A NEW YORKER'S STEP BY STEP GUIDE

WHISTLE BLOWERS

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ABOUT THIS GUIDE

If you suspect an individual or organization of involvement in government contract fraud, securities violations, health care fraud, pharmaceutical fraud, cybersecurity breaches, or other forms of misconduct, you're facing some challenging decisions. *Whistleblowers: A New Yorker's Step By Step Guide* offers an inside look at protecting yourself from retaliation, maximizing your cash award, and ensuring a bulletproof case right from the start.

A concise, informative overview of how to:

- Select the proper whistleblower program
- Gather evidence and protect your claim
- Navigate the whistleblower claims process
- Maximize your cash award

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SHOULD YOU BLOW THE WHISTLE?

Blowing the whistle on an employer or other entity can be daunting, but whistleblower laws offer job protections, identity safeguards, and large cash rewards. If you want to stop misconduct, activate your legal protections, and receive a significant cash award, filing a whistleblower claim is the right move.

When a person comes across dangerous or fraudulent activity, one of the first questions they ask themselves is, “Should I report this?” The answer to this question is, of course, up to you. But we can offer some insight into why some people decide “Yes, I should,” and opt to enter the whistleblower world.

It isn’t an easy decision. Since our youth, we’ve experienced the risks and harsh realities of telling on someone for misconduct. Many learn early on that the bigger the kid you tell on, the bigger the consequence and things aren’t much different in the legal arena. The bigger the corporation you turn in for misconduct, the greater the battle. So is pursuing a whistleblower claim even worth it?

Yes! Job protections and big cash rewards make it easier to blow the whistle and stop the misconduct. Smart whistleblowers use an experienced whistleblower lawyer with David v Goliath battles (and victories) to their credit.

Those who decide to become whistleblowers typically have one or more of the following in common.

They:

1. want to put a stop to the misconduct,
2. want the cash whistleblower award,
3. want the legal protections that come with filing a claim, and
4. are confident in their case.

Stopping the misconduct

For some, this one's a given. A defense contractor's employee may worry that selling cheap, defective military gear to the armed services could endanger lives. A stockbroker may realize that his partner's insider trading activity is robbing investors of their hard-earned nest eggs. A doctor might understand that accepting $30,000 cash to prescribe a drug isn't looking out for her patients' best interests.

For others, it may not be so apparent that whistleblowing could actually make a difference. But successful claims always make a difference. Winning whistleblower actions not only help put a stop to the defendant's wrongdoing, but also fraudulent acts by other industry participants. Successful settlements or verdicts set a standard for the industry.

Even if no specific court order is issued to stop the corrupt activity, a multimillion-dollar settlement can quickly demonstrate that it isn't

financially prudent to sidestep the law. Suddenly, producing high-quality military equipment is cheaper than getting sued – and the armed forces has safer gear.

Whistleblower actions serve to hold companies accountable. They level the playing field for those who choose to play by the rules. They recover stolen and wasted taxpayer funds, putting them back into proper use. Without whistleblowers, consumer product manufacturers go unchecked, healthcare costs continue to rise, and lives are at risk. Whistleblowers are not only exceptional, courageous people. They are true American heroes.

Earning a cash award

There's no shame in pursuing a whistleblower claim for the cash award. Government whistleblower programs offer large awards for that very reason – to encourage individuals with knowledge of misconduct to come forward.

Government resources are limited. Regulators don't have the time or personnel to continually monitor every entity for wrongdoing. Government officials also realize how difficult it can be for an employee, contractor, or another person to come forward and report fraud. Therefore, as payment for taking the risk and exposing acts of fraud, waste, or abuse, whistleblowers receive a percentage of any recovery resulting from a claim. These awards are lucrative, often falling in the hundreds of thousands to millions of dollars range.

Financial incentives work. Whistleblower tips increased 20% in the first two years after the Securities and Exchange Commission (SEC) implemented its whistleblower program. SEC whistleblower awards started high and kept getting higher. In 2014, the SEC awarded $30 million to an individual whistleblower, more than twice its previous record amount.[1] Four years later, the SEC set another record, awarding $33 million. Since its inception, the SEC has paid out 62 awards totaling over $381 million.[2]

Significant cash awards have also come out of the False Claims Act (FCA) whistleblower program. In 2018, the federal government recovered almost $2.9 billion in civil settlements and judgments under the False Claims Act, awarding whistleblowers over $300 million. FCA whistleblower awards can be considerable, depending on the number of false claims involved.

