



# Office directive

Date: 5 March 2021

## Reporting misconduct and protection from retaliation

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### I. Introduction

1. In accordance with the provisions of the Constitution of the International Labour Organisation, service with the International Labour Office is subject to the highest standards of conduct and integrity and all staff are required to comply with ILO internal rules and procedures.
2. Providing channels for reporting misconduct ("whistleblowing") and affording protection to staff members who report such cases or cooperate with duly authorized audits or investigations is essential for ensuring respect for applicable standards of conduct and compliance with ILO internal rules and procedures.
3. The present Directive specifies the appropriate channels for reporting misconduct and establishes arrangements for prevention of and protection from retaliation to ensure that all staff can report misconduct and cooperate with audits and investigations without fear of retaliation. The Directive should be read in conjunction with:
  - (a) the Staff Regulations;
  - (b) the Financial Rules and the Financial Regulations;
  - (c) the Standards of Conduct for the International Civil Service issued by the International Civil Service Commission (ICSC);<sup>1</sup>
  - (d) the Principles of Conduct for Staff of the International Labour Office;<sup>2</sup>
  - (e) Office Directive, *Ethics in the Office*, IGDS No. 76;
  - (f) Office Directive, *Anti-fraud and anti-corruption policy*, IGDS No. 69; and
  - (g) Office Directive, *Prevention and response to sexual exploitation and abuse*, IGDS No. 568.
4. The Directive is issued pursuant to article 8 of the Constitution of the ILO, article 30 of the Financial Regulations and article 1.2 of the Staff Regulations.
5. The Directive supersedes Office Procedure, *Ethics in the Office: Whistle-blower protection*, IGDS No. 186 (version 1), of 8 September 2010.

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<sup>1</sup> The Standards of Conduct are available at [www.ilo.org/ethics](http://www.ilo.org/ethics) and on the ICSC website <https://icsc.un.org/Resources/General/Publications/standardsE.pdf?r=03326915>.

<sup>2</sup> The Principles of Conduct are available at [www.ilo.org/ethics](http://www.ilo.org/ethics).

6. The Directive applies to all ILO staff irrespective of service category or type of contract. It also addresses reporting of misconduct by external parties such as interns, consultants, service providers or implementing partners.
7. This Directive is effective as of its date of issue.

## II. Definitions

8. For the purposes of this Directive:
  - (i) “Misconduct” is understood as the failure to comply with the Staff Regulations, Financial Regulations, Financial Rules or other relevant internal rules and procedures or to observe the standards of conduct required of an international civil servant. Submission of grievances under Chapter XIII of the Staff Regulations other than harassment grievances under article 13.4 is not considered as reporting misconduct under this Directive.
  - (ii) “Retaliation” and “retaliatory action” refers to any direct or indirect detrimental action that adversely affects the employment or working conditions of a staff member, where such action has been threatened or taken for the purpose of punishing, intimidating or injuring an individual because that individual engaged in a protected activity. Retaliation in itself constitutes misconduct and may result in disciplinary or other appropriate action.
  - (iii) “Protected activity” is understood as the reporting by staff members of misconduct in good faith and through the channels specified in paragraphs 9–16 below or the cooperation with a duly authorized audit or investigation. The transmission or dissemination of unsubstantiated 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.

## III. Reporting misconduct

### Reporting misconduct through internal mechanisms

9. All ILO staff have a duty to report situations involving possible misconduct through the appropriate internal mechanism for receiving such reports as described in the present Directive.<sup>3</sup> Reports may also be received anonymously.
10. The Chief Internal Auditor receives directly from individual staff members reports, complaints or information concerning possible misconduct,<sup>4</sup> including sexual exploitation and abuse of project beneficiaries possibly perpetrated by other staff members, interns, consultants, service providers or implementing partners and their employees.<sup>5</sup> Any such report, complaint or information concerning possible misconduct should be brought to the attention of the Chief Internal Auditor in person, by telephone or in writing, including by email ([investigations@ilo.org](mailto:investigations@ilo.org)).
11. The Chief Internal Auditor and the Treasurer ([TRCF@ilo.org](mailto:TRCF@ilo.org)) receive reports and information concerning any suspected case of fraud, presumption of fraud or attempted fraud.<sup>6</sup>
12. Staff members who consider having been subject to harassment, including sexual harassment, may file a grievance with the Director of the Human Resources Development Department (HRD) under article 13.4 of the Staff Regulations. Other staff members who become aware of situations possibly involving harassment, including sexual harassment, perpetrated by staff members should inform the Director of HRD ([HRD@ilo.org](mailto:HRD@ilo.org)).

