



**DEPARTMENT OF DEFENSE  
EDUCATION ACTIVITY**

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NOV 21 2006

MEMORANDUM FOR DODEA HQ EMPLOYEES  
DIRECTOR, DODDS EUROPE  
DIRECTOR, DODDS PACIFIC AND DDESS GUAM

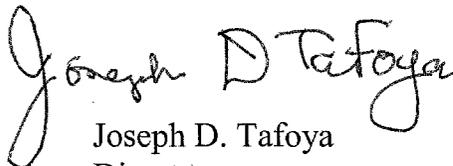
SUBJECT: The No FEAR Act Training

The No FEAR Act requires Federal agencies to notify their employees of their rights and remedies under discrimination and whistleblower laws; and to ensure that managers have adequate training in the management of a diverse workforce, early and alternative conflict resolution, and essential communications skills. All Department of Defense Education Activity (DoDEA) employees are required to complete the attached No FEAR Act Training no later than December 22, 2006.

Please carefully review these slides and when you are finished, notify your supervisor that you have completed the training. Supervisors are to certify that everyone within their division/s has complied with the requirement to take the No FEAR Act training. Individuals who have attended EEO/No FEAR training this year are not required to take this training again. However, it is recommended that they print out the certificate in the attached presentation for their own records.

To review additional materials and learn more about the No FEAR Act, please go to the Web site at <http://www.dodea.edu/offices/eo/dodea.cfm?gnav=nofear>.

Area Directors will report to me by January 22, 2007, to verify that everyone within their area has complied with the requirement to take the No FEAR training.

  
Joseph D. Tafoya  
Director

Attachment:  
As stated



DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

**Notification and Federal Employee Anti-  
discrimination and Retaliation (No FEAR)  
Act Training**

**Presented by:  
Diversity Management and Equal Opportunity Office**



# Overview of No FEAR Training

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The purpose of this No FEAR training is to make you aware of your rights, remedies, and responsibilities in employment discrimination; fraud, waste, and abuse, whistleblowing and associated retaliation. The training is divided into 2 sections as follows:

- Part 1 Employment Discrimination; Rights, Remedies, & Responsibilities
- Part 2 Fraud, Waste & Abuse; Whistleblowing and Retaliation; Rights, Remedies, & Responsibilities



# Discrimination

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The type of discrimination covered in this training session is employment discrimination. Discrimination may occur in many different scenarios, but under the No FEAR training requirement, this course will focus on workplace discrimination.

**Employment discrimination** is defined as adverse treatment of an employee or applicant for employment based on one or more of the following bases:

- Race
- Color
- National Origin
- Religion
- Physical or mental disability
- Reprisal
- Sexual Orientation
- Status as a Parent
- Gender
- Age
- Genetic Information



# Discrimination

Discrimination on the basis of **race** covers all races. The U. S. Government currently recognizes five race as follows:

- Black/African American
  - White
  - Asian American
  - Native Hawaiian or other Pacific Islander
  - American Indian or Alaska Native
- (Not everyone fits into these neatly defined categories)*

*Note: “Hispanic” is a national origin but often claimed as a race. Hispanics can identify with one or more races.*

**Color discrimination** has been frequently viewed synonymous with race, or as a basis for defining a subclass within a race. There is no accepted definition of the term color.

**Color discrimination** can also occur within the same racial group as members of a group may have biases against those whose skin is lighter or darker than their own.



# Discrimination

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**National origin** discrimination refers to adverse treatment due to someone's ethnicity or heritage.

**National origin** discrimination also includes prohibition of harassment or adverse employment action based on any of the following:

- Affiliation because an individual is affiliated with a particular religious or ethnic group
- Physical or cultural traits, linguistic traits or clothing associated with a particular religion
- Perception or belief that a person belongs to a particular racial, ethnic or religious group
- Association with a person or organization of a particular religion or ethnicity



# Discrimination

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Discrimination on the basis of **religion** covers persons of all faiths, including those who are atheist.

Following are examples of illegal discrimination on the basis of religion:

- To have stricter production requirements for atheists simply because they do not share the supervisor's own religious beliefs
- To fail to hire a Muslim due to the selecting official's fear of terrorism
- To make derogatory comments to others about their faith or lack of faith
- To insist that a subordinate participate in religious activity as some condition of employment, promotion, preferred job assignment, or salary increase



# Discrimination

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Employees have a right to religious accommodation as long as it does not create an undue hardship for the employer. An employer's reasonable accommodation obligation under Title VII does not require that employers bear more than a minimal cost to accommodate an employee.

