

**SUBJECT:** Managing Improper Governmental Conduct

**NUMBER:** 50-090-01

**DIVISION:** Chief Human Resources Office

**EFFECTIVE DATE:** January 1, 2017

**APPROVED:** Signature on file with the Chief Human Resources Office

**POLICY STATEMENT:**

Oregon state government is committed to providing employees and volunteers with an environment that encourages and enables reporting of known or suspected improper governmental conduct. This policy addresses reporting such conduct and how state government manages reports.

**AUTHORITY:**

ORS 659A.200 to 659A.224

**APPLICABILITY:**

All employees and volunteers, except where collective bargaining agreement language conflicts

**ATTACHMENTS:**

None

**DEFINITIONS:**

Refer to State HR Policy 10.000.01

**Abuse of authority:** the deliberate, wrongful, and improper use or diversion of public resources or the excessive or improper use of a state official's position.

**Gross waste of funds:** a deliberate, wrongful, and improper use of public funds for other than their lawful or designated use resulting in significant financial detriment to the state.

**Improper governmental conduct:** conduct involving abuse of authority, gross waste of funds, mismanagement, specific danger to public health or safety, or violations of state or federal law, rule, or regulation.

**Mismanagement:** serious misconduct having the effect of actually or potentially undermining state government's ability to fulfill its public mission.

**Reasonably believes is evidence:** in addition to other circumstances bearing on the reasonableness of the belief, that an employee has personal knowledge of facts tending to establish the violation of law, rule or regulation, or the existence of mismanagement, abuse of authority, gross waste of funds, or substantial and specific danger to public health or safety.

**Substantial and specific danger:** a specified 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 do in the same situation.

**POLICY:**

(1) Oregon state government is committed to an environment where:

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- (a) the opportunity exists to report activities reasonably believed to be improper governmental conduct;
  - (b) reports of improper activities are investigated and action taken, if necessary; and,
  - (c) persons who report are free from retaliation.
- (2) **Reporting.** An employee or volunteer who reasonably believes they have evidence of improper governmental conduct (whether alleged behaviors of government officials or specific practices) may report the violation immediately to the Chief Human Resources Office, law enforcement, a manager, human resources or a licensed attorney (when seeking legal advice on the alleged violation).
- (a) A report of improper conduct may be made orally or in writing.
  - (b) Reports of improper conduct may be submitted anonymously.
  - (c) An oral or written report of improper conduct should contain the following:
    - (i) the names of all parties involved, including witnesses;
    - (ii) a specific and detailed description of the suspected or actual violation; and
    - (iii) the date and time period in which the violation allegedly occurred.
- (3) **Investigation.** The agency's human resources office or agency head, as applicable, will coordinate and conduct or delegate responsibility for the investigation.
- (a) The agency will assess all reports of improper conduct, and if appropriate, initiate an investigation.
  - (b) All parties are expected to cooperate with the investigation.
  - (c) The subject of an investigation may have rights under state policy or applicable collective bargaining agreement. The investigator, as necessary, may confer with their agency's human resources staff or DAS CHRO pertaining to those rights.
  - (d) While an investigation is pending, the name of the reporting employee will not be disclosed without written consent of the reporting employee, unless otherwise required by law.
- (4) **Retaliation.** This policy prohibits retaliation against an employee who, in good faith, reports a violation.
- (a) State officials and employees are prohibited from retaliating, including imposing discipline, against any employee because the employee has, in good faith, reported improper governmental conduct. However, employees may be subject to discipline if the information disclosed is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or if the information disclosed relates to the employee's own improper governmental conduct.
  - (b) Any employee who believes they are the subject of retaliation for reporting improper governmental conduct shall advise their supervisor or agency human resources office. The party receiving the report shall take steps to investigate and address complaints of retaliation.
- (5) **Penalties.** Agencies will assess conduct in violation of this policy and take appropriate disciplinary action.
- (a) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
  - (b) Volunteers engaging in conduct in violation of this policy may have their volunteer position ended.
  - (c) Managers or supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.
  - (d) Any employee who is found to have retaliated against an employee for reporting, in good faith, improper

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governmental conduct may be subject to disciplinary action up to and including dismissal.

