

WASHINGTON STATE UNIVERSITY



State Whistleblower Act

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Class Objectives

- What is the State Whistleblower Act?
- Definitions of Improper Governmental Action
- Whistleblower Process
- What to Do

State Whistleblower Act

- RCW 42.40
- Enacted by State Legislature in 1982, amended 1999 and 2008
- Provides an avenue for state employees to report suspected improper governmental action
- Reports issued at sao.wa.gov

 **Whistleblower Act Provisions**

- Meant to encourage state employees to report improper governmental action(s)
- Makes retaliation against whistleblowers (*and witnesses participating in an investigation*) unlawful, and authorizes remedies for occurrence
- State Auditor's Office (SAO) investigates and reports
- Human Rights Commission (HRC) investigates asserted retaliatory actions

 **What is Improper Governmental Action?**

Any action by a state employee undertaken in the performance of his/her duties which:

- Is a gross waste of public funds or resources
- Is in violation of federal or state law or rule
- Is of substantial and specific danger to public health or safety
- Is gross mismanagement
- Prevents dissemination of scientific opinion

 **Complaints**

- Complaints may be made to:
 - SAO Whistleblower Division
 - WSU public officials: Chancellors; Chief Audit Executive, Internal Audit
- Must be made in writing
- Must be made in good faith

Investigation may be performed by SAO solely, in coordination with employee's employing agency.

 **Good Faith**

- Complainant must have a reasonable basis in fact for the communication.
- Good faith is lacking when the employee knows, or ought to know, the report is malicious, false or frivolous.
- Identity of whistleblower must be kept confidential unless auditor determines the information was provided in other than good faith.

 **Investigation Process**

- Complaints received in writing to include:
 - Employee(s) asserted to conduct improper act
 - Agency/department/location
 - Date/timeframe (one year statute of limitation)
 - Detailed description of improper actions
 - If known, specific rule or law violated
 - Any additional details
- Complaints may be anonymous
 - Harder to follow up if insufficient information available in complaint to pursue investigation

 **Intake Process**

- Complaints reviewed to determine violation and if sufficient information to pursue (preliminary phase)
 - If anonymous – SAO triage
 - If name of complainant – SAO responds within 90 days

If received first by agency public official, must be forwarded to SAO within 15 calendar days

Investigation

- SAO entrance meeting with subject
 - WSU Internal Audit is audit liaison
- SAO procedure: interviews, data collection, other procedures depending on circumstances
- SAO close meeting with subject
- SAO reporting – to sao.wa.gov, copy of report to employing agency

If charge of ethics violation, the report is referred to Executive Ethics Board (EEB)

What is Improper Governmental Action?

Any action by a state employee undertaken in the performance of his/her duties which:

- **IS A GROSS WASTE OF PUBLIC FUNDS OR RESOURCES**
- Is in violation of federal or state law or rule
- Is of substantial and specific danger to the public health or safety
- **IS GROSS MISMANAGEMENT**
- Prevents dissemination of scientific opinion

Gross Waste of Funds, Gross Mismanagement

RCW 42.40.020 definition, states:

- (5)“Gross waste of funds” means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.
- (4)“Gross mismanagement” means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

 **Washington State Parks & Recreation**
(Report 1004706, 12/6/10)

- Assertion: The Commission (members) mismanaged and misused public funds related to a new sewer and water distribution system at Fort Flagler State Park.
- Finding: 'The Washington State Parks & Recreation Commission mismanaged contracts, resulting in a gross waste of public funds.'
- Details...

 **Washington State Parks & Recreation**
(Continued)

- Ten-year project (8/00 to 5/09)
- Initially approved \$140,000 to replace recreational vehicle dump station
- Project grew to \$2 million in design and consulting fees, and construction – for a sewer system that did not work
- Additional expense of \$4.6 million to redesign and rebuild the failed sewer system
- Additional expense of \$734,799 to pump nonfunctioning system

 **Department of Transportation**
(Report 1004974, 1/18/11)

- Assertion: Mismanaged road construction project - inadequate management led to design errors, environmental violations and unnecessary expenditures.
- Finding: 'We found the actions of the first (Department of Transportation) project engineer constituted a gross waste of public funds...We also found gross waste of public funds across the divisions responsible for this project.'
- Details...

 **Department of Transportation**
(Continued)

- Work began 9/15/03, completed 8/21/08
- Project awarded for \$55.9 million
- Project closed at \$98.5 million
 - \$78.8 million to contractor, plus \$6.9m tax
 - \$10 million department engineering
 - \$2.8 million, other – agreements, vendors, etc.
 - Environmental violations led to add'l cost \$4.5m
- Charged: first and second project manager

 **What is Improper Governmental Action?**

Any action by a state employee undertaken in the performance of his/her duties which:

- Is a gross waste of public funds or resources
- Is in violation of federal or state law or rule
- **IS OF SUBSTANTIAL AND SPECIFIC DANGER TO THE PUBLIC HEALTH OR SAFETY**
- Is gross mismanagement
- **PREVENTS DISSEMINATION OF SCIENTIFIC OPINION**

 **RCW 42.40.020 Definitions of Improper Conduct**

- (8) 'substantial and specific danger to the public health or safety' means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.
- (6)(a)(v) 'Prevents dissemination of scientific opinion' or alters technical findings without scientifically valid justification, unless state law or a common law privilege prohibits disclosure.