Examples of religious accommodations are as follows:

- Allowing religious dress
- Granting leave for religious observations
- Flexible work breaks and scheduling

For further information on religious accommodations, please click on the following link: [US EEOC's Definition of Religious Discrimination](#)



# Discrimination

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Disability discrimination covers those individuals who have a disability (physical or mental), a record of a disability, or are regarded as disabled.

An **employee or an applicant** with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities.

Pursuant to the **Rehabilitation Act**, applicants and employees, including those with either physical or mental disabilities, have the right to a reasonable accommodation for their disabilities, unless the accommodation causes an undue hardship on DoDEA.

A reasonable accommodation is a change or adjustment to a job or worksite that makes it possible for otherwise qualified employees with disabilities to perform the essential functions of the positions in question.



# Discrimination

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Examples of disability accommodation are as follows:

- Leave (An employer does not have to provide paid leave beyond that which is provided to similarly situated employees)
- Flexible scheduling
- Redistributing marginal (not essential) job functions
- Assistive devices

To view the DoDEA reasonable accommodation policy, please click the link:

[Procedures to Facilitate the Provision of Reasonable Accommodation – DoDEA Pamphlet 01-EEO-01](#)

To view rights under FMLA, please click on [Family Medical Leave Act](#)



# Discrimination

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**Reprisal** is retaliation against an individual who has participated in the EEO process. i.e. filing a complaint of discrimination, participating in an investigation, or somehow opposing discriminatory practices.

**Reprisal** is the most common basis of discrimination alleged within DoDEA and other Federal agencies.

For example:

A supervisor did not promote or select an individual because the supervisor is aware that he filed an EEO complaint in the past.



# Discrimination

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**Sexual orientation** discrimination covers those who are bisexual, homosexual, heterosexual, and transsexual.

For example:

It would be illegal for someone who is heterosexual to harass a homosexual about his or her sexual orientation and vice versa. This would be true whether the sexual orientation of the victim was real or perceived. It is also illegal to subject a person to disparate treatment based on their real or perceived sexual orientation.

**Status as a parent** discrimination covers individuals who are parents.

For example:

Failing to hire someone because of fears that being a parent cause them to be less committed to their job or not sending a single parent on travel for assignments or training because of a mistaken belief that the employee does not have child care.



# Discrimination



**Paying a male teacher more for doing the same work as a female teacher because of his gender.**

**Refusal to consider a man for a secretarial position based on a preference to fill such positions with women.**



**A supervisor's failure to address complaints of frequent and pervasive sexual comments and jokes which are unwelcome by people of either gender.**

**Failure to accommodate pregnant employees in a manner which other temporarily disabled employees would be treated, e.g., by providing modified tasks, alternative assignments, disability leave, or leave without pay.**

**Sex discrimination covers both men and women. Discrimination on the basis of pregnancy, childbirth, or related medical conditions is also recognized as unlawful gender discrimination. So is sexual or sex-based harassment.**



# Discrimination

There are 2 types of harassment: sexual and non-sexual hostile work environment. The most prevalent issue currently alleged in the Federal workforce is harassment (non-sexual) or hostile work environment.

**Sexual harassment** constitutes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, *unreasonably* interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

**Harassment/hostile work environment** includes unwelcome comments or conduct unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. An harasser can be the victim's supervisor, co-worker, or a non-employee.

For example:

Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color constitutes unlawful harassment.



# Discrimination

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**Age discrimination** laws cover those who are **40 years of age and older**.

Following are examples of unlawful age discrimination:

- Removing a 65-year old worker from a maintenance job due to baseless fears that the employee may injure himself while hauling bags of garbage
- Failing to hire a 50-year old as a Staffing Specialist for Recruitment simply because most of his work-related dealings would be with college students
- Refusing to promote or provide training to an employee due to a fear that the employee may retire soon



# Discrimination

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**Genetic information** discrimination refers to information about an individual's **genetic tests**; the **genetic tests of an individual's family members**; or the occurrence of a disease, medical condition or disorder of individual's family member or **family medical history**.

The following is an example of genetic information discrimination:

A supervisor learns that one of his employee's father died recently of pancreatic cancer and that his brother is seriously ill with the same disease. The employee is well-respected and highly-rated. Budget cuts to the division will eliminate two employee slots. The supervisor decides to identify the employee's slot for elimination based on his family history of cancer.