Bank of America whistleblowers shared a $170 million award for reporting fraudulent high-risk mortgage sales practices. Four GlaxoSmithKline whistleblowers shared a $250 million award for reporting illegal drug marketing practices.

Obtaining whistleblower protections

An equally valuable incentive for many whistleblowers is the promise of protection against retaliation. Studies suggest that as many as one in three

1 Annual Report to Congress on the Dodd-Frank Whistleblower Program. (2014). SEC.

2 SEC awards $4.5 million to whistleblower whose internal reporting led to successful SEC case and related action. (2019, May 24). SEC.

whistleblowers will experience workplace retaliation.[3] Once an employee is suspected of being a whistleblower, it isn't uncommon for that employee to be demoted, transferred to another department, harassed by coworkers and superiors, or fired altogether.

Federal and state whistleblower programs provide strong protections against retaliation. For example, the Anti-Retaliation provisions of the False Claims Act enable whistleblowers to file separate claims seeking damages for workplace retaliation, including job reinstatement, back pay with interest, and attorney's fees.

Confidence in whistleblower action

Finally, when an individual is certain that they have followed proper procedure, gathered sufficient proof of wrongdoing, and crafted a persuasive case, it's easier to take that step and file a whistleblower claim. However, this is where most questions arise.

How can you be sure your case is going to hold up against a powerful corporate defendant? Will the government be interested in dedicating its limited resources to investigating your claims? Is your suit optimized to achieve the largest whistleblower award available? In this guide, we aim to answer these questions and more to help you make informed decisions around whether to blow the whistle - and how to go about it.

3 Greenwood CA. (2015, November). Whistleblowing in the Fortune 1000: What practitioners told us about wrongdoing in corporations in a pilot study. Public Relations Review. 41:4 p 490-500.

WHO ARE WHISTLEBLOWERS?

Whistleblowers aren't people who "leak" information regarding misconduct to the public or other sources. Whistleblowers are the individuals who take the appropriate legal steps to expose fraud, waste, abuse, or mismanagement of government resources. This elite group of individuals functions to hold our nation's government and corporations accountable for their actions.

Before getting into what makes a successful whistleblower claim, let's clear up any misconceptions about what we mean by "whistleblower" for the purposes of this Guide. When many hear the word "whistleblower," they think of Edward Snowden, Daniel Ellsberg, maybe Chelsea Manning. Indeed, these individuals disclosed information about misconduct.

But their disclosures were "leaks." Leaking private documents, recordings, or other information to a public source like the media can be illegal. Those who leak the information can be prosecuted. They have little to no legal protection and may face severe criminal penalties.

On the other hand, we refer to "whistleblowers" herein as those who take the appropriate legal avenues to expose acts of fraud, waste, abuse, gross mismanagement, or other forms of misconduct involving government resources. They are an elite group of national and international leaders who

help hold our nation's government and corporations accountable for their actions.

Still, even these whistleblowers often get a bad rap. Many think of them as disgruntled employees, untrustworthy traitors, competitors out for revenge, or money-hungry folks seeking a windfall. And certainly, there are those types of individuals in the mix. But for the most part, whistleblowers are people who are merely trying to do the right thing. They aren't running smear campaigns. They aren't taking the law into their own hands. Instead, they are reporting illegal activity to the proper authorities to make the activity stop.

[SOURCE: ERC National Business Ethics Survey (2011)]

According to survey data, a majority of whistleblowers (82%) go to their lawyer with information due to the serious nature of the crime. Over three out of four reports externally out of concern that the misconduct will harm someone. Sixty-five percent go outside of the company because no action was taken after making an internal report to a supervisor. Only 43% choose to report company misconduct externally for the potential cash award.

Data reveals that the majority of whistleblowers aren't disgruntled, unhappy or disloyal employees, but are actually engaged, high-performers in leadership positions who have been with the company for years.[4] Population studies show that most whistleblowers are proactive individuals who seek to influence their environment.[5] Most whistleblowers give the company a chance to respond, reporting their concerns within the company first. Ninety-two percent of whistleblowers report misconduct to a manager or supervisor before considering outside legal action. Just 20% eventually end up taking their knowledge to their lawyer.[6]

A large motivator for talking to a whistleblower lawyer instead of a company supervisor can be to avoid workplace retaliation. Though most company compliance programs prohibit retaliation against employees for reporting misconduct or dangerous activities, it is still a very valid fear.

