PRIVATE SECTOR WHISTLEBLOWING

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COACHING THE HOUSE ON BEST PRACTICES

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OVERVIEW

Many federal laws protect private sector workers from retaliation when they blow the whistle. Some laws also provide monetary awards. This document largely focuses on the laws within the Labor Department's **Whistleblower Protection Program**, which are administered by the Department's Occupational Safety and Health Administration (OSHA). Individuals considering blowing the whistle should do so under advisement of a whistleblower attorney.

LABOR DEPARTMENT'S WHISTLEBLOWER PROTECTION PROGRAM

OSHA administers **over 20 federal laws** that prohibit whistleblower retaliation against private sector workers. Some laws apply across industries, giving workers the opportunity to safely disclose workplace health and safety concerns, for instance. Other laws are sector-specific, providing workers with the right to report their employer's violation of industry standards. All OSHA-administered whistleblower laws protect lawful communications with Congress.

Scope of Laws

For easier navigation, OSHA sorts whistleblower laws into **several subject-specific categories, such as**:

- **Employee Safety Laws:** Protect those who report occupational safety and health concerns. For example, a medical professional exposing poor workplace safety practices that endanger workers as well as patients and the broader public. (E.g., **Occupational Safety and Health Act**)
- **Consumer Products Laws:** Protect those who report violations of consumer safety protections. For example, allegations that a manufacturer is not properly inspecting their merchandise. (E.g., **Consumer Product Safety Improvement Act**)
- **Transportation Laws:** Protect those who report violations of federal transportation safety standards. For example, laws controlling the manufacture of motor vehicles or aircraft. (E.g., **Moving Ahead for Progress in the 21st Century Act**)
- **Food Safety Laws:** The **Food Safety Modernization Act** protects workers in food-related industries, such as manufacturing and processing, when they report violations of federal standards. For example, violations of the Federal Food, Drug, and Cosmetic Act.
- **Environmental Laws:** Protect those who report violations of federal environmental laws. For example, disclosures related to asbestos, pollution, and unsafe drinking water. Further, the Energy Reorganization Act protects employees of energy licensees. While most private sector laws only protect private sector employees, several of the environmental whistleblower laws also protect public employees. (E.g., **Clean Air Act**)
- **Fraud and Financial Laws:** Protect those who expose fraud and misconduct in the financial industries or by publicly traded companies. For example, disclosures about consumer financial products or shareholder deception. (E.g., **Sarbanes-Oxley Act**)

Anti-Gag Rights

Several whistleblower laws prohibit employers from using a workplace policy or nondisclosure agreement to strip employees of their whistleblower rights. For example, the Anti-Money Laundering Act and the Sarbanes-Oxley Act.

Administrative Relief Process

Retaliation may include firing, demotion, discipline, threats, harassment, reduced pay or hours, denial of promotion, or other adverse actions.

To challenge retaliation, a worker **must file a retaliation complaint with OSHA** within the relevant statute's filing deadline. OSHA then determines whether the allegations meet their criteria to open an investigation. If so, they will **proceed with an investigation** and issue a final report. Depending on the statute, a complainant may be able to "kick out" the case to federal district court during the investigation phase. Once there is a final order, parties may be able to seek review before an administrative judge.

Legal Disclaimer: This document is for general informational purposes only. Its contents are not legal advice.

Note that while many private sector whistleblower protections are administered by OSHA, the substantive portions of the underlying statute are enforced by what OSHA calls **"partner agencies."** For example, OSHA investigates whistleblower retaliation complaints under the Taxpayer First Act, but the IRS enforces the other portions of the law, including the award program.

Optional Settlement Program

Where applicable, the two parties may agree to participate in OSHA's free **Alternative Dispute Resolution (ADR)** program, which pauses an ongoing investigation. ADR allows parties to settle on a remedy that is agreeable to both sides in lieu of the investigation and enforcement process. If parties fail to settle, the investigation resumes. This program is only offered in certain regional offices.

Gaps and Disparities in the Laws

Coverage between laws varies widely by factors like industry, worker status, protected activity, recipient of the disclosure, and remedies. In particular, OSHA filing deadlines can be very short: between 30 and 180 days depending on the law. The clock generally starts when the adverse action occurs and is communicated to the employee. For more, see **Gaps and Disparities in Whistleblower Law**.

OTHER PRIVATE SECTOR LAWS

While OSHA administers most of the private sector whistleblower protections within the Labor Department's jurisdiction, other sub-agencies administer other notable private sector whistleblower laws:

- **Mine Safety and Health Administration:** Administers the **whistleblower protections** of the Mine Act, which prohibits retaliation against miners who report mine-related hazards, seek mine inspections, or refuse to engage in dangerous work.
- **Wage and Hour Division:** Enforces the federal minimum wage under the Fair Labor Standards Act as well as other related federal standards regarding worker pay. Administers whistleblower protections tied to **each law it oversees**.
- **Veterans Employment and Training Service (VETS):** Administers the Uniformed Services Employment and Reemployment Rights Act (USERRA) as it applies to private sector employers. USERRA prohibits discrimination based on military status and provides **whistleblower protections** for individuals who exercise their rights under the Act.

AWARD PROGRAMS

Some whistleblower laws provide a monetary award to whistleblowers when their disclosures lead to a financial recovery for the federal government. For example, an employee of a federal contractor or nonprofit that has received federal grant money might disclose their employer's fraudulent activities. These programs support regulatory enforcement efforts and recoup billions in taxpayer dollars each year. They include anti-retaliation protections for whistleblowers.

A whistleblower covered under one of the award laws can also disclose their concerns to Congress, but they may be precluded from the benefits if they do not follow the unique statutory requirements. In turn, they should avoid taking steps that could preclude their eligibility for a whistleblower reward, such as disclosing the filing of a sealed False Claims Act complaint or failing to disclose the fraud to the relevant agency in the required manner. It is advisable that whistleblowers first consult knowledgeable counsel.

Examples of these programs include (but are not limited to):

- **Anti-Money Laundering Whistleblower Program:** Awards disclosures made to the Treasury or Justice Departments that expose financial crimes that violate the Bank Secrecy Act and other related laws and regulations.
- **Commodity Futures Trading Commission (CFTC) Whistleblower Program:** Awards disclosures that expose violations of the Commodity Exchange Act where there is at least one million dollars in monetary sanctions
- **False Claims Act (FCA):** Awards individuals who expose fraud against the federal government
- **Internal Revenue Service (IRS) Whistleblower Office:** Awards disclosures made to the IRS involving tax fraud
- **Securities and Exchange Commission (SEC) Office of the Whistleblower:** Awards disclosures regarding violations of federal securities laws

ADDITIONAL RESOURCES

- Occupational Safety and Health Administration: **How to File a Whistleblower Complaint**
- Occupational Safety and Health Administration: **Whistleblower Statutes Summary Chart**
- Occupational Safety and Health Administration: **Whistleblower Investigations Manual**