# Discrimination

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In addition to there being many different covered bases for discrimination, there are also many different situations in which discrimination can occur. These situations are described as "issues."

The following are some examples of employment discrimination issues:

- Hiring
- Firing
- Assignment of Duties
- Reassignment
- Compensation/Pay
- Reprimand
- Denial of Reasonable Accommodation
- Evaluation
- Promotion
- Training
- Terms and Conditions of Employment
- Harassment



# Rights, Remedies, and Responsibilities

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The rights and responsibilities under this part are as follows:

Individuals who believe they have been the victim of unlawful discrimination on the basis of **race, color, age, religion, sex, national origin, disability or reprisal**, must contact an Equal Employment Opportunity (EEO) counselor within **45 calendar days** of the alleged discriminatory action, or effective date of the alleged discriminatory personnel action.

Employees also have the option of using appropriate or alternative dispute resolution processes (ADR) to address their workplace concerns. ADR processes are voluntary and confidential and give employees another alternative for addressing their concerns in a constructive, fair and timely manner.

Information regarding the EEO process and ADR is available through your local DMEO office, or the following DODEA EEO websites:

[www.dodea.edu/offices/eoo/index.cfm](http://www.dodea.edu/offices/eoo/index.cfm)

[Alternative Dispute Resolution \(Mediation Process\)](#)

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# Rights, Remedies, and Responsibilities

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Federal employees – current and former – and applicants who appeal **personnel actions** to the Merit Systems Protection Board (MSPB) may also allege discrimination race, color, national origin, religion, gender, age, disability, or reprisal. Additionally, employees who file an appeal with the MSPB may also state that the personnel action in question resulted from a prohibited personnel practice.

Information about the MSPB process may be found at the following website:

[www.mspb.gov/howtoappeal.html](http://www.mspb.gov/howtoappeal.html)

Individuals alleging discrimination based on **marital status** or **political affiliation** may file a written complaint with the U.S. Office of Special Counsel (OSC).

Information regarding discrimination based on marital status or political affiliation may be found at the following website:

[www.osc.gov/](http://www.osc.gov/)

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# Rights, Remedies, and Responsibilities

Individuals who believe that they have been discriminated against because of their **sexual orientation, status as a parent, or genetic information**, may obtain complaint process information at the following websites:

- Sexual Orientation  
[www.dodea.edu/offices/eo/complaints\\_so.cfm?sid=1](http://www.dodea.edu/offices/eo/complaints_so.cfm?sid=1)
- Status as a Parent  
[www.eeoc.gov/facts/fs-orientation\\_parent\\_marital\\_political.html](http://www.eeoc.gov/facts/fs-orientation_parent_marital_political.html)
- Genetic Information  
[www.eeoc.gov/policy/docs/guidance-genetic.html#v1](http://www.eeoc.gov/policy/docs/guidance-genetic.html#v1)



## Part 2

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# **Fraud, Waste and Abuse Whistleblowing and Retaliation & Rights, Remedies, and Responsibilities**



# Fraud, Waste, & Abuse

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There are similarities between the processes for fraud, waste, & abuse and whistleblowing. The DoDEA Office of Compliance and Assistance (OCA) is available to assist you in making determinations and distinguishing between the various processes.

It is Department of Defense (DoD) policy to combat fraud, waste, abuse and mismanagement. The Defense Hotline Program was established in order to report significant instances of fraud, waste, abuse of authority and gross mismanagement. Each of these elements are defined as follows:

## **Fraud**

Intentional deception designed to unlawfully secure or deprive the United States of something of value such as a benefit, privilege, allowance or consideration to which an individual is not entitled. Examples are bribes or gratuities; submitting false claims; deceit by suppressing the truth or misrepresenting material fact.



# Fraud, Waste & Abuse

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## **Waste**

The extravagant careless, or needless expenditures of Government funds or the consumption of Government property that results from deficient practices, systems, controls, or decisions.

## **Abuse of Authority**

Intentional or improper use of Government resources. Examples include misuse of rank, position or misuse of resources such as tools or vehicles.

## **Mismanagement**

A collective term covering acts of waste and abuse.

