

PUBLICATION

OSHA Update: More Than Just Safety Investigations in Whistleblower Retaliation Complaints

May 15, 2014

Did you know that the Occupational Safety and Health Administration (OSHA) investigates 22 different types of whistleblower complaints? If not, then you may want to become more familiar with the various laws that the OSHA whistleblower program covers. To be specific, here's the list:

1. Asbestos Hazard Emergency Response Act (AHERA)
2. Clean Air Act (CAA)
3. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
4. Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
5. Consumer Product Safety Improvement Act (CPSIA)
6. Energy Reorganization Act (ERA)
7. Federal Railroad Safety Act (FRSA)
8. Federal Water Pollution Control Act (FWPCA)
9. International Safe Container Act (ISCA)
10. Moving Ahead for Progress in the 21st Century Act (MAP-21)
11. National Transit Systems Security Act (NTSSA)
12. Occupational Safety and Health Act
13. Pipeline Safety Improvement Act (PSIA)
14. Safe Drinking Water Act (SDWA)
15. Sarbanes-Oxley Act (SOX)
16. Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281
17. Section 402 of the FDA Food Safety Modernization Act (FSMA)
18. Section 1558 of the Affordable Care Act (ACA)
19. Solid Waste Disposal Act (SWDA)
20. Surface Transportation Assistance Act (STAA)
21. Toxic Substances Control Act (TSCA)
22. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21)

It is sometimes very surprising to many employers to know that OSHA, an agency known for safety compliance, has a group of investigators that look into complaints of retaliation ranging from the OSH Act itself to the Affordable Care Act or even the Sarbanes Oxley Act. What do some of these laws have to do with safety, you ask? Nothing! But the whistleblower protection division of OSHA is not tasked with only looking at complaints that arise from safety laws.

You may never have an actual OSHA inspection, but you may one day hear from OSHA related to an employee who complains to OSHA about retaliation under one of the 22 laws that OSHA investigates. The legal process for each of these statutes can vary greatly, but each one starts with an investigation by one of OSHA's whistleblower investigators. It is extremely important to take any employee complaint that is being investigated by OSHA seriously and to ensure accuracy in the company's response. Often, putting in the effort

to respond fully and appropriately at the investigation stage of one of these complaints can result in a positive outcome for the company.

It is likely that we will see more activity from the OSHA whistleblower investigators in the future. OSHA has asked for more funding for this program area and both Democrat and Republican Senators are listening. Further, there is a drive by both the agency and Congress to see more results from this program area in the future.

May's tip: Treat any OSHA investigation of an employee complaint seriously. Companies have become very adept at responding to EEOC complaints, often with the assistance of outside counsel. Whistleblower complaints should be treated with equal attention.