(6) **Specific Reporting Protections and Defenses provided under relevant law relating to improper governmental conduct:**

- (a) In response to an official request, no employee shall be prohibited from discussing, either specifically or generally, with any member of the Legislative Assembly, legislative committee staff acting under direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision in the state or any elected auditor of a city, county or metropolitan service district, the activities of:
  - (A) The state or any agency or political subdivision in the state; or
  - (B) Any person authorized to act on behalf of the state or any agency or political subdivision in the state.
  
- (b) No employee shall be disciplined or threatened with discipline for disclosing any information that the employee reasonably believes is evidence of:
  - (A) A violation of any federal or state law, rule or regulation by the state, agency or political subdivision;
  - (B) Mismanagement, gross waste of funds, abuse of authority or substantial and specific danger to public health and safety resulting from action of the state, agency or political subdivision; or
  - (C) Subject to ORS 659A.212(2), the fact that a person receiving services, benefits or assistance from the state or agency or subdivision, is subject to a felony or misdemeanor warrant for arrest issued by the state of Oregon, any other state, the federal government, or any territory, commonwealth governmental instrumentality of the United States.
  
- (c) No employee shall be required to give notice prior to making any disclosure under Sections (a) and (b).
  
- (d) No employee shall be discouraged, restrained, dissuaded, coerced, prevented or otherwise interfered with when making disclosures or engaging in discussions of matters protected under Sections (a) and (b).
  - (A) The remedies provided under Sections (a) and (b) are in addition to any remedy provided to an employee under other applicable laws.
  
- (e) An employee's good faith and objectively reasonable belief of a violation of federal, state or local law, rule or regulation by the employee's employer shall be an affirmative defense to a civil or criminal charge related to the disclosure by the employee of lawfully accessed information related to the violation, including information that is exempt from disclosure as provided in ORS 192.501 to 192.505 or by state policy, if the information is provided to:
  - (A) A state or federal regulatory agency;
  - (B) A law enforcement agency;
  - (C) A manager employed by the state;
  - (D) An attorney licensed to practice law in the state of Oregon if a confidential communication is made in connection with the alleged violation described in this Section (e) and in furtherance of the rendition of legal services to the employee that are subject to ORS 40.225.
  
- (f) An employee may not assert the affirmative defense described in Section (e) if the information:

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- (A) Is disclosed or re-disclosed by the employee or at the employee's direction to a party other than the parties listed in Section (e);
  - (B) Is stated in a commercial exclusive negotiating agreement with the state, provided that the agreement is not related to the employee's employment with the state; or
  - (C) Is stated in a commercial nondisclosure agreement with the state, provided that the agreement is not related to the employee's employment with state.
- (g) The affirmative defense described in Section (e) is available to an employee who discloses information related to an alleged violation by a coworker or supervisor described in Section (e) if the disclosure relates to the course and scope of employment of the coworker or supervisor.
- (h) The affirmative defense described in Section (e) may not be asserted by an employee who is an attorney or by an employee who is not an attorney but who is employed, retained, supervised or directed by an attorney if the information disclosed pursuant to Section (e) is related to the representation of a client.
- (i) Disclosure made under Section (b), (c), and (e) herein are subject to the rules of professional conduct established pursuant to ORS 9.490.
- (j) Subject to the rules of professional conduct established pursuant to ORS 9.490, a public employee who is an attorney may report to the Attorney General the employee's knowledge of a violation of federal, state or local law, rule or regulation.
- (k) Disclosure of information pursuant to Section (e) does not waive the attorney-client privilege or affect the applicability of any exemption from disclosure of a public record under ORS 192.501 to 192.505.
- (l) Notwithstanding Section (e), information protected from disclosure under federal law, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), may be disclosed only in accordance with federal law.
- (7) **Other Opportunities for Reporting.** This policy addresses reporting allegations of improper governmental conduct, as described above. The policy does not replace other opportunities for employees to bring complaints or grievances regarding their employment or work environment, such as the employee's rights under a collective bargaining agreement or other policies.
- (8) **Policy Notification.** Agencies must give all employees and volunteers a copy or the electronic location of Statewide Policy 50-090-01, Managing Improper Governmental Conduct.