The following are examples of what should be reported:

- Violations of law, rule or regulation
- Contract and procurement irregularities
- Bribery and acceptance of gratuities
- Conflicts of Interest
- Travel fraud (TDY/TAD)



# Fraud, Waste & Abuse

## **Confidentiality in reporting fraud, waste and abuse**

In accordance with the Inspector General Act, the identity of DoD employees who make complaints or provide information regarding alleged wrongdoing will be held confidential unless the individual gives their permission for the disclosure of their name.

## **Protecting your identity**

It's important to note that even anonymous individuals put information in their letters that would disclose their identity. It is recommended that personal statements or references that would lead others to their identity be avoided. Prior to investigation, written complaints are thoroughly reviewed by a Hotline investigator. During the review process, any personal identities or personal references to individuals or gender are removed. All complaints referred for investigation are further protected by warnings to preclude the unauthorized disclosure of your identity.

Employees have a right to report waste, fraud, and abuse without fear of retaliation. If you do not wish to report waste, fraud, or abuse through your regular supervisory chain of command, you may report it to any supervisor or manager within your region, the Office of Compliance and Assistance, the Office of Special Counsel (OSC), or the Office of the Inspector General (OIG).



# Whistleblowing

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Its basic authorities come from three federal statutes, the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act.

The Office of Special Counsel defines a whistleblower, according to the Whistleblower Protection Act, 5 U.S.C. 2302 (b)(8), as an employee, former employee, or contractor who provides information he or she reasonably believes evidences waste, fraud, or abuse in the form of:

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

In order to articulate any one of these elements, certain conditions must be established.



# Whistleblowing

## **A violation of any law, rule or regulation**

In order to invoke Whistleblower Protection Act (WPA) relief, disclosures of violations of laws, rules or regulations must be substantial.

If a disclosure is not substantial, whistleblower status may not be conveyed to the individual making the allegation.

Examples of substantial violations of the law, rules or regulations include:

- Disclosing an agency employee who makes false statements in an investigation related to a security breach
- Disclosing a supervisor who purposely and repeatedly ignored violations of time and attendance abuse by themselves or their staff
- Disclosing that a supervisor is aware of an employee using office telephones to run a personal business and not taking corrective action



# Whistleblowing

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## **Gross mismanagement**

Gross mismanagement is characterized by management action, or inaction, which creates a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission.

It does not include management decisions which are merely debatable, nor does it include action or inaction which constitutes simple negligence or wrongdoing.

Some examples of gross mismanagement may include:

- A supervisor's inaction when advised by employees that one of his managers made threatening statements, exhibited behavior considered threatening, and was planning workplace violence
- A manager instructing his employees not to follow the security procedures required by regulations for verifying the identity of individuals requesting entry to a highly sensitive area of a military base



# Whistleblowing

## **Gross waste of funds**

There is no precise definition of what constitutes a "gross waste of funds." The WPA was not intended to protect trivial or minimal waste of funds.

Accordingly, each allegation of waste of funds must be weighed on a case-by-case basis. Reasonable minds may differ and a mere disagreement with a decision made by a DoDEA financial manager may not rise to the level of gross mismanagement.

Some examples of facts which would support an allegation that a gross waste of funds has occurred are:

- A manager decides to purchase 50 computers for a staff of 10 with the argument that the purchases were made for future staff additions
- An agency spending \$1,000,000 on travel for employees to attend training that was available locally



# Whistleblowing

## **Abuse of authority**

Abuse of authority is defined as an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or which results in personal gain or advantage to the official or other persons.

Examples of abuse of authority include:

- A manager orders a subordinate to award contracts to friends and relatives
- A manager's repetitive travel to exotic locations and posh resorts

Most cases interpreting “abuse of authority” address the element of gain or favoritism. However, harassment or intimidation of other employees may also constitute abuse of authority, e.g., a manager who belittles, swears at, and threatens staff with the loss of their jobs, could be construed as abusing his authority.



# Whistleblowing

## **A substantial and specific danger to public health and safety**

Only disclosures of public health or safety dangers which are both substantial and specific are protected under the WPA.

Some examples:

- Allegations of Agency-wide violations of life-safety/fire protection standards within the schools
- An allegation by a DoDEA teacher that a school is unsafe and in danger of collapsing

*NOTE: A general criticism by an employee that DODEA is not doing enough to have safe and secure schools for its students and staff would NOT be viewed as a substantial or specific danger.*



# Retaliation

## Retaliation

In many cases, you can claim whistleblower retaliation under 5 U.S.C. 2302(b)(8) if you suffer or if you are denied any of the following covered personnel actions:

- An appointment
- A promotion
- A disciplinary or corrective action
- A detail
- A transfer or reassignment
- A reinstatement
- A restoration
- A reemployment
- A decision about pay, benefits, awards, training
- A performance evaluation
- A decision to order psychiatric testing
- A significant change in duties, responsibilities, or working conditions

For example: A supervisor directs the geographic reassignment of an employee because the employee reported safety violations of the Occupational Safety and Health Act (OSHA). The employee believes the reassignment was in retaliation for having reported the OSHA violation, he or she may be able to seek remedy under the WPA.



