



Department of Energy

Washington, DC 20585

MAY 28 2014

MEMORANDUM FOR HUMAN RESOURCES DIRECTORS

FROM:


KENNETH T. VENUTO, DIRECTOR
OFFICE OF HUMAN CAPITAL MANAGEMENT

SUBJECT:

POLICY GUIDANCE MEMORANDUM #27
Office of Special Counsel 2302(c) Certification Program on
Prohibited Personnel Practices, Whistleblower Protection Act and the
Whistleblower Protection Enhancement Act

Congress enacted 5 U.S.C. § 2302(c) in response to reports of limited understanding in the federal workforce concerning employees' right to be free from prohibited personnel practices, especially retaliation for whistleblowing. Section 2302(c) requires agencies to ensure, in consultation with the Office of Special Counsel, that employees are informed of the rights and remedies available to them under the Whistleblower Protection Act and related laws.

In accordance with a February 2014 memorandum from the White House's Chief Technology Officer and the White House's 2013 second Open Government National Action Plan, the U.S. Department of Energy must establish a plan for completing OSC's 2302(c) Certification Program. In fulfillment of this obligation, Human Resources Directors (HRDs) must inform their workforce of their rights and protections under the Whistleblower Protection Act and the Prohibited Personnel Practices. A DOECAST was disseminated on April 24, 2013 informing the DOE workforce about the Non-Disclosure Policies, Forms and Agreements, and Acknowledgements covered under the Whistleblower Protection Enhancement Act. This DOECAST is attached for your convenience. A reminder DOECAST will also be issued shortly.

Prohibited Personnel Practices (PPP)

There are thirteen prohibited personnel practices, including reprisal for whistleblowing, which are defined by law at § 2302(b) of title 5 of the United States Code (U.S.C.). Generally stated, § 2302(b) provides that a federal employee who has authority over personnel decisions may ***not***:

- (1) discriminate against an employee or applicant based on race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- (2) request or consider employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics;
- (3) coerce the political activity of any person;



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- (4) deceive or willfully obstruct anyone from competing for employment;
- (5) influence anyone to withdraw from competition in an effort to improve or injure the employment prospects of any person;
- (6) give an unauthorized preference or advantage to anyone so as to improve or injure the employment prospects of any particular employee or applicant;
- (7) engage in nepotism (*i.e.*, hire, promote, or advocate the hiring or promotion of relatives);
- (8) engage in reprisal for whistleblowing – generally, a person with personnel authority cannot take or fail to take a personnel action with respect to an employee or applicant because of a disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. The prohibition does not apply, however, if the disclosure is barred by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, *except* when such a disclosure is made to the Special Counsel, the Inspector General, or a comparable agency official.
- (9) take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law;
- (10) discriminate based on personal conduct which is not job-related and does not adversely affect the on-the-job performance of an employee, applicant, or others;
- (11) take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate a veterans' preference requirement;
- (12) take or fail to take a personnel action, if taking or failing to take the action would violate any law, rule or regulation implementing or directly concerning merit system principles at 5 U.S.C. § 2301; or
- (13) implement or enforce a nondisclosure agreement or policy lacking notification of whistleblower rights.

Servicing human resources offices (SHROs) must be diligent in reminding its federal workforce about the Prohibited Personnel Practices. Each SHRO must comply and adhere to these governing principles.

New Employee Orientation

Each SHRO must include a copy of the guidance on Prohibited Personnel Practices titled "Your Rights as a Federal Employee" (<http://osc.gov/YourRightsFederalEmployee.htm>) and fact sheet about the Whistleblower Protection Act (WPA) and the Whistleblower Protection Enhancement Act (WPEA) as part of the new employee orientation process. All federal employees must adhere to these statutes. To maximize awareness and familiarity with these provisions, the Office of

Special Counsel requires agencies to place brochures and posters in a communal work space. As a result, SHROs must post these publications in the same location as that of the EEO Statements. If space is limited, the Office must then place these posters in other public settings that are commonly visited by the federal workforce. For your convenience, the hyperlinks to the Posters are below. Each SHRO is responsible for consulting with their local printing office and will bear the cost, if any.

- *Prohibited Personnel Practices:* <http://osc.gov/PPPposter.htm>
- *Whistleblowing Retaliation:* <http://osc.gov/PPPwbdiscRetaliationposter.htm>
- *Whistleblowing:* <http://osc.gov/wbdiscposter.htm>

Should you require any additional information, you may contact George Waldmann, Director, Human Capital Accountability and Compliance Division at 202.586.9904 or at George.waldmann@hq.doe.gov.

Attachment:
DOECAST