

State Auditor's Office
Summary of Provisions and Protections
Chapter 42.40 RCW
The State Employee Whistleblower Act

The Whistleblower Program, enacted by the Washington State Legislature in 1982, provides a means for state employees to report suspected improper governmental actions. These are any actions by a state employee or officer that violate state laws and rules, are an abuse of authority, are of substantial and specific danger to the public health or safety, or are a gross waste of public funds. Personnel actions and related complaints, including employee grievances, are not considered improper governmental actions under the act and the State Auditor is not authorized to investigate them.

All Washington state employees, in all branches of state government, may report a suspected improper governmental action through the Whistleblower Program. This includes temporary employees, classified and exempt civil service employees, and elected officials.

How to File a Report of Improper Governmental Action

Assertions of improper governmental action are filed in writing with the State Auditor's Office.

They can be reported using the [Whistleblower Reporting Form](#), or in a separate letter. In either case, the report should include:

- A detailed description of the improper governmental action(s) -- what happened?
- The name of the employee(s) involved.
- The agency, division, and location where the action(s) occurred.

When the action(s) occurred.

- Any other details that may be important for our investigation -- other witnesses, documents, evidence, etc.

The specific state law or state regulation that has been violated.

Your name, address and phone number.

Assertions of improper governmental action may be filed anonymously. However, by including your name and number, we can reach you to gather further information that may be necessary for a thorough investigation. In addition, the law provides remedies for individuals subjected to retaliation as a result of their whistleblower activities.

Each assertion should be noted separately and supported with as much specific information as possible. Proving allegations can often be difficult. Supplying detailed

information contributes to a thorough and efficient investigation. The Whistleblower Reporting Form is designed to assist in supplying the needed information.

Send your Whistleblower Reporting Form or letter to:

State Auditor's Office
Attention: ED
PO Box 40021
Olympia, WA 98504-0021

The Investigative Process

Once the State Auditor's Office receives a report of improper governmental action by mail, the whistleblower receives our written response within five working days, acknowledging receipt of the report. If the reported assertions fall under the provisions of the Whistleblower Act, a preliminary investigation is conducted within 30 days. However, to be thorough, many investigations require more time and have to be extended. In these situations, the whistleblower is notified of the extension by mail. In most cases, whistleblower investigations are completed within 90 days. If the complexity of the claim requires even more research and review, the investigation can be further extended. By statute, no whistleblower investigation is to extend beyond one year.

After the investigation, a final report is issued outlining the assertions and whether they were substantiated. The report also includes any agency corrective action planned to deal with the substantiated assertions. The whistleblower and all other involved parties receive a copy of the final report, which is a public document.

Protection From Retaliation

The whistleblower law provides that the identities of whistleblowers are kept confidential. It also provides remedies for retaliation. If you believe you have been subjected to retaliatory action resulting from reporting your assertions, you may file a claim with the Washington State Human Rights Commission. The commission will investigate the claim and take appropriate action. Civil penalties for retaliation may include a fine of up to \$3,000 and suspension for 30 days without pay.

The Human Rights Commission has toll-free numbers for your convenience. They are:

Olympia 1-800-233-3247
TTY 1-800-300-7572

For more information on the state Whistleblower Program, please call (360) 753-2445. Information about the [Whistleblower Program](#) is also included on the State Auditor's Office home page.

**Washington State Auditor's Office
State Employee Whistleblower Program
Chapter 42.40 RCW
Questions and Answers About the Whistleblower Program**

Q: What is the state Whistleblower Program?

The Whistleblower Program, enacted by the Washington State Legislature in 1982, provides a means for state employees to report suspected improper governmental actions occurring within state government. These are any actions by a state employee or officer that violate state laws or regulations, are an abuse of authority, are of substantial and specific danger to the public health or safety, or are a gross waste of public funds. The State Auditor administers this program under Chapter 42.40 RCW and performs independent, objective, and thorough investigations of reported assertions of improper governmental actions.

