



State Whistleblower Act

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Class Objectives

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

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Revised Code of Washington

- What is the [Revised Code of Washington](#)?
- "The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts. The official version of the RCW is published by the Statute Law Committee and the Code Reviser."

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State Whistleblower Act

- [Revised Code of Washington \(RCW\) 42.40](#)
- Enacted by State Legislature in 1982, amended 1999, 2008 and 2017
- Provides an avenue for state employees to report suspected improper governmental action
- Reports issued at 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 – established by Legislature – [RCW 49.60](#)

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University Policies & Procedures

- Business Policies and Procedures Manual ([BPPM](#)) [10.20 – Improper Governmental Actions \(Whistleblower Act\)](#)
- Provides overview of Whistleblower Act
- Lists Public Officials for reporting purposes
- Office of Internal Audit – [Whistleblower Information](#)

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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 ([BPPM 10.20](#))
- Must submit complaint form to [SAO via online](#) form or completed PDF form
- Must be made in [good faith](#)
- Investigation may be performed by SAO solely, in coordination with employee's employing agency ([RCW 42.40.040](#))

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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.
- Penalties for false information

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Interference Prohibited

- An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to:
 - Disclose to the auditor (or representative thereof) or other public official, as defined in RCW 42.40.020, information concerning improper governmental action

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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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Intake Process

- If SAO determines to not investigate, they may make informal or formal referral to WSU
 - If closed at prelim by SAO – will notify agency (WSU)
 - SAO may follow with WSU to request final determination made by agency
 - For formal referral under RCW 42.4040(5)(d) – SAO may request that WSU perform investigation - WSU must consent to referral

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Investigation

- SAO entrance meeting with subject:
 - WSU Internal Audit is the 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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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

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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.

Improper Governmental Action

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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

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- (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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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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'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 101727, 8/15/16) - [SAO Reports](#)

- **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 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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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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Example of Substantiated Assertions

- The (subject) permitted non-essential staff to leave early on November 22, 2017, without requiring they use leave. ([1021766](#))
- Students and faculty had received an email inviting them to a launch party for the subject's new CD. There was an admission fee and the attendees were encouraged to purchase the CD. The complaint stated that this activity was unrelated to the subject's University duties. ([1022391](#))
- An employee (subject) used state time to attend classes and improperly claimed travel expenses while traveling to classes. The complaint also asserted that the subject regularly missed work to the detriment of her job. ([1022787](#))

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Example of No Reasonable Cause

- The (subject) extended a special privilege when she arranged flights for her spouse, not a state employee, at the discounted state rate and used state funds to purchase his tickets. ([1021782](#))
- Employee (subject) was given permanent use of a state vehicle to commute from her residence in Clark County to her office in Tacoma. ([1023078](#))
- Professor (subject) extended a special privilege to her son when she broke an established contract with a vendor and hired her son to complete the work. The vendor was contracted to care for plants on campus. ([1023262](#))

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Whistleblower Reports

For Fiscal Years 2016 through 2021:

- 183 whistleblower cases
- 28 of these at higher education (four at WSU)

| | Cases | Assertions | Substantiations | % |
|-------------|-------|------------|-----------------|-----|
| Fiscal 2021 | 7 | 7 | 5 | 71% |
| Fiscal 2020 | 23 | 24 | 5 | 21% |
| Fiscal 2019 | 39 | 50 | 20 | 40% |
| Fiscal 2018 | 39 | 51 | 23 | 45% |
| Fiscal 2017 | 24 | 30 | 9 | 30% |
| Fiscal 2016 | 27 | 37 | 15 | 41% |

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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)

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Resources

- WSU Internal Audit – (509) 335-5336, internalaudit.wsu.edu
- SAO – sao.wa.gov
- EEB – ethics.wa.gov
- WSU Whistleblower Policy – [BPPM 10.20](#)
- WSU Ethics Policy – [BPPM 10.21](#)
