

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

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## 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](http://sao.wa.gov)

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**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

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**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

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**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.

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**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.

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**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

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**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

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**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 sa0.wa.gov, copy of report to employing agency

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

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**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

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**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.

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- 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**

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**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.

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**What is Improper Governmental Action?**

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- **IS IN VIOLATION OF FEDERAL OR STATE LAW OR RULE**
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**'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

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**Department of Corrections**  
*(Report 1017272, 8/15/16)*

- **Assertion:** An employee does not work his full shifts.
- **Finding:** 'We found the subject did not work all of the hours claimed on his timesheet and did not submit leave for his absences. Therefore, we found reasonable cause to believe an improper governmental action occurred.'
- **Details:** Video footage from directly outside employee's work area was reviewed for eight complete working days.
  - Employee was late for work on three of the eight days.
  - Employee left the building for lunch and did not return for 90 minutes.
  - Employee left work an average of 25 minutes early.

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**Department of Health**  
*(Report 1018638, 2/16/17)*

- **Assertion:** Seven employees violated state contracting laws when they:
  - Allowed purchase orders to be issued non-competitively and above the direct buy limit without sole source justification.
  - Unbundled purchase orders to bypass the direct buy.
  - Failed to use the competitive solicitation or sole source process for contracts.
  - Failed to effectively manage existing contracts.
  - Allowed contracts that violated state policies.
- **Finding:** 'We found reasonable cause to believe:
  - Subject MM failed to comply with state law when he approved the use of improper sole source exemptions and signed contracts awarded non-competitively in violation of state policies.
  - Subject TG failed to comply with state law when she made purchases non-competitively and above the direct buy limit without proper sole source approval.
  - Subject LM failed to comply with state law when he authorized the issuance of a contract that was awarded non-competitively in violation of state policies.
  - We found no reasonable cause to believe Subject JT, AF, GP and JB violated state law.

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**Department of Corrections**  
*(Report 1018764, 3/13/17)*

- **Assertion:** An employee used Department staff mailboxes to deliver union election flyers.
- **Finding:** 'Because the subject used the Center's mailboxes to deliver a union election flyer, we found reasonable cause to believe an improper governmental action occurred.'
- **Details:** Employee used **personal** resources to create a flyer inviting union members to meet with the union (Teamsters) president and secretary-treasurer, who were running for office.
  - However, the employee distributed the flyers at work to union staff members for whom she did not have personal email addresses.
  - State rule (WAC 292-110-010(3)(a)(vii)): a state employee's de minimis use of state resources is permitted if the use is not for supporting, promoting the interests of, or soliciting for an outside organization.

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**Department of Social and Health Services**  
*(Report 1019389, 6/26/17)*

- **Assertion:** An employee used state resources for personal gain and did not submit leave when he reported to work late, left early or was absent.
- **Finding:** 'The subject did not submit leave for all of his absences, and his personal use of the state computer was not de minimis. Therefore, we found reasonable cause to believe an improper governmental action occurred.'
- **Details:** From 11/14/16 through 2/15/17, the employee spent approximately 92 hours browsing LinkedIn.
  - Between 8/15/16 and 2/2/17, employee arrived an average of 44 minutes late, and logged off his computer an average of 90 minutes early.
  - On three days, for a total of 26 hours, the subject stayed home but did not submit leave.
  - During a 25-week review period, the subject received compensation for 1,000 hours, when he worked or submitted leave for 787 hours.

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**Employment Security Department**  
*(Report 1019581, 7/27/17)*

- **Assertion:** An unemployment claims adjudicator violated state laws and rules by not following the proper claims adjudication process.
- **Finding:** 'The subject did not comply with state laws and rules during the claims adjudication process, and failed to establish fraud with clear, cogent and convincing evidence. Therefore, we found reasonable cause to believe an improper governmental action occurred.'
- **Details:** In 15 of 19 claimant files, the subject did not follow state law, rules or Department policies when denying claims or establishing fraud.
  - In error, subject determined claimant was outside labor market, denied benefits and accused claimant of fraud.
  - In error, subject retroactively denied benefits for five months. Claimant was incorrectly assessed an overpayment of \$3,100.
  - During a six-month period, the subject alone determined fraud was committed in 36 claims.

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**University of Washington**  
(Report 1020609, 1/8/18)

- **Assertions:** Two employees did not submit leave for all of their absences. Also, Subject 1, who supervised subject 2, granted subject 2 a special privilege by not requiring her to submit leave for all of her absences.
- **Finding:** 'We found no reasonable cause to believe an improper governmental action occurred.'
- **Details:** Both subjects' hard drives, network folders, emails and leave reports from 7/1/16 through 7/31/17 were reviewed.
  - Both subjects' vacation and sick leave reconciled with their absences as noted on their Microsoft Outlook calendars.
  - Additionally, SAO verified that work activity occurred on all other scheduled workdays – indicating subjects submitted leave for all absences.

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**Whistleblower Reports**

For Fiscal Years 2013 through 2018:

- 158 whistleblower cases
- 39 of these at higher education (five at WSU)

	Cases	Assertions	Substan- tiations	%
Fiscal 2018	39	51	23	45%
Fiscal 2017	24	30	9	30%
Fiscal 2016	27	37	15	41%
Fiscal 2015	31	38	16	42%
Fiscal 2014	24	31	21	68%
Fiscal 2013	13	19	12	63%

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**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

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**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](http://sao.wa.gov))

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**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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WASHINGTON STATE UNIVERSITY



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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](mailto:hrstraining@wsu.edu)**

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