Researchers at North Carolina State University and Bucknell University

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4 Inside the Mind of a Whistleblower. (2012). Ethics Resource Center.

5 Miceli MP, Near JP, et al. (2012, June 28). Predicting employee reactions to perceived organizational wrongdoing: Demoralization, justice, proactive personality, and whistle-blowing. *Human Relations*. 65:8.

6 Inside the Mind of a Whistleblower. (2012). Ethics Resource Center.

found that the main reason employees report fraud externally is out of the fear of being fired, demoted, denied a promotion, or harassed.[7] As many as one in three people choose not to report misconduct internally for fear of retaliation.[8]

One 2015 study asked corporate public relations executives and practitioners in the nation's largest publicly traded corporations about their involvement in "developing and/or publicizing the anonymous, internal whistleblowing channel to report financial fraud, their awareness of wrongdoing, their reporting of wrongdoing, their view of their responsibility to report wrongdoing, and the consequences of reporting wrongdoing."

Results showed that nearly half (44.4%) said they (or someone they knew) were aware of wrongdoing. Sixty-six percent who knew about misconduct reported it. Over 81% said it wasn't part of their job to report it, and 33.3% of those who reported it suffered employer retaliation.[9] Reporting misconduct outside of the workplace via an unbiased whistleblower attorney and the federal whistleblower programs can help ease the fear of retaliation.

Luckily for whistleblowers, corporate culture is changing. Recent research reveals that employees in leadership roles are becoming less and less likely to experience adverse attitudes or unfriendly behavior for reporting unethical behavior. In some cases, company leaders are given the cold-shoulder for

7 Internal corporate whistleblowers swayed by protections, not pay: study (2015, March 3). *Insurance Journal*.
8 Inside the Mind of a Whistleblower. (2012). Ethics Resource Center.
9 Greenwood CA. (2015, November). Whistleblowing in the Fortune 1000: What practitioners told us about wrongdoing in corporations in a pilot study. Public Relations Review. 41:4 p 490-500.

failing to report misconduct, while leaders who do blow the whistle earn higher levels of respect from coworkers.[10]

Another common misconception about whistleblowers is that they must be a company insider. This statement is false. Whistleblowers don't have to be current or former employees of the company they are reporting. They don't have to have any special relationship with the defendant in their claim, and they don't have to be harmed in any way by the misconduct. One in five whistleblowers are outside contractors or consultants,[11] and many are employees of competitor companies.

Consider Josh Harman, a Virginia guardrail company owner who started investigating car accidents involving guardrails made by a competitor company, Trinity Industries Inc. Harman discovered Trinity's recent design change was allegedly linked to over 40 deaths and 100 injuries. He also found that Trinity hadn't reported the design change to the Federal Highway Administration. In June 2015, the U.S. fined Trinity $663 million for defrauding the government. Harman collected 30% of that ($199 million), plus an additional $19 million in court fees, as his whistleblower award.

Likewise, Kevin Carlisle won a $1.7 million whistleblower award after filing a claim alleging five ambulance company competitors were allegedly paying illegal kickbacks and offering unlawful discounts.[12] And John Dickson won

10 Wellman N, Mayer DM, et al. (2016, June). When are do-gooders treated badly? Legitimate power, role expectations, and reactions to moral objection in organizations. *J Appl Psychol*. 101(6):793-814.

11 Annual Report to Congress on the Dodd-Frank Whistleblower Program. (2014). SEC.

12 McLaren ML. (2015, May 4). Five California ambulance companies pay $11.5M to end Medicare fraud whistleblower suit. *Whistleblower News Rev.*

a $7.8 million whistleblower award for blowing the whistle on Japan-based competitor Toyo Ink and its U.S. affiliates who allegedly misrepresented their ink products to U.S. customs as having been made in Mexico and Japan (rather than the actual China and India) to reduce duties.[13]

In short, whistleblowers can come from anywhere. They must simply possess "original source" information, information that isn't available to the general public through the internet, media, or other publicly-accessible sources. We will cover eligibility criteria later in this Guide, but in general, anyone with original source information suggesting misconduct can file a whistleblower claim.

