

# HEALTHCARE WHISTLEBLOWING



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## OVERVIEW




Those working in healthcare may encounter misconduct that impacts patient safety, public health, or taxpayer dollars. This fact sheet explores anti-retaliation protections for related whistleblowing in the private and public sectors.

Those considering blowing the whistle should do so on their own time and under advisement of knowledgeable counsel.

## PRIVATE SECTOR

Many healthcare employees in the private sector are protected by whistleblower laws enforced through the Occupational Safety and Health Administration's Whistleblower Protection Program as well as other federal laws. The scope and strength of these protections vary significantly.

Relevant laws include:

-  **Affordable Care Act (ACA):** Prohibits retaliation against employees who report concerns related to healthcare coverage, benefits, insurance requirements, subsidy eligibility, or other ACA compliance issues.
-  **False Claims Act (FCA):** Prohibits retaliation against individuals who report fraud against the federal government. Under the law's Qui Tam provision, some may seek a percentage of the government's recovery. Of the billions recovered in taxpayer dollars annually under the FCA, most cases involve the healthcare industry.
-  **FDA Food Safety Modernization Act (FSMA):** Bars retaliation against workers who report violations of FDA food-safety or product-handling requirements, including unsafe practices that could threaten public health.



-  **Health Insurance Portability and Accountability Act (HIPAA):** Prohibits retaliation against employees who report HIPAA violations, participate in compliance investigations, or oppose practices they reasonably believe violate HIPAA, provided disclosures comply with HIPAA privacy requirements.
-  **Occupational Safety and Health Act (OSH):** Prohibits retaliation against those who report workplace health and safety hazards or violations of OSHA standards.
-  **Sarbanes Oxley Act (SOX):** Prohibits retaliation against employees and officers of publicly traded companies, including their subsidiaries, contractors, and subcontractors, for reporting shareholder fraud or related financial misconduct.

The [Private Sector Whistleblowing Fact Sheet](#) provides additional information on related rights and enforcement.

## FEDERAL CONTRACTORS AND GRANTEES

Entities commonly enter into contracts with, or receive grant funding from, the federal government for medical products, research, or other services. Their employees have the right to report related misconduct such as fraud against the government or violations of the terms of the contract through inadequate patient care practices, for example. The laws also prohibit retaliation against employees who exercise their rights.


Specifically, 41 U.S.C. § 4712 protects those who expose wrongdoing connected to the underlying grant or contract including issues ranging from illegality to substantial dangers to public health or safety. For contracts or grants originating in the Department of Defense or NASA, the law is codified at 10 U.S.C. § 2409.

The [Federal Contractor and Grantee Whistleblowing Fact Sheet](#) provides additional information on related rights and enforcement. These individuals may also be covered under the private sector laws described above.

## PUBLIC SECTOR

The federal government employs healthcare professionals around the globe. Federal healthcare workers may fall under different anti-retaliation laws depending on their sector.

Relevant public sector anti-retaliation laws include:

 **The Whistleblower Protection Act:** Protects most executive branch employees, including healthcare workers, for disclosing issues like illegality, gross waste or mismanagement, and substantial threats to public health and safety.

 **The Military Whistleblower Protection Act:** Covers military service members, including those whose duties involve healthcare, and uniformed officers in the Commissioned Corps of the U.S. Public Health Service.

The [Whistleblower Protection Act Fact Sheet](#) and the [Military Whistleblower Protection Act Fact Sheet](#) provide additional information on related rights and enforcement.

## STATE-LEVEL

Each state may have their own whistleblower laws, including those relevant for individuals working in the healthcare industry. For example, states often have laws that protect state employees and some industry-specific workers. Many states also maintain their own False Claims Acts and anti-retaliation provisions, some of which cover healthcare billing or fraud.

[A related Congressional Research Service report](#) breaks down whistleblower laws by state. There are sub-categories including, for some states, “healthcare” whistleblowing. Coverage, procedures, and remedies vary widely by state.

## DISCLOSURES INVOLVING PROTECTED HEALTH INFORMATION (PHI)

Healthcare whistleblowing may involve access to sensitive patient data. Under the Health Insurance Portability and Accountability Act (HIPAA), employees of a covered entity generally cannot disclose individually identifiable health information without the patient’s consent. Although Congress can usually receive such information, workers may still be held liable if a disclosure violates HIPAA.

Whistleblowers should exercise caution, including de-identifying documents when possible or relying on HIPAA’s narrow whistleblower safe-harbor provision. This regulatory provision allows disclosures to public health authorities, health-accrediting organizations, or the whistleblower’s attorney when they reasonably believe the employer has engaged in unlawful or professionally improper conduct or that patient care, workplace safety, or public health is at risk. See: 45 C.F.R. § 164.502 (j).

## ADDITIONAL RESOURCES

Occupational Safety and Health Administration: [Health Privacy and OSHA Whistleblower Complaints](#)

Office of the Whistleblower Ombuds: [Department of Veterans Affairs Whistleblowing Fact Sheet](#)