<sup>3</sup> Standards of Conduct for the International Civil Service, para. 20.

<sup>4</sup> See Standard Operating Procedure Investigations ([https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/accountability-and-transparency/iao/WCMS\\_686602/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/accountability-and-transparency/iao/WCMS_686602/lang--en/index.htm)), Financial Rule 14.30(iii).

<sup>5</sup> Office Directive IGDS No. 568.

<sup>6</sup> Financial Rule 13.10.

13. Situations involving possible misconduct may also be reported by staff to management, including heads of departments, units, bureaux or offices. The managers receiving such reports must forward them immediately to the competent authority indicated in paragraphs 10–12 above. Management should not undertake investigations into the possible misconduct reported, unless it is under the guidance of the Office of the Internal Audit and Oversight (IAO). Staff may also report directly to the competent authorities.
14. Allegations of fraud or other misconduct concerning the Chief Internal Auditor shall be reported to the Director-General, who will inform the Chairperson of the Governing Body and the Chairperson of the Independent Oversight Advisory Committee (IOAC), and will make the appropriate recommendations on how to deal with the allegations.<sup>7</sup>
15. Allegations of fraud or other misconduct concerning the Director-General shall be reported to the Chairperson of the Governing Body, either directly or through the Treasurer, the Chief Internal Auditor, or the Chairperson of the IOAC.<sup>8</sup>

### Reporting misconduct through external mechanisms

16. Protection against retaliation will be extended to a staff member who reports misconduct to an entity or individual outside of the established internal mechanisms, where the criteria set out in subparagraphs (a), (b) and (c) below are satisfied:
  - (a) such reporting is necessary to avoid:
    - (i) a significant threat to public health and safety; or
    - (ii) substantive damage to the Organization's operations; or
    - (iii) violations of national or international law; and
  - (b) the use of internal mechanisms is not possible because:
    - (i) at the time the report is made, the individual has grounds to believe that he/she will be subjected to retaliation by the person(s) he/she should report to pursuant to the established internal mechanism; or
    - (ii) it is likely that evidence relating to the misconduct will be concealed or destroyed if the individual reports to the person(s) he/she should report to pursuant to the established internal mechanisms; or
    - (iii) the individual has previously reported the same information through the established internal mechanisms, and the Office has failed to acknowledge the receipt of the report or to inform the individual, upon her or his request, in writing of the status of the matter; and
  - (c) the individual does not accept payment or any other benefit from any party for such report.
17. External reporting by a staff member in accordance with the Directive does not constitute a breach of the staff member's obligations regarding confidentiality and discretion under the Staff Regulations.

## IV. Prevention of and protection from retaliation

### Action to prevent retaliation

18. The IAO and HRD shall inform the Ethics Officer of any report of alleged misconduct received by them which they consider posing a retaliation risk, subject to the consent of the staff member who made the report.

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<sup>7</sup> See Standard Operating Procedure Investigations.

<sup>8</sup> <https://www.ilo.org/public/english/edmas/ioac/index.htm>.

19. When informed of the risk of retaliation, the Ethics Officer shall consult with the staff member who made the report on appropriate retaliation prevention action. With the person's consent, such action may include engagement by the Ethics Officer with the person's senior management or the Director of HRD to ensure monitoring of the person's workplace situation with a view to preventing any retaliatory action against the staff member as a consequence of her or his engagement in a protected activity.

### **Request for protection from retaliation**

20. Staff members who believe that retaliatory action has been threatened or taken against them because they have reported misconduct or cooperated with an audit or investigation may submit to the Ethics Officer a request for protection against retaliation in person, by phone or in writing, including by email at [ethics@ilo.org](mailto:ethics@ilo.org). They should forward all information and documentation available to them to support their request to the Ethics Officer as soon as possible.
21. The staff member's request for protection must be submitted to the Ethics Officer not later than six months after the date on which the individual knew, or in the opinion of the Ethics Officer should have known, that the alleged retaliation was threatened or taken.
22. Allegations of retaliation concerning the Director-General shall be reported to the Chairperson of the Governing Body either directly or via the Chairperson of the IOAC.