Another mistaken belief about whistleblowers is that they must work and/or reside in the United States. This is also false. In 2016, an Australian won a $3.75 million SEC whistleblower award for reporting BHP Billiton's alleged violations of the Foreign Corrupt Practices Act at the Beijing Olympics. The former BHP Billiton employee provided information and aided the SEC's investigation into allegations the company provided government officials with trips to the Beijing Olympics, leading to a $25 million settlement.[14] A whistleblower can be anyone from anywhere, as long as they possess original source information suggesting misconduct.

Our nations' whistleblowers continue to recover billions of stolen taxpayer

13 Japanese-based Toyo Ink and affiliates in New Jersey and Illinois settle false claims allegation for $45 million. (2012, December 17). DOJ.

14 McKenzie N, Bachelard M, et al. (2016, August 28). Americans pay millions to whistleblower at BHP; we hound them out of their jobs. *Sydney Morning Herald*.

dollars each year. With large financial incentives and anti-retaliation protections in place, the government provides whistleblowers with an increased confidence that it is safe to discuss their knowledge of misconduct with their whistleblower lawyer. Despite the negative connotations, most whistleblowers are simply concerned citizens who want to reduce risks to their employer or their community.

FEDERAL WHISTLEBLOWER PROGRAMS

There are several federal programs whistleblowers can use to report misconduct and earn a cash award for false billings to government programs, securities violations, foreign bribes, tax evasion, or unsafe motor vehicle parts.

The United States government has numerous whistleblower programs in which individuals with original source knowledge of misconduct can file a claim. The type of misconduct will choose which program you use to file a claim. In this guide, we will cover various kinds of whistleblower programs, including:

- FCA Whistleblower Program
- SEC Whistleblower Program
- Foreign Corrupt Practices Act (FCPA) Whistleblower Cases
- Commodity Futures Trading Commission (CFTC) Whistleblower Program
- Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) Program
- Internal Revenue Service (IRS) Whistleblower Program
- State Insurance Whistleblower Programs

FCA Program

Individuals with original source information regarding fraud, waste, or abuse of government funds, including companies who knowingly violate government contract regulations and/or fail to report violations, may be eligible to collect a cash whistleblower award under the FCA.

Award amount: Between 15% and 30% of total government recovery.

Knowledge: Original source information required. Violations must be material.

Time Limits: First-to-file bar. 6 years of violation or 3 years of time violation should have been discovered. No longer than 10 years.

Anonymity: Filed under seal. Identity released late in the investigation or at the time of the legal proceeding.

Other: Whistleblower may proceed with private prosecution should the government decline to intervene (award is raised to between 25% and 30%).

Enacted in 1863 during the Civil War era, the federal False Claims Act still stands as America's largest and most successful whistleblower award program. Each year, taxpayers and government programs recover billions of dollars because of lawsuits filed by whistleblowers under the False Claims Act.

Because fraud cases are often committed behind closed doors and can be difficult to detect by regulatory agencies, the federal False Claims Act was

enacted to allow company insiders with knowledge of fraud to file lawsuits against fraudsters on behalf of the government. These private citizens are entitled to collect a percentage of the total government recovery in a successful lawsuit and are offered significant protections against employer retaliation. False Claims Act lawsuits are sometimes called "qui tam lawsuits," with the whistleblower being the "qui tam plaintiff" or "relator."

What is a "false claim"? Every time a company bills the government for or receives government funds from a government-funded program, it makes a claim for payment. In order to get paid, the recipients of these funds must certify that they comply with all applicable government regulations.

Any time a company lies about its compliance, the claim is considered a false claim. Under the False Claims Act, any person or company that "knowingly" submits a false claim to the government can be liable for civil penalties of between $10,781.40 and $21,562.80 per false claim, plus three times the amount of each false claim (treble damages) and costs of litigation.

Note that we say the company is acting "knowingly." This means that the wrongdoers know (have actual knowledge) they are not in compliance. Courts also allow cases to be brought when company officials act recklessly or with deliberate ignorance. The latter is often called "willful blindness." This means a company can't escape liability by simply burying its head in the sand and pretending they don't see what's going on.

Not only must violations be knowing or reckless, but they must also be material. For example, say a company called ACME Painters gets a Department of Defense contract to paint a warehouse. The contract specifies the facility should be painted "off-white," with a rust-resistant, 30-year paint. The president of ACME Painters has a hundred gallons of leftover paint from another job. Its good quality, rust-inhibiting, 30-year paint. But the color is "tan."

