

MILITARY WHISTLEBLOWERS PROTECTION ACT (MWPA)

Key References: 10 U.S.C. § 1034; DOD Directive 7050.6; IGDG 7050.6; SECNAVINST 5370.7C.

Key Concepts: It is unlawful to restrict a military member from making a “protected communication” (PC), as defined below or to take an unfavorable “personnel action” or withhold a favorable personnel action against a military member in reprisal for making or preparing a PC. Substantiated reprisal by a military member is punishable under Article 92, UCMJ. Substantiated reprisal by a civilian employee is punishable under DOD regulations governing disciplinary or adverse actions. Members are not, however, immunized from responsibility for their own wrongdoing or inadequate performance by filing a complaint of reprisal. In the wake of a PC by a command member, a command having legitimate grounds for taking unfavorable personnel action against that member should thoroughly document the bases for all actions taken.

Definitions:

- “Protected Communication:”
 - (1) Any lawful communication to a member of congress or an IG; or
 - (2) A communication which the member *reasonably believes* identifies a violation of law or regulation, including sexual harassment, discrimination, mismanagement, gross waste of funds or resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of congress; IG; DOD audit team, inspection, or law enforcement organization; or member of the chain of command.
- “Personnel Action:” Any action that affects or has the potential to affect the member’s current position or career. These include promotions; disciplinary or other corrective action; transfer or reassignment; performance evaluation; decision on pay, benefits, awards, or training; referral for a mental health evaluation; or other significant change in duties inconsistent with the member’s rank.

Command Guidance:

- Allegations of reprisal must be reported through NAVINSGEN to DOD, IG within 10 working days of receipt.
- Commands receiving allegations of reprisal will ensure the complainant is advised in writing of their rights under the MWPA.
- NAVINSGEN will task appropriate Echelon II IG’s with preparing a report of investigation. Findings must be supported by a preponderance of the evidence. This report must be submitted to DOD, IG within 180 of receipt of the allegation.
- Because of the complexity of reprisal cases, investigators should be qualified by temperament and experience to ensure compliance with existing rules and regulations. Investigators will also be from outside the complainant’s chain of command.
- The investigator should coordinate with JAG or OGC counsel to ensure compliance with the MWPA.
- Echelon II IG’s shall forward completed investigations to NAVINSGEN (or Deputy Naval IG Marine Corps as appropriate). Completed reports will include a redacted copy of the report and a memorandum from JAG or OGC counsel that addresses the legal sufficiency of the investigation.
- NAVINSGEN is required to provide a redacted copy of the completed investigation to the complainant not later than thirty days after receipt.

Investigation:

- A report of investigation into reprisal must address four central questions:
 - (1) Did the member make or prepare a communication protected by statute?
 - (2) Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or Threatened to be withheld following the protected communication?
 - (3) Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected communication?
 - (4) Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected communication had not been made?