### **Preliminary review**

23. Upon receipt of a request for protection, the Ethics Officer shall send an acknowledgement of receipt to the staff member, register the request and undertake a preliminary review to determine whether:
  - (a) the staff member engaged in a protected activity;
  - (b) the action alleged to be retaliatory did take place; and
  - (c) there is a prima facie case that the staff member's engagement in the protected activity was a contributing factor in causing the action or threat alleged to be retaliatory.
24. The Ethics Officer shall complete the preliminary review within 30 days of receiving all information requested concerning a claim of retaliation. Where in exceptional circumstances the Ethics Officer is unable to conclude the preliminary review within 30 days, she or he shall inform the staff member and set a new timeline.
25. The Ethics Officer shall maintain the confidentiality of all communications received from staff members who request protection against retaliation, and from all relevant third parties. Staff members may authorize the Ethics Officer to contact any office or other staff members to obtain additional information and/or records related to the request for protection.
26. The Ethics Officer may, at any time during the preliminary review period or, as the case may be, during the time period of a subsequent investigation by the IAO as provided below, recommend measures to HRD, or to other relevant units, to protect the staff member from the risk of further retaliation. Such measures can include, but are not limited to, temporary suspension of the implementation of the action reported as retaliatory; with the consent of the complainant, temporary reassignment of the complainant and/or change of reporting lines; or placement of the complainant on special leave with full pay.
27. All offices and staff members 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 that are not available without the express consent of the official concerned and records that are subject to confidentiality requirements.

### **Action in case of a prima facie determination of retaliation**

28. If the Ethics Officer determines that there is a prima facie case of retaliation or threat of retaliation, she or he shall refer the matter in writing to the IAO for investigation and shall immediately inform the staff member in writing. The IAO shall seek to complete its investigation and submit its report to the Director-General within 120 days, with a copy to the Ethics Officer.
29. Upon receiving the IAO's fact-finding report, the Ethics Officer shall make a determination whether retaliation has occurred or not. Retaliation shall be deemed to have taken place unless it is established with clear and convincing evidence that the Organization would have taken the same action regardless of the protected activity, or that the alleged retaliatory action was not made for the purpose of punishing, intimidating or injuring the staff member. In this respect, this Directive is without prejudice to the legitimate application of regulations, rules and administrative procedures, including those governing evaluation of performance, non-extension or termination of appointment or contract. The Ethics Officer shall, wherever possible within 30 days, inform the Director-General and the staff member of whether or not retaliation is considered to have occurred.
30. If the Ethics Officer considers that retaliation has occurred, his/her recommendations to the Director-General, after consultation with the complainant, may include possible measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation. These measures may include, but are not limited to, rescission of the retaliatory decision, including reinstatement, or, if requested by the complainant, transfer to another office and/or function and/or change in reporting lines, or subject to due process rights and relevant staff rules, transfer of the person who allegedly engaged in retaliation.
31. The Director-General shall communicate a written decision to the staff member within 60 days of receipt of the Ethics Officer's recommendations, with a copy to the Ethics Officer. The written decision shall inform the staff member of the appeals available in accordance with paragraph 41 below.

### **Action where there is no prima facie case of retaliation**

32. In cases where the Ethics Officer, following the preliminary review of the requests of protection from retaliation, finds that there is no prima facie case of retaliation, the Ethics Officer shall notify the staff member accordingly.
33. Should the Ethics Officer determine in such cases that there is an interpersonal problem within a particular office it may advise the complainant on the available channels for informal conflict resolution, including the Office of the Mediator. The Ethics Officer may also inform the Director-General if she or he considers there to be a managerial problem relating to a particular office.
34. Within 30 days of notification of the determination that there is no prima facie case of retaliation, the staff member may request the Ethics Officer, to refer the matter to an external and independent expert for further review. For this purpose, the Director-General establishes a list of qualified experts with experience regarding protection from retaliation in the UN system.
35. Following receipt of a request for further review, the Ethics Officer shall refer the matter to an expert from the above-mentioned list and shall inform the staff member accordingly. The expert may seek further information from the staff member, the Ethics Officer, and, with the consent of the staff member, other ILO units. The independent expert shall be tasked with making a recommendation as to whether the matter should be referred to the IAO for investigation under paragraph 28 above. If recommended so, the Ethics Officer shall refer the matter for investigation.