Is that a breach of contract? Yes. Was ACME's using the wrong color done knowingly? Yes. But is the violation material? Probably not. Had the company used cheap latex paint with no rust inhibitors the breach may have been material. Especially if the company lied about its actions. In this case, the Defense Department can sue the contractor for using the wrong color, but no whistleblower award is available.

A corrupt hospital or defense contractor will typically submit hundreds, even thousands, of false claims for payment before getting caught. Because the whistleblower receives between 15% and 30% of the total government recovery in a successful lawsuit or verdict, whistleblower awards are usually in the hundreds of thousands to millions of dollars.

For example, when a healthcare facility joins the Medicare program, it agrees to provide certain standards of care put forth by Medicare in exchange for government support. If this facility decides to cheat these standards of care by allowing an unlicensed physical therapist to treat one of its patients, and subsequently bills Medicare for that treatment procedure, it has submitted a false claim to Medicare and therefore violated the False Claims Act.

With the enormous amount of claims submitted to Medicare daily, it can be challenging to spot this type of violation. This is where the whistleblower comes in. Assume that a nurse walks into the physical therapy session and is surprised to find that a hospital volunteer provides the physical therapy for a patient. The nurse knows that this volunteer is not trained or licensed to do this sort of work. That nurse now has inside knowledge of a False Claims Act violation, is eligible to file a whistleblower lawsuit, and potentially eligible to collect a cash award.

False Claims Act violations are much more common than one would think. But detecting these violations can be difficult, even when violations are carried out right in front of your eyes. For example, busy staff members may rush past a hospital volunteer performing physical therapy without a second look. Busy bookkeepers and billing clerks may rush through medical records to submit their claims, without considering whether coding for those claims is correct. This is why familiarizing yourself with the various types of FCA violations discussed later in this Guide is important.

Regarding the type of information required to file an FCA lawsuit, it must be non-public, original source information. In other words, the information is derived from the independent knowledge or analysis of the whistleblower. The information is not available to the regulatory agency through any other source and was not derived from allegations made in a judicial or administrative hearing, government report, audit, investigation, or news media.

Another important rule regarding FCA claims is the “first-to-file” bar. To prevent multiple claims over the same information, only the first to file an FCA claim is eligible for an award. If you come across an incidence of fraud in your workplace, another employee may have. If another whistleblower provided the same information before you, you would be ineligible. Only the first whistleblower gets paid.

Groups of individuals are allowed to file a whistleblower claim and share the award amount, but the group must be the first to report the information and file a claim. If two whistleblowers provide *different* information and both sets of information are helpful to the government in its investigation, an award can be split between the two whistleblowers. In some cases, if the government decides not to offer an award because you were not the first to file, it may be possible to seek a fairness hearing before a judge.

To be eligible for an award under the FCA, the whistleblower must have a lawyer representing them. In addition, whistleblowers may be eligible for an FCA award even if the government uses a different set of laws to go after the wrongdoers. The False Claims Act has an alternative remedies provision that enables whistleblowers to collect their award as long as the government relied on their information.

Under the False Claims Act, a whistleblower need not prove that an individual or agency intended to defraud the government. The False Claims Act is violated when an individual or agency knows of the false claim and acts with deliberate ignorance or reckless disregard of that false claim. Even

an unreported mistake in accounting can constitute a false claim, as long as the mistake is known.

In addition to the federal False Claims Act, many U.S. states also have their own state False Claims Acts that offer cash whistleblower awards. New York's FCA offers some of the greatest protections for insiders willing to expose fraud. Your whistleblower lawyer will be able to determine which federal and state laws apply to your case.

One and a half centuries after its creation, the False Claims Act is still successful in recovering stolen government funds and thwarting dangerous behavior. Each year, FCA whistleblowers recover billions in defrauded taxpayer dollars for our nation's military, infrastructure, and healthcare programs. These courageous insiders are instrumental in putting a stop to unsafe, corrupt business practices.

SEC Program

The key to collecting a whistleblower reward under the SEC program is having original, voluntarily disclosed information relating to federal securities laws violations that have resulted in damages of over $1 million.

Award Amount: Between 10% and 30% of government recovery when sanctions are at least $1 million.

