



8 September 2010

Ethics in the Office: Whistleblower protection

Introduction

1. This Procedure is based on article 8 of the ILO Constitution and is issued further to the Office Directive, *Ethics in the Office*, IGDS No. 76 (version 1) of 17 June 2009.
2. All staff members are entitled to protection against retaliation for reporting misconduct and cooperating with an audit or investigation. This Procedure clarifies the steps to be followed for the protection of whistleblowers against retaliation.
3. This Procedure comes into effect as of the date of issue.

Scope

4. This Procedure applies to complaints by members of staff who believe that retaliatory action has been taken against them because they have reported misconduct or cooperated with an audit or investigation. Such complaints must be made to the Ethics Officer in person, by email, internal mail or postal mail.¹ Every complaint must include a written statement setting out the complaint. The Ethics Officer will notify the date of receipt to the complainant.
5. Retaliation means any direct or indirect detrimental action or omission recommended, threatened or taken because an individual reported misconduct or cooperated with an audit or investigation.
6. A protected activity, under the terms of the cited Office Directive, is defined as “reporting of misconduct or cooperating with an audit or investigation”. The transmission or dissemination of rumours is not a protected activity. Making a report or providing information that is intentionally false or misleading constitutes misconduct and may result in disciplinary or other appropriate action.
7. This Procedure is not applicable to external parties, who cannot be granted the same procedural guarantees as an official. However, if it is established that any retaliatory measures were taken against a contractor or its employees, agents or representatives, or any other individual engaged in any dealings with the ILO, because such persons reported misconduct, this may lead to a qualified referral from the Ethics Officer to the Human Resources Development Department (HRD) recommending disciplinary action.

¹ Email: ETHICS@ilo.org.

Role and responsibilities of the Ethics Officer

8. The functions of the Ethics Officer with respect to the protection of staff members against retaliation for the reporting of misconduct or cooperating with an audit or investigation are:
 - (a) to receive complaints of retaliation;
 - (b) to conduct a preliminary review to determine if the complainant is engaged in a protected activity and whether there is a prima facie case that the protected activity was a factor in the alleged retaliation;
 - (c) to make, if warranted, a qualified referral to HRD for consideration of disciplinary action.

Procedural steps

9. *Step 1:* Upon receipt of a complaint of retaliation, the Ethics Officer shall determine if there are reasonable grounds to warrant further investigation.² If the complaint is found not to warrant further investigation, it shall be confidentially filed by the Ethics Officer.

If sufficient grounds are found to warrant further investigation, the Ethics Officer shall initiate a preliminary review and notify the alleged retaliator of the complaint within ten working days of the date of receipt of the complaint. Full disclosure of the initial complaint shall be made to the alleged retaliator unless the Ethics Officer considers that such disclosure would hinder or restrict the investigation or expose the complainant to risk of further retaliation.

The Ethics Officer may, at any time during the preliminary review period, recommend measures to HRD, or to other relevant units, to protect the complainant from the risk of further retaliation.

Step 2: Upon notifying the alleged retaliator of the complaint, she or he shall have ten working days to respond to the allegations. At the request of the alleged retaliator, this ten-day response time may be extended at the discretion of the Ethics Officer.

Step 3: The Ethics Officer shall complete the preliminary review within 45 working days of the date of receipt of the complaint of retaliation. If after the 45-day period the preliminary review has not been concluded, either of the parties may request in writing the reasons for the delay. The Ethics Officer shall respond within ten working days of the date of receipt of this request giving the reasons and setting a new timeline.

Step 4: Upon completion of the preliminary review, the Ethics Officer shall take a decision and provide to the alleged retaliator and the complainant a copy of all evidence on which this decision was based.

Step 5: The alleged retaliator and the complainant shall have ten working days to file final written comments with the Ethics Officer. The Ethics Officer shall communicate

² In order for the Ethics Officer to find reasonable grounds the complaint must indicate that:

- (a) the complainant was engaged in a protected activity;
- (b) a direct or indirect detrimental action or omission was subsequently recommended, threatened or taken;
- (c) the official who took the detrimental action or omission apparently knew about the protected disclosure.

her or his final decision to the complainant and to the alleged retaliator. The corresponding recommendation, if any, shall be addressed to the Director of HRD.

If the Ethics Officer concludes from the preliminary review that the complaint was not based on reasonable grounds, the procedure shall be closed.

Due process

10. The Ethics Officer is responsible for ensuring that due process is followed at all stages of the procedure. The alleged retaliator and the complainant have the right to examine the evidence at the end of the preliminary review. The Ethics Officer may allow for examination of the evidence during the preliminary review, as she or he sees fit, including allowing the alleged retaliator and the complainant to review transcripts of interviews and comment on them accordingly.

Duty of cooperation

11. All offices and staff members within the ILO shall cooperate with the Ethics Officer and provide access to any and all records and documents requested by the Ethics Officer with the exception of medical records and records that are subject to confidentiality requirements.

Confidentiality

12. The Ethics Officer shall ensure confidentiality during all stages of the procedure. The final recommendation shall only be made available to the complainant, the alleged retaliator and the Director of HRD. The Ethics Officer has the discretion to release the final recommendation to other parties, but only after giving five working days' notice to both the alleged retaliator and the complainant and allowing them the opportunity to comment on such a release.

Conflict of interest

13. Where there may be a conflict of interest for the Ethics Officer, she or he shall inform the Director-General who will take appropriate measures to have the complaint reviewed and investigated, if necessary.

Monique Zarka-Martres
Ethics Officer

Additional references

For more information on the activities of the Ethics Officer, please refer to the web site www.ilo.org/public/english/ethics/.