# Retaliation

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To prove retaliation in whistleblower cases, you must show that the prohibited personnel action taken against you was, at least in part, a result of your protected disclosure.

To prove retaliation and invoke the [WPA](#), an employee must:

- Make a protected disclosure
- Have had a prohibited personnel action taken, not taken, or threatened against them
- Prove that the agency had actual or constructive knowledge of the protected disclosure
- Demonstrate the protected disclosure was a contributing factor in the personnel action

To refute a claim of retaliation, an employing agency must demonstrate that it would have taken the same personnel action in the absence of the disclosure.

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# Rights, Remedies, and Responsibilities

Individuals seeking assistance in determining the appropriate forum regarding **fraud, waste and abuse**, or to report incidents may do so through the chain of command or accessing the following contact information:

DoDEA's Office of Compliance and Assistance (703) 588-3244

[www.dodea.edu/offices/oca/index.cfm](http://www.dodea.edu/offices/oca/index.cfm)

DoDIG Hotline (800) 424-9098

<http://www.dodig.mil/hotline/index.html>

Incidents of **whistleblowing and retaliation** should be reported to the Office of Special Counsel (OSC) as follows:

[www.osc.gov](http://www.osc.gov)

OSC Hotline	(800) 872-9855
Whistleblower Disclosure Unit	(800) 572-2249
Hatch Act Unit	(800) 85-HATCH



# Rights, Remedies, and Responsibilities

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## **Disciplinary Action**

Under the existing laws, the Agency retains the right, where appropriate, to discipline a Federal employee who has engaged in discriminatory or retaliatory conduct, up to and including removal. DoDEA has a Zero Tolerance policy for all behavior in the workplace that violates employment discrimination laws and regulations.

To view DoDEA's policy, click on:

[http://www.dodea.edu/offices/eeo/docs/AntiHarassmentPolicy\\_05\\_EEO\\_004.pdf](http://www.dodea.edu/offices/eeo/docs/AntiHarassmentPolicy_05_EEO_004.pdf)

To view the Table of Penalties for engaging in discriminatory, harassing, or retaliatory behavior, click on:

[DoDEA Regulation 5751.9, Disciplinary and Adverse Actions](#)



# Rights, Remedies, and Responsibilities

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## **Additional Information**

For further information regarding DoDEA discrimination policies and No FEAR Act regulations, refer to 5 CFR 724, or contact your regional Diversity Management & Equal Opportunity Office.

<http://www.dodea.edu/offices/eeo/index.cfm>

*Congratulations!*

*You have successfully completed No FEAR training for 2006. The next mandatory session will be in 2 years.*

*Certificate of Completion*

*for*

*Annual No FEAR Act Training*

*presented to*



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*Name*

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*Date*





# Whistleblowing – Rights, Remedies, and Responsibilities

## GLOSSARY

**ADEA** - Age Discrimination in Employment Act.

**ADR** - Alternative Dispute Resolution. A term used for a wide variety of dispute resolution processes that are alternatives to investigations and litigation. Types of ADR include Mediation, Facilitation, Fact Finding, Peer Review, and Settlement Conferences.

**EEO** - Equal Employment Opportunity. A system of employment practices regulated by the EEOC under which individuals are not excluded from any participation, advancement, or benefits due to race, color, religion, sex, national origin, or any other action that cannot lawfully be the basis for employment actions.

**EEOC** - U.S. Equal Employment Opportunity Commission. Promotes equality of opportunity in the workplace and enforces Federal laws prohibiting employment discrimination.

**FAD** - Final Agency Decision.

**OSHA** - Occupational Safety and Health Administration of the U.S. Department of Labor. Federal agency with safety and health regulatory authorities for most U.S. industries and businesses.

**Similarly situated** - Similarly situated persons are those who are, or were, in similar circumstances, such that you reasonably would expect them to receive the same treatment as the complainant.

**WPA** - Whistleblower Protection Act.