

The Federal Statute-False Claims Act Affords Whistleblower Employee Protections and Remuneration

In 1986, Congress added anti-retaliation protections to the False Claims Act. These provisions, which did not exist previously, are contained in 31 U.S.C. Sec. 3730(h):

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.

The protection against retaliation extends to whistleblowers whose allegations could legitimately support a False Claims Act case even if the case is never filed. The statute of limitations for Sec. 3730(h) claims is 6 years in most jurisdictions, but is currently shorter in California and a few other locations.

The whistleblower plaintiff is entitled to reinstatement with seniority, double back pay, interest, special damages sustained as a result of discriminatory treatment, and attorneys fees and costs. There is federal jurisdiction for these whistleblower claims. To establish a Sec. 3730(h) retaliatory discharge claim, the whistleblower must engage in conduct protected by the False Claims Act. Second, the courts require a showing that the defendant have some notice of the protected conduct that the whistleblower was either taking action in furtherance of a qui tam action or assisting in an investigation or actions brought by the Government. Finally, the whistleblower must show that the termination was in retaliation for the protected activities. A False Claims Act qui tam case can include whistleblower claims and other legal claims based upon other state and federal laws.

Under the False Claims Act the government may recover up to three times the amount of money it lost as a result of the defendant's fraud. The whistle-blower's share is calculated based upon the amount the government recovers, not the actual losses. A number of factors determine how much money a whistle-blower will receive if the government is able to recover money from the defendant. If the government joins the case, the whistle-blower is entitled to at least 15 percent but not more than 25 percent of what the government recovers. If the government declines to join the case and the whistle-blower continues with a suit against the defendant, the whistle-blower is entitled to at least 25 percent but not more than 30 percent of the money the government recovers.

One recently publicized settlement under the False Claims Act involved Walgreens Pharmacy, which agreed to pay the government \$35 million for bilking Medicare (and U.S. taxpayers) out of millions of dollars when it intentionally filled patient prescriptions with more expensive versions of a drug in order to increase its reimbursement rate from Medicare. For example, Walgreens computer system was preset to have certain prescriptions filled with the more expensive capsule versions, rather than the standard cheaper tablet form, which carries with it a smaller reimbursement to the pharmacy. Rantidine (Zantac) and Fluoxetine (Prozac) are two of the drugs "switched" by the drugstore chain. The employee-pharmacist who "blew the whistle" on Walgreens was awarded \$5million dollars.

