WSU employees are notified each year of the procedures and protections under the Whistleblower Act. The annual notice includes a list of WSU public officials authorized to receive whistleblower reports. The Office of Internal Audit initiates the annual notice process.

Improper Governmental Actions (Whistleblower Act)

FEDERAL WHISTLEBLOWER PROGRAM

The National Institutes of Health (NIH) mandates that all federal grants and contracts incorporate the requirements of the "Pilot Program for Enhancement of Employee Whistleblower Protections." (NIH Notice NOT-OD-14-068) The program is intended to encourage employees to report fraud, waste and abuse.

Applicability

The NIH whistleblower program applies to all employees working for contractors, grantees, subcontractors, and subgrantees on federal grants and contracts.

Whistleblowing Defined

Under this program, whistleblowing is defined as making a disclosure "that the employee reasonably believes" is evidence of any of the following:

- Gross mismanagement of a federal contract or grant
- Gross waste of federal funds
- Abuse of authority relating to a federal contract or grant
- Substantial and specific danger to public health or safety
- Violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant)

Disclosure

To qualify under the statute, the employee's disclosure must be made to one of the following:

- A member of Congress
- A representative of a congressional committee
- An Inspector General
- The Government Accountability Office (GAO)
- A federal employee responsible for contract or grant oversight or management at the relevant agency
- A court or grand jury
- A management official or other employee of the contractor, subcontractor, grantee, or subgrantee who has the responsibility to investigate, discover, or address misconduct. (See *EP33*.)

ASSISTANCE

For concerns or additional information, contact the Office of Internal Audit; telephone 509-335-5336; e-mail ia.central@wsu.edu; or refer to the Internal Audit website at:

internalaudit.wsu.edu