Q: Who can report improper governmental actions?

Only Washington **state employees** may report suspected improper governmental actions through the Whistleblower Program. This includes temporary employees, classified and exempt civil service employees, and elected officials and includes all branches of state government. There is a separate program for local government employees, which is authorized under Chapter 42.41 RCW. The state does not administer that program.

Q: Can I only file a whistleblower complaint against my own agency?

No. Any state employee may file a whistleblower complaint relating to any state agency.

Q: How do I file a whistleblower complaint?

Assertions of improper government actions are filed in writing with the State Auditor's Office. They are generally reported using the [Whistleblower Reporting Form](#), but they may also be reported in a separate letter. In either case, the report should include the following:

- a detailed description of the improper governmental action(s) -- what happened?
- the name of the employee(s) involved.
- the agency, division, and location where the action(s) occurred.

when the action(s) occurred.

- any other details that may be important for our investigation -- other witnesses, documents, evidence, etc.

the specific state law or regulation that has been violated.

your name, address and phone number.

The more specifics you can provide, the better. Avoid generalizations such as, "Bob is always wasting public resources." The chances of substantiation are greater with something like, "Bob used his agency assigned personal computer to keep accounting records for his home business during working hours. I saw this happen on Jan. 18, Jan. 22 and February 12."

Each assertion should be noted separately and supported with as much specific information as possible. Proving allegations can often be difficult. Supplying detailed information contributes to a thorough and efficient investigation. The Whistleblower Reporting Form is designed to assist you in supplying the needed information. Use a separate Whistleblower Reporting Form for each assertion of improper governmental action.

Q: Where do I submit the Whistleblower Reporting Form or letter?

Mail your completed Whistleblower Reporting Form(s) or letter separately detailing each assertion of improper governmental action to:

State Auditor's Office
Attention: ED
PO Box 40021
Olympia, WA 98504-0021

Q: Can my supervisor prohibit me from filing a report of improper governmental action with the State Auditor?

No. RCW 42.40.030 specifically prohibits direct or indirect interference. It applies to all state employees at all levels. It is also important to note that this statute prohibits attempts at interfering with an employee providing information to the auditor during an investigation.

Q: What if I'm afraid someone will find out I filed a complaint? Do I have to sign my name?

Assertions of improper governmental action may be filed anonymously. However, by including your name and number, we can reach you to clarify or gather further information. In many investigations this can be an important factor. The law provides remedies for whistleblowers who have been retaliated against because of their whistleblower activities. Your identity is not subject to public disclosure and will be kept confidential.

Q: What if I believe I am being subjected to retaliation?

One key component of the Whistleblower Program is that it provides remedies for retaliation. If you feel you are being retaliated against as a result of filing a complaint, you may file a claim with the Human Rights Commission (HRC). A retaliatory action is any adverse change that affects your employment. Retaliation can be in many forms, such as frequent staff changes, office changes, unwarranted letters of reprimand or unsatisfactory performance evaluations. The Commission will investigate the claim and take appropriate action. The HRC has these toll-free numbers.

Olympia 1-800-233-3247
TTY 1-800-300-7525

Q: What happens if a determination is made that retaliation has occurred?

The Human Rights Commission may impose a civil penalty of up to \$3,000 and the retaliator may be suspended from work for up to 30 days without pay. At a minimum, in the least serious cases, a letter of reprimand is placed in the retaliator's personnel file.

Q: Who has protection under the Whistleblower Program?

The law requires that the identity of the whistleblower be kept confidential and affords the whistleblower protection from retaliation for filing a report. It also provides these same protections to any state employee who provides information during a whistleblower investigation. At the same time, the law protects any employee who others believe filed a whistleblower report or provided information, but actually didn't.

Q: Can the State Auditor investigate assertions involving personnel actions?