Knowledge: Original source information relating to securities violations.

Time Limits: First-to-file provisions apply.

Anonymity: Strong confidentiality. The name or identifying details about the whistleblower and the company are kept confidential even after reaching a settlement.

Other: No option for private action if the SEC declines to intervene.

Whistleblowers who report securities violations are invaluable in combating market deceit, protecting pension funds, and preventing manipulation of invested finances. To persuade whistleblowers to come forward, the Dodd-Frank Wall Street Reform and Consumer Protection Act provides both financial incentives and protections against employer retaliation for individuals who provide original knowledge of securities and commodities violations to the SEC and the U.S. Commodity Futures Trading Commission (CFTC).

The SEC Whistleblower Program is the newest of the nation's whistleblower programs. The program was created by the Dodd-Frank Act and signed into law by President Obama in 2010. Whistleblowers who provide the SEC with inside information that leads to sanctions or penalties of $1 million or more are eligible to receive an award of between 10% and 30% of the amount collected. Since its inception, the program has paid over $381 million in awards.

The SEC whistleblower program shares many similarities with the False Claims Act. For example, there are the same first-to-file rules. If you wait too long, someone may file before you and collect the award. You must also be the original source of the information. Thus, information you gathered

from something you read in the newspaper or from a friend of a friend probably doesn't qualify.

There are some differences between the SEC program and the FCA, however. First, the information must relate to a securities violation. Another difference is anonymity. When you file a complaint under the False Claims Act, you should assume that your identity will ultimately become public. Even though we have tools to protect your identity, we tell everyone to expect that it will become public at some future date. The SEC, however, allows for anonymous filing. The confidentiality provision provided by the SEC is the strongest of any federal whistleblower program. SEC whistleblowers are offered anonymity as long as an attorney represents them.

The big disadvantage of the SEC Whistleblower Program is the lack of a private right of action. If the SEC doesn't take your case, it is over. Unlike the False Claims Act, the Securities Exchange Commission's program does not allow your lawyer to privately prosecute the case in the name of the SEC.

As discussed earlier, even those living and working outside of the U.S. can file whistleblower lawsuits. This works for both the FCA and SEC whistleblower programs. For example, most pharmaceutical companies are multinational corporations that frequently do business in other countries. Over three-quarters of the prescription drugs sold in the United States are manufactured offshore.

FCPA Program

Whistleblowers can collect a reward under the Foreign Corrupt Practices Act (FCPA) for their original source information relating to FCPA anti-bribery violations or recordkeeping and accounting violations that have resulted in damages of over $1 million.

Award Amount: Between 10% and 30% of government recovery when sanctions are at least $1 million.
Knowledge: Original source information relating to FCPA violation.
Time Limits: First-to-file provisions apply.
Anonymity: Strong confidentiality.

In many countries, bribery and government corruption are common. The United States has very strong laws that prohibit bribery of foreign government officials. The law preventing foreign bribery is known as the Foreign Corrupt Practices Act. [15] Both the SEC and Justice Department enforce this law. Likewise, FCPA whistleblower awards often fall in the millions of dollars range.

The FCPA governs any U.S. or foreign companies that must register with the SEC. Most big, foreign companies that are publicly traded sell. They don't necessarily sell their stock in the U.S., but they sell what are called "ABR's" so a U.S. resident can buy a share of their stock in a foreign country. When a U.S. or multinational public company is registered

15 15 U.S.C. §78dd-1

with the SEC typically when some of the illegal conduct occurs within the U.S.

Passed by Congress in 1977, the FCPA was originally introduced to address the bribery of foreign government officials. The Congressional committee considering the Act found that:

> *"More than 400 corporations have admitted making questionable or illegal payments. The companies, most of them voluntarily, have reported paying out well in excess of $300 million in corporate funds to foreign government officials, politicians, and political parties…The abuses disclosed run the gamut from bribery of high foreign officials in order to secure some type of favorable action by a foreign government to so-called facilitating payments that allegedly were made to ensure that government functionaries discharge certain ministerial [sic] or clerical duties. Industry sectors typically involved are drugs and health care; oil and gas production and services; food products; aerospace, airlines, and air services; and chemicals.*
>
> *The payment of bribes to influence the acts or decisions of foreign officials, foreign political parties, or candidates for foreign political office is unethical. It is counter to the moral expectations and values of the American public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system. It*

> *short-circuits the marketplace by directing business to those companies too inefficient to compete in terms of price, quality of service, or too lazy to engage in honest salesmanship, or too intent upon unloading marginal products. In short, it rewards corruption instead of efficiency and puts pressure on ethical enterprises to lower their standards or risk losing business."*[16]

Bypassing the FCPA, Congress hoped to create a level playing field for legitimate businesses and restore confidence in the free market system.

