

MESICIC Best Practice: U.S. Submission

1. **Institution**: U.S. Office of Special Counsel and federal agencies subject to 5 U.S.C. 2302.
2. **Name**: Education and training as a means of prevention.
3. **Description**: By law, including enhancements through 2017 legislation, agencies are required to educate their employees about their rights and remedies with respect to whistleblower protections. Such education has included informing new employees of whistleblower protections within 180 days of the start of their employment; education with respect to the role of the Office of Special Counsel and Merit Systems Protection Board in protecting whistleblowers; as well as informing employees about how to lawfully disclose information to the Office of Special Counsel; Office of Inspector General; Congress; or an individual designated by the employee's agency, that would otherwise be kept classified and thus prohibited from disclosure by law or Executive Order in the interest of national defense or the conduct of foreign affairs. OSC has a certification process (the 2302(c) Certification Program) by which agencies can register and be certified by OSC as having educated their employees, and having trained supervisors, about whistleblower rights and remedies by following certain steps. OSC publishes agency certification statuses on its website. Agencies must train supervisors on how to respond to complaints of whistleblower retaliation, and must also include whistleblower protection as a criteria in the job performance of supervisors. Such criteria must include principles regarding how to constructively respond to an employee's protected disclosure; take responsible action to resolve the disclosure; and foster a safe environment for employees to make disclosures. Agencies must also make annual reports to Congress concerning unacceptable performances by supervisors with respect to whistleblower protection, and actions taken to correct those unacceptable performances.
4. **Reasons/Importance**: Education and training helps ensure that employees can make disclosures of information that is classified, and thus prohibited from disclosure, without subjecting themselves to discipline. It also educates employees about their rights and remedies with respect to protection. Additionally, education and training of supervisors on how to receive disclosures and take appropriate action with respect to disclosures is crucial to ensure that the disclosure is appropriately addressed and to prevent negative outcomes where a supervisor may not ordinarily ensure an employee's job safety for having made a disclosure. In sum, these best practices help ensure the safe disclosure of information, the safe handling of that information, and the prevention of retaliation against employees who make protected disclosures.
5. **Approach**: The requirements were included in legislation enacted into law, and OSC designed its 2302(c) Certification Program.
6. **Implementation**: OSC designed and implemented the 2302(c) Certification Program as a five-step educational program, through which OSC provides guidance and easy-to-use methods and training resources to assist agencies in fulfilling their statutory obligation to educate and train their employees. Such resources include an online training quiz. OSC unit staff can also provide government-wide training, including through formal and informal outreach sessions as well as publication of available materials on the agency website. If agencies choose to use their own training materials, OSC approves such

materials. Additionally, agencies can consult with OSC on how to design their supervisory performance criteria, thereby reducing guesswork and ensuring that the criteria properly makes supervisors aware of their responsibilities, and appropriately holds them accountable.

7. Outcome: The result of these best practices can be found on OSC's certification page on its website, which shows the details of the certification program, and lists the federal agencies and offices that have complied with the education requirements. Additionally, with respect to newer measures enhancing requirements to educate employees and train supervisors, the expected outcome is enhanced prevention of whistleblower retaliation, as well as the protection of those who make disclosures of prohibited information, such as classified information, through the appropriate and lawful process.
8. Potential for Technical Cooperation: Education and training as a means of prevention can be accomplished by other governments in a manner consistent with their domestic legal frameworks for whistleblower protections.
9. Follow-up: OSC, through the certification process, will continue to monitor the compliance of agencies with its obligations to educate its employees, and publish agency certifications on its website. Congress will also monitor agencies through required annual reporting by agencies concerning unacceptable performances by supervisors with respect to whistleblower protection.
10. Lessons: Improved education and training requirements, along with the 2302(c) Certification Program, may appear to have a correlation with elevated case levels, as employees increasingly become aware of their rights and learn more about OSC.
11. Documentation: See 5 U.S.C. 2302(c), 5 U.S.C. 4302, and <https://osc.gov/Services/Pages/Outreach-2302Cert.aspx>
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