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ATZP-JA

30 November 2018

MEMORANDUM FOR ALL

SUBJECT: Military Whistleblower Protection Act (MWPA)

1. PURPOSE: To summarize the Military Whistleblower Protection Act
2. REFERENCES:
 - a. 10 U.S.C. § 1034, 7 January 2011, Protected Communications; Prohibition of Retaliatory Personnel Actions.
 - b. 5 U.S.C. § 2302, The Whistleblower Protection Act of 1989 (WPA)
 - c. DoDD 7050.06, 17 April 2015, Military Whistleblower Protection.
3. DISCUSSION:
 - a. The Military Whistleblower Protection Act (MWPA) prohibits the restriction of lawful communication between a member of the armed forces and a Member of Congress or an Inspector General (IG). Under the MWPA, the following communication is protected:
 - (1) All lawful communications to members of Congress or an IG.
 - (2) All communications to a member of Congress, IG, employee involved in a DoD audit, inspection, or investigation, any law enforcement organization, or other designated person or organization in the chain of command regarding what the member reasonably believes constitutes evidence of any of the following: a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination; gross mismanagement; a gross waste of funds; an abuse of authority, or; a substantial and specific danger to public health or safety.
 - (3) Moreover, testimony or otherwise participating in or assisting in an investigation or proceeding related to a communication as described above constitutes a protected communication

(4) A communication will not lose its protected status because:

(a) The communication was made to a person who participated in the activity that the service member complained of

(b) The communication revealed information that had been previously disclosed

(c) The communication was not in writing

(d) The communication was made while the Service member was off duty

(e) The communication was made during the normal course of the Service member's duties

(f) Of the service member's motive for making the communication

b. In addition, the MWPA prohibits retaliatory action and acts of reprisal. No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing communications to individuals provided for in 10 U.S.C. § 1034.

(1) The term "personnel action" means any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career.

(2) Such actions include a promotion, a disciplinary or other corrective action, a transfer or reassignment, a performance evaluation, a decision on pay, benefits, awards, or training, a referral for mental health evaluation and any other significant change in duties or responsibilities inconsistent with the military member's rank. DoDD 7050.06.

c. Federal Civilian Employees: The Whistleblower Protection Act of 1989 (WPA), codified at 5 U.S.C. § 2302, likewise prohibits retaliation against Army civilian employees for making protected disclosures to an IG. Under the WPA, an employer may not take or fail to take a personnel action in retaliation for any disclosure to the Special Counsel, or to the Inspector General of the Army, or another employee designated by the head of the Army to receive such disclosures, of information which an employee believes evidences any violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. 5 U.S.C. § 2302(8)(b)(i-ii).

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4. Point of contact is the undersigned at (831) 242-6414.

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