What is Improper Governmental Action?

Any action by a state employee undertaken in the performance of his/her duties which:

- Is a gross waste of public funds or resources
- **IS IN VIOLATION OF FEDERAL OR STATE LAW OR RULE**
- Is of substantial and specific danger to the public health or safety
- Is gross mismanagement
- Prevents dissemination of scientific opinion

'Violation of Federal or State Law or Rule'

- ...if the violation is not merely technical or of a minimal nature
- Includes violations of federal and state laws/rules, to include state ethics law
- Majority of whistleblower complaints fall under this definition of improper governmental conduct

Whistleblower Reports

For Fiscal Years 2011 through 2015:

- 107 whistleblower cases
- 31 of these at higher education (one at WSU)

	Cases	Assertions	Substantiations	%
Fiscal 2011	22	36	19	53%
Fiscal 2012	17	23	16	70%
Fiscal 2013	13	19	12	63%
Fiscal 2014	24	31	21	68%
Fiscal 2015	31	38	16	42%

Example: Violation of Law or Rule

- DSHS (1004838) – Office Assistant used state resources for a personal business
- WWU (1004241) – Director failed to follow state travel regulations
- CCS (1004372)- Counselor used state computer for personal use
- DOT (1004569) – Program Manager failed to monitor a consultant who billed the department for services not rendered

What to Do?

If improper government activity or ethical violation is suspected:

- Contact supervisor, if possible
- May file complaint in writing with WSU public official:
 - WSU Chancellor (Spokane, Tri-Cities, Vancouver, Everett)
 - Chief Audit Executive, Internal Audit
- May file complaint in writing with State Auditor's Office (sao.wa.gov)

Ethics in Public Service Act

- RCW 42.52
- The law addresses:
 - Use of state resources
 - Compensation, conflicts of interest and special privileges
 - Gifts and honoraria
 - Confidential information
- Adopted by WSU policy, BPPM 10.21, 10.22

 **Ethics Law in Summary**

- All state officers and employees have a duty to ensure the proper stewardship of state resources.
- The ethics law provides that state resources under your control may not be used for the private benefit or gain of a state employee, officer, or another employee.

 **State (WSU) Resources**

- Real and personal property provided to WSU employees for the purpose of performing their jobs.
- They include: WSU facilities, employees, computers, equipment, vehicles, and consumable resources.

 **De Minimis (Minimal) Use**

- The EEB allows personal de minimis use as long as you do not use resources for any of the prohibited purposes.
- De minimis use is infrequent, occasional, personal use resulting in little or no cost to WSU and no disruption of WSU employees or operations.

 **How Much is De Minimis?**

As a guide, ask yourself the following questions. If any are a "yes," do not use the state resource for personal matters:

- Will my use of state resources result in added costs or any other disadvantage to the state?
- Am I using this resource in order to avoid personal expense?
- Will my use of state resources compromise the security or integrity of state information or software?

 **EEB FAQs**

1. An employee makes a telephone call or sends an email message to his children to make sure they have arrived home safely from school.
2. An employee makes a call to doctor to confirm an appointment.
3. An employee uses her computer to send email to another employee wishing them a happy birthday.

These are not ethical violations. So long as call or email is brief in duration, there is little or no cost to the state, and does not interfere with performance of official duties.

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 **Prohibited Uses**

- Outside business or private employment
- Supporting, promoting or soliciting for an outside organization or group (unless approved by University official designee)
- Promoting or opposing a candidate for office or a ballot proposition
- Lobbying unless assigned by WSU
- Use of property away from WSU
- Any use prohibited by law or WSU policy

EEB FAQ

May a state employee use state-provided Internet access to monitor or update account allocations in a state provided retirement benefit plan, or to update personal information regarding other state provided benefits?

Yes, an occasional and limited use of state resources, including state provided Internet access, to review and update state-provided benefits would not violate the Ethics in Public Service Act. [03-01]

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EEB FAQ

May an employee routinely use the Internet to manage her personal investment portfolio and communicate information to a broker?

No, using state resources to monitor private stock investments or make stock trades, are private activities that can result in a private financial benefit or gain. Allowing even an occasional or limited use of state facilities to facilitate a private financial gain undermines public confidence in state government.

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EEB Case (Whistleblower Referral)

- State employee violated ethics law when used state resources to benefit an outside business.
 - EEB Settlement - \$10,000 civil penalty, \$2,000 suspended
- State employee violated ethics law when used state resources for personal gain.
 - EEB Settlement - \$6,000 civil penalty, \$2,000 suspended

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Confidential Information

- Defined as specific information that is not available to the general public or that the law makes confidential
- Making confidential information public is a violation of ethics law
- Always cooperate with the WSU public records officer

Resources

- WSU Internal Audit – (509) 335-5336, <http://internalaudit.wsu.edu>
- SAO – <http://www.sao.wa.gov>
- EEB – <http://ethics.wa.gov>
- WSU Whistleblower Policy – BPPM 10.20
- WSU Ethics Policy - BPPM 10.21

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This has been a WSU Training Videoconference

If you attended this live training session and wish to have your attendance documented in your training history, please notify Human Resource Services within 24 hours of today's date:

hrstraining@wsu.edu