No. In enacting the state's Whistleblower Act, the Legislature specifically excluded personnel actions from the types of actions covered. These types of actions include, but are not limited to, employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of state civil service laws, labor agreement violations, reprimands, any actions which may be taken under civil service law, or other disciplinary actions. While by statute, the Auditor's Office cannot investigate these types of complaints, there are other avenues for addressing them. These are described in the next section.

Q: Which government agencies or other organizations can assist in addressing personnel issues?

The following government agencies and labor organizations can be of assistance to state employees in dealing with different types of personnel issues.

Agency Issues

Washington State Personnel Appeals Board

Disciplinary actions. Layoffs.

Olympia (360) 586-1481

Violations of merit system rules.
Violations of state civil service laws.

Washington State Human Rights Commission Olympia 1-800-233-3247 TTY 1-800-300-7572	Discrimination because of race, creed, color, national origin, sex, marital status, age, or handicap. Sexual harassment.
Public Employment Relations Commission Olympia (360) 570-7334 Washington Federation of State Employees Olympia (800)562-6002	Unfair labor practices. Interference with rights to form or join employee labor organizations and rights to bargain collectively. See grievance procedures in your union bargaining agreement.
Washington Public Employee Association Olympia (360) 943-1121 x 104	See grievance procedures in your union bargaining agreement.

Q: How does the whistleblower process work?

Once the State Auditor's Office receives a Whistleblower Reporting Form or letter asserting improper governmental action, we acknowledge receipt of the information by return mail within five working days. If the assertion or assertions fall under the whistleblower provisions, a preliminary investigation is planned and conducted within 30 days. To be thorough, many investigations require more time and have to be extended. When this occurs, we notify the whistleblower by mail. In most cases, full whistleblower investigations are completed within 90 days. If the complexity of the claim requires even more research and review, the investigation can be extended further. By statute, no whistleblower investigation is to extend beyond one year.

During the investigation, we remain in contact with the whistleblower. While we do not reveal

conclusions until the investigation is complete and a final report has been prepared, we do keep the whistleblower informed at each significant stage of the investigation.

Each investigation is different and tailored to the specific assertion. The general work plan, however, is largely the same. For each assertion, a logical strategy for the investigation is developed. We contact the agency and notify the department head or appropriate supervisor that a whistleblower assertion has been filed with the State Auditor's Office relating to that particular work division. We do not reveal the identity of the whistleblower.

Information is gathered by conducting interviews with the relevant parties. We also request and review any relevant documentation or other available evidence that might have a bearing on the case. These could be things like time sheets, phone bills, organizational charts, documentation relating to expenditures, receiving reports, or items in inventory. There also might be occasions where we would contact people outside of the agency to solicit expert opinion.

At the conclusion of the investigation, a determination is made as to whether any assertions have been substantiated. When assertions are substantiated, a draft report is prepared and sent to the appropriate agency director requesting the agency respond with a written corrective action plan to solve the problems identified in the report.

The agency director has 30 days to form a response and return the draft report to the State Auditor's Office. Up until and including this point, the draft report is not a public record. The agency response is incorporated into the report and the final report is then issued outlining each assertion, our investigative scope and methodology, and the agency's plan for corrective action. At this time, the report is a public document subject to disclosure. The State Auditor's Office follows up on the implementation of corrective action during the course of the agency's next audit.

Q: What do I do after filing a whistleblower?

After mailing a Whistleblower Reporting Form or letter, you can expect to hear from the State Auditor acknowledging receipt of your report within five working days. After that, you will be notified if the investigation will take more than 30 days, and again if more than 90 days. The State Auditor may also call you requesting clarification or additional information concerning your report.

We recommend that you do not discuss your report with others, including family, friends, and co-workers. The fewer people involved, the easier and more efficiently we can carry out our investigation. Also, if you tell people about your report, you risk preserving your confidentiality. Overall, the best thing you can do after filing is sit back and let us take it from there.

Q: Why is such a program important?

