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## Reporting misconduct and protection from retaliation

### I. Introduction

1. In accordance with the provisions of the Constitution of the International Labour Organisation and the United Nations Charter, service with the International Labour Office is subject to the highest standards of conduct and integrity and all staff is required to comply with ILO internal rules and procedures.
2. Providing channels for reporting misconduct or wrongdoing (“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 wrongdoing and establishes arrangements for prevention of and protection from retaliation to ensure that all staff can report misconduct or wrongdoing and cooperate with audits and investigations without fear of retaliation. The Directive should be read in conjunction with:
  - (a) Chapters I, XII and XIII and 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) Office Directive, *Ethics in the Office*, IGDS No. 76; and
  - (e) Office Directive, *Anti-fraud and anti-corruption policy*, IGDS No. 69.
4. The Directive is issued pursuant to article 8 of the Constitution of the ILO, article 30 of the ILO Financial Regulations and article 1.2 of the ILO Staff Regulations.
5. The Directive supersedes Office Procedure, *Ethics in the Office: Whistle-blower protection*, IGDS No. 186 (version 1), of 8 September 2010.

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

6. The Directive applies to all ILO staff irrespective of service category or type of contract. It also addresses reporting of wrongdoing by non-staff members.
7. This Directive is effective as of its date of issue.

## II. Reporting misconduct

### *Reporting misconduct through internal mechanisms*

8. All ILO staff are expected to report situations involving possible wrongdoing and misconduct through the appropriate internal mechanism for receiving such reports as described in the present Directive. Reports may also be received anonymously.
9. Misconduct for the purpose of this Directive is understood as the failure to comply with the ILO 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 Regulation is not considered as reporting misconduct or wrongdoing under this Directive.
10. Any case of fraud, presumption of fraud or attempted fraud must be reported to the Director-General through the Treasurer and the Chief Internal Auditor.<sup>2</sup> Allegations of fraud 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 Independent Oversight Advisory Committee (IOAC).<sup>3</sup>
11. The Chief Internal Auditor also receives directly from individual staff members' complaints, reports or information concerning the possible existence of waste, abuse of authority, or other irregular activities.<sup>4</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)).
12. Where staff members become aware of situations that may involve sexual exploitation or abuse,<sup>5</sup> directed at or possibly perpetrated by other staff members, interns, consultants, service providers or implementing partners and their employees, or project beneficiaries, they must report the matter to the Chief Internal Auditor in person, by telephone or in writing, including by email ([investigations@ilo.org](mailto:investigations@ilo.org)).
13. Where staff members become aware of situations that may involve harassment, including sexual harassment,<sup>6</sup> directed at or possibly perpetrated by other staff members, interns, consultants, service providers and their employees, or project beneficiaries and participants in ILO meetings, such information should be forwarded to the Director of the Human Resources Development Department (HRD) ([hrd@ilo.org](mailto:hrd@ilo.org)).
14. When situations that may be incompatible with the standards of conduct or established rules and procedures are raised by staff through the management channel, that is, with heads of departments, units, bureaux or offices, the heads receiving such reports must take appropriate action, including reporting to the relevant authority.

<sup>2</sup> Financial Rule 13.10.

<sup>3</sup> <https://www.ilo.org/public/english/edmas/ioac/index.htm>.

<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> For the purposes of the present Directive, the term "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Similarly, the term "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

<sup>6</sup> The definitions of "harassment" and "sexual harassment" are set out in Article 13(4), paragraphs 1 and 2, of the Staff regulations.

### ***Reporting misconduct through external mechanisms***

15. 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.
16. External reporting by a staff member in accordance with the Directive does not constitute a breach of the staff members' obligations regarding confidentiality and discretion under the Staff Regulations.

### **III. Protection from retaliation**

#### ***Protected activity***

17. Staff members who report misconduct or wrongdoing in good faith through the channels specified in paragraphs 8–16 above or cooperate with a duly authorized audit or investigation, as is their duty, are considered to engage in a protected activity.
18. 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.

#### ***Retaliation***

19. Retaliation for the purposes of this Directive means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, 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.

### **Action to prevent retaliation**

20. The Office of Internal Audit and Oversight (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.
21. 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**

22. 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.
23. The staff member's request for protection must be submitted to the Ethics Officer no later than six (6) 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.
24. Allegations of retaliation concerning the Director-General shall be reported to the Chair of the Governing Body either directly or via the Chair of the IOAC of the ILO.

### **Preliminary review**

25. 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.
26. 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/he shall inform the staff member and set a new timeline.
27. 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 ILO officials to obtain additional information and/or records related to the request for protection.
28. 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.

29. 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 that are not available without the express consent of the official concerned and records that are subject to confidentiality requirements.
30. Where there may be a conflict of interest for the Ethics Officer, the Ethics Officer shall inform the Director-General who will take appropriate measures to ensure that the claim is reviewed through alternative channels, and investigated, if necessary.

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

31. 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.
32. Where the Ethics Officer considers that there may be a conflict of interest in the IAO conducting the investigation, it may recommend to the Director-General that the matter be investigated through an alternative mechanism.
33. The IAO shall investigate whether retaliation was threatened or actually took place. The burden of proof rests with the Organization, which must prove that the same action would have been taken 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.
34. The IAO shall seek to complete its investigation and submit its report to the Director-General and the Ethics Officer within 120 days.
35. Upon receipt of the investigation report by the IAO, the Director-General will review the report and:
  - (a) determine whether the investigation supports the allegations of retaliation; and
  - (b) inform the complainant of the outcome of the investigation and whether a finding of retaliation is supported.
36. The Director-General may seek recommendations from the Ethics Officer with regard to the determination referred to in paragraph 35(a) above and shall inform the Ethics Officer of the determination made.
37. In cases where retaliation has been established, the Director-General shall take appropriate measures aimed at correcting negative consequences suffered as a result of the retaliatory action and protecting the complainant from any further retaliation. The Director-General shall communicate his or her decision on corrective measures to the staff member and the Ethics Officer.

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

38. 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.

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

39. In cases where the Director-General, following the preliminary review by the Ethics Officer and the IAO investigation, determines that there had been retaliation, the Director-General will refer the case to the Director of HRD for consideration of

disciplinary action under Chapter XII of the Staff Regulations against the official who engaged in retaliation, as may be warranted as a result of the determination.

40. HRD shall inform the staff member who made the claim of retaliation, the Ethics Officer and the IAO on a confidential basis of any disciplinary action taken against the official who engaged in retaliation.

#### **IV. Reporting of misconduct by non-staff members**

41. Non-staff members 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.
42. Non-staff members 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 or wrongdoing 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 a non-staff member because she or he reported misconduct to the ILO, this may lead to disciplinary action against the staff member.

#### **V. General matters**

##### ***Reporting on whistleblowing and retaliation cases***

43. 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.
44. The Ethics Officer makes available information on the number and status of cases of retaliation in the function's Annual Report.
45. Information on disciplinary sanctions taken against staff that engaged in retaliatory action is included in the periodic information notes on disciplinary cases issued by the Office.

##### ***Information and advice***

46. Staff and non-staff members who wish to seek information and advice with regard to reporting misconduct or wrongdoing 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***

47. The Ethics Officer 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