

THE STATE EMPLOYEE WHISTLEBLOWER ACT

SUMMARY OF PROVISIONS AND PROTECTIONS OF RCW 42.40

Whistleblower Program

The Whistleblower Act, enabled by the Washington State Legislature in 1982 and amended in 1999, provides an avenue for state employees to report suspected improper governmental action. The legislative intent is to encourage state employees to report improper governmental action(s). The law makes retaliation against whistleblowers unlawful and authorizes remedies should it occur. The State Auditor's Office investigates and reports on complaints of improper governmental action, and the Human Rights Commission has sole responsibility for investigating asserted retaliatory actions.

Improper governmental action is defined as any action by an employee undertaken in the performance of his/her official duties which is:

- A gross waste of public funds or resources.
- In violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature.
- Of substantial and specific danger to the public health or safety.
- Gross mismanagement.
- Preventing dissemination of scientific opinion or altering technical findings.

Improper governmental action **DOES NOT** include personnel actions including, but not limited to: employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of state civil service laws, labor agreement violations, reprimands, or other disciplinary actions.

Filing a Whistleblower Complaint

Any current Washington State employee may report a suspected improper governmental action through the Whistleblower Program. This includes temporary employees, classified and exempt civil service employees, and elected officials. Whistleblower complaints of improper governmental action may be filed anonymously.

Improper governmental action(s) may be filed in writing with any designated public official or with the State Auditor's Office within one year after the occurrence of the action. In the Department of Corrections, the Audit and Policy Administrator is designated as the public official.

If you wish to file a whistleblower complaint with the Audit and Policy Administrator, please complete DOC 03-427 Whistleblower Reporting. In order to preserve confidentiality, please do not e-mail any whistleblower forms to the Audit and Policy Administrator. Send a hard copy form only.

If you wish to file a whistleblower complaint directly with the State Auditor's Office, you may complete:

- DOC 03-427 Whistleblower Reporting, or
- The Whistleblower Reporting Form available on the State Auditor's Office website at <http://www.sao.wa.gov/applications/wbdesigneeelist/Default.aspx>.

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The complaint should include the following information:

- A detailed description of the improper governmental action(s),
- The name of the employee(s) involved,
- The agency, division, and location where the action(s) occurred,
- Date(s) of the improper governmental action, which must be within one year of the date the complaint is submitted,
- Details that may be important for the investigation - witnesses, documents, and evidence,
- The specific law or regulation that has been violated, if known, and
- Your name, home address, and phone number, unless filing anonymously.

Each improper governmental action should be noted separately and supported with as much specific information as possible. Proving allegations can often be difficult. Supplying detailed information contributes to a thorough and efficient investigation. The forms are designed to help you supply the needed information. Please use a separate form for each improper governmental action.

Please mark any whistleblower correspondence "confidential".

Rights and Responsibilities under the Whistleblower Program

Department of Corrections: The Department of Corrections must report any whistleblower complaints to the State Auditor's Office within 15 days of receipt of the complaint. The Department of Corrections does not have the right to initiate an investigation of any whistleblower complaints received, but may agree to conduct an investigation at the State Auditor's Office's request.

State Auditor's Office: The State Auditor's Office has a right to receive and investigate complaints of improper governmental action.

Whistleblower: The whistleblower must file the complaint in good faith. Good faith is defined as a reasonable basis in fact for the report. Good faith is lacking when the employee knows or reasonably ought to know that the report is malicious, false, or frivolous. Therefore, whistleblowers must make a reasonable attempt to determine the correctness of the information furnished in the complaint. The whistleblower, if named, will be notified of receipt of the complaint and will be updated on the status of the case during the preliminary investigation (i.e., 30 working days) and during the full investigation (i.e., 60 working days), if one is conducted. The whistleblower has a right to confidentiality and remedies for retaliation. The whistleblower, agency head, and the subject(s) are notified at least annually of the status of corrective action until the State Auditor's Office concludes that appropriate action has been taken by the agency.

Subject of Complaint: Within the preliminary investigation (i.e., 30 working days), the subject has the right to be notified of the nature of the complaint, relevant facts known at the time, and the intended course of action. Each subject will be interviewed during the investigation, if appropriate. The same rights apply during the full investigation (i.e., 60 working days), if one is conducted. If reasonable cause is found that an improper governmental action has occurred, the subject may respond within 15 working days to the draft report. The subject's response, or portions of it, may be included in the final report, if appropriate.

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Investigation Process

Whistleblower investigations are conducted independently and objectively. It is the goal of the State Auditor's Office to treat all parties to the investigation (i.e., the state agency, the whistleblower, and the subject) respectfully and fairly. Further, it is the goal of the State Auditor's Office to conduct all whistleblower investigations as timely as possible. On average, whistleblower reports are issued to the public within 90 working days and completed within one year of receipt of the complaint.

Under state law, anyone who conducts a state employee whistleblower investigation must keep the whistleblower's name confidential. Further, confidentiality is maintained even after the final report is issued. All working papers and final reports are redacted in responding to all public record requests to maintain that confidentiality. However, filing a tort claim, lawsuit, or a complaint with the Human Rights Commission may waive whistleblower confidentiality.

Retaliation

The law requires that whistleblower identities be kept confidential. It makes retaliation unlawful and provides remedies for retaliation. If an employee feels s/he is being retaliated against because of filing a whistleblower report or providing information during an investigation, or because s/he is believed to have filed a whistleblower report or provided information, the employee may file a report of asserted retaliation with the Washington State Human Rights Commission. The Commission will investigate the claim and take appropriate action. Civil penalties for retaliation may include a fine of up to \$5,000.00 and suspension for 30 days without pay. At a minimum, a letter of reprimand is placed in the retaliator's personnel file.