Public employees have an obligation to ensure that government in general, and their departments in particular, perform ethically, as well as efficiently and effectively. The Whistleblower Program holds state employees accountable for their actions. On another level, a whistleblower investigation can help to focus subsequent audit effort on high risk areas that need attention and improvement. It also provides a means to vindicate employees when rumors and assertions are invalid. And most important, the Whistleblower program stops inappropriate and illegal governmental actions.

Q: What are some examples of whistleblower complaints that have been substantiated?

Some examples of claims which have been substantiated through the whistleblower program are:

- Electrical inspections were not being conducted in accordance with the law.
- Several state agencies reimbursed a vendor for costs which were unallowable because the vendor double or triple billed those same costs to others.
- A motor pool manager misappropriated state vehicle parts for his personal use and then falsified documents to conceal the theft.

A public official entered into a contract on behalf of the state with a firm he owned.

A public employee used his assigned state computer to collect child pornography.

Official public records were not retained in accordance with state law.

A state agency did not follow policies and procedures in the scoring process for a bid.

A state agency did not routinely respond to requests for public records in accordance with the Open Public Records Act.

A chief executive officer of a state hospital used state resources, such as vehicles, telephones and staff, for his personal benefit.

A state agency rented an on-campus, state-owned house to a chief executive officer for less than fair market value as required by state law.

Q: What are the statistics of the Whistleblower Program?

In Fiscal Year 1996, 390 assertions of improper governmental action were reported to the State Auditor's Office. This represented a 22 percent increase over the previous year. Of the total, 103 assertions, or 26 percent, were substantiated. Seventeen cases were referred to other agencies, such as the Executive Ethics Board, for follow-up action. In the past several years, the number of whistleblower complaints has increased annually. The total number of assertions reported in Fiscal Year 1995 was 319.

Q: Who receives the results of a whistleblower report? Are they made available to the public?

The whistleblower is notified upon completion of the investigation and receives a copy of the final report, if the assertions were not filed anonymously. People named in the assertions and agency officials also receive copies. While these people are standard recipients, the final report is a public record and is available to anyone who requests it. In rare instances, the media requests reports. We also sometimes distribute reports to agencies charged with enforcement. These can include county prosecutors, the state Attorney General's Office, the state's Executive Ethics Board, and the state Office of Financial Management.

Q: What if I have an idea about how my agency could be saving money? Should I file my suggestion under the Whistleblower Program?

No. Cost saving ideas should be submitted to the Employee Brainstorm Suggestion Program, which is administered by the State Productivity Board, within the Secretary of State's Office. Cost saving ideas can result in monetary awards. Their number is (360) 586-3174.

Q: Can an employee of a local government file a whistleblower report with the State Auditor's Office?

Only under certain circumstances can a whistleblower report involving local government be filed with the State Auditor's Office. There is a Local Government Whistleblower Act, Chapter 42.41 RCW. It requires each local government to have a policy in place, which establishes an appropriate person to receive and investigate reports of improper governmental action. If the local government has failed to follow state law by not establishing a whistleblower policy, the whistleblower can submit a report to the County Prosecutor's Office. If the local government hasn't established a policy, and if an employee of the County Prosecutor's Office is named as the subject of the assertions of improper governmental action, then the whistleblower may file a report with the State Auditor's Office.

Q: Do any other agencies participate in the investigations?

If the assertions are criminal in nature, we may ask the Washington State Patrol to conduct the investigation. Other agencies may be asked for assistance depending on the assertion. For example, we request assistance from the State Archivist in cases involving public records. Any agency taking part in a whistleblower investigation is required to maintain all confidentiality requirements.

Q: If I have a question about the Whistleblower Program or a particular situation, how can I get technical assistance?

Between 8:00 a.m. and 5:00 p.m. Monday through Friday you can call the State Auditor's Office and talk to someone about your questions.

Dell Cowart (360) 753-2445

Linda Sheler (360) 586-8501