### **Disciplinary action against staff that engaged in retaliation**

36. In cases where the Director-General, following the IAO investigation, determines that there had been retaliation, the Director-General will refer the case to the Director of HRD for consideration of appropriate disciplinary action under Chapter XII of the Staff Regulations against the staff member who engaged in retaliation.
37. HRD shall inform the staff member who made the claim of retaliation, the Ethics Officer and the IAO on a confidential basis of any sanction applied to the staff member who engaged in retaliation.

## V. Reporting of misconduct by external parties

38. External parties engaged in dealings with the ILO such as interns, consultants, service providers or implementing partners can and are encouraged to report misconduct of ILO staff members to the IAO ([investigations@ilo.org](mailto:investigations@ilo.org)). Reports may also be received anonymously.
39. External parties engaged in dealings with the ILO who consider that they have been subject to detrimental action taken by an ILO staff member because they have reported misconduct to the ILO may raise the matter with the Ethics Officer ([ethics@ilo.org](mailto:ethics@ilo.org)). The Ethics Officer shall review the matter and refer it to the IAO in case there are reasonable grounds to investigate the matter further. If it is established that any retaliatory measures were taken by an ILO staff member against such an external party because she or he reported misconduct to the ILO, this in itself constitutes misconduct and may lead to disciplinary or other appropriate action.

## VI. General matters

### Appeals

40. Staff members are reminded that they may file a grievance under article 13.2(1) of the Staff Regulations with HRD on the grounds that they have been treated in a manner incompatible with their terms and conditions of employment, including in order to challenge any action or inaction by the Office that they consider to be retaliatory, within six months of the treatment complained of.
41. A staff member that has sought protection from retaliation under the present Directive may file a grievance against the decision taken under paragraph 31 above to the Joint Advisory Appeals Board (JAAB) within 30 days of its receipt. In the absence of an express decision within the time allowed under the same provision, a staff member may file a grievance with the JAAB within 30 days of the expiration of the time allowed.

### Conflict of interest

42. In case the Ethics Officer has a potential, perceived or real conflict of interest preventing the exercise of his or her functions under this Directive in a particular matter, he or she shall recuse him/herself therefrom, and designate an expert from the list referred to in paragraph 34 above to act in his or her stead. The complainant shall be informed accordingly.
43. Where the Ethics Officer or the IAO consider that there may be a conflict of interest in the IAO conducting the investigation into a prima facie case of retaliation, they may recommend to the Director-General that the matter be investigated by a qualified external investigator and inform the staff member that requested protection that such a recommendation was made to the Director-General.
44. In case the Director-General has a potential, perceived or real conflict of interest preventing the exercise of his or her functions related to protection from retaliation in a particular matter, he or she shall recuse him/herself therefrom, and designate another appropriate official to act in his or her stead and inform the Chairperson of the Governing Body and the IOAC of such designation.

### Reporting on whistleblowing and retaliation cases

45. Summary information on the reports of misconduct and retaliation received by the IAO is included in the report of the Chief Internal Auditor to the Governing Body.
46. The Ethics Officer makes available information on the number and status of cases of retaliation in the function's Annual Report.
47. Information on sanctions applied to staff members that engaged in retaliatory action is included in the periodic information notes on disciplinary cases issued by the Office.

### Information and advice

48. Staff and external parties who wish to seek information and advice with regard to reporting misconduct and available protection from retaliation may contact the Ethics Officer ([ethics@ilo.org](mailto:ethics@ilo.org)) or the IAO ([investigations@ilo.org](mailto:investigations@ilo.org)).

### Review of implementation

49. The Ethics Officer, in consultation with the IAO, HRD, other units concerned and the Staff Union, shall review and assess the terms and implementation of the present Directive every two years, and may make recommendations to the Director-General for its updating, as may be warranted.

Guy Ryder  
Director-General