The Foreign Corrupt Practices Act has two major provisions:

- Anti-bribery provisions
- Accurate books and records provisions

FCPA Anti-Bribery Violations

First, the FCPA prohibits companies from paying bribes to foreign government officials with the intent to obtain or retain any sort of business advantage in exchange.

The keywords here are "foreign" and "government" officials. In many countries, state utilities – like phone companies, power companies, oil companies – are state organizations. When a bribe is paid to a foreign minister, department head, or someone who runs a state utility company, the bribe is being paid to a foreign government official.

16 Unlawful Corporate Payments Act of 1977. (1977, September 28). H.R. 95-640.

Some examples of FCPA anti-bribery violations are bribes or payments made to:

- Obtain favorable tax treatment or avoid taxes legally due
- Avoid or reduce custom duties and tariffs
- Speed up licenses and permits
- Secure government contracts
- Keep other competitors out of the market
- Influence court cases or regulatory agency actions

In addition, receiving unlawful payments, promising to make these payments, or facilitating another with these bribes are all FCPA violations.

Note that a bribe doesn't have to be cash. Many companies will try to disguise their illegal bribery schemes, making payments via gift cards, prepaid credit cards, "commissions," bogus "speaking fees" and honoraria, "consulting fees," or lavish travel for conferences. Some companies attempt to use third-party agents and consultants to launder the bribes. It is still illegal, and all parties can be charged.

FCPA Accurate Books and Records Violations

Second, the FCPA requires companies to keep accurate books and records and have adequate accounting controls. All of the books and records sections of the SEC are kept under the FCPA because, often, the government can't prove a bribe occurred – but they can prove that the company didn't keep accurate books and records.

For example, a company's books may show that they paid a consultant $3 million in consulting fees, but the company can't define exactly what the consultant did to earn all that money. This would be a books and records violation. Businesses and individuals that falsify records can be civilly and criminally prosecuted under the FCPA.

Both U.S. citizens and foreign citizens working for U.S companies are eligible to receive an award for reporting FCPA violations. The SEC has already awarded millions to non-U.S. residents and citizens. Unless you authorized or received the bribes or ordered the illegal accounting entries, you are probably eligible for an award – even if you don't live, work, or vote in the United States.

CFTC Program

The CFTC awards whistleblowers who report violations of the Commodity Exchange Act

Award Amount: Between 10% and 30% of government recovery when sanctions are at least $1 million.
Knowledge: Original source information relating to securities violations.
Time Limits: First-to-file provisions apply.
Anonymity: Strong confidentiality.

The second whistleblower program created under the Dodd-Frank Act is called the CFTC Whistleblower Program. It is under the domain of the Commodity

Futures Trading Commission, which can pay awards for inside information about violations of the Commodity Exchange Act. The rules and parameters are virtually identical with that of the SEC Whistleblower Program.

Since its inception in 2014, the CFTC Whistleblower Program has awarded over $85 million to whistleblowers, including one $10 million award.

FIRREA Program

FIRREA awards whistleblowers who report misconduct that jeopardizes the financial security of banks, mortgage companies, and financial institutions.

Award Amount: Up to $1.6 million. Maximum awards are common.
Knowledge: Original source information of banking misconduct or fraud.
Time Limits: 10-year statute of limitations.
Anonymity: Strong confidentiality.
Other: Low burden of proof. Fast prosecution process.

FIRREA is short for the Financial Institutions Reform Recovery and Enforcement Act. Passed in 1989, FIRREA was Congress' answer to the savings and loan crisis of the 1980s. The law was originally passed to go after bank officers who ran their institutions into the ground or used customer funds to fund their own lavish lifestyles. A recent series of court cases say the law can now be used to prosecute the bank itself.

FIRREA provides prosecutors with powerful tools to prosecute people who

defraud banks and other financial institutions. As currently drafted, the law also extends to mortgage companies.

FIRREA has a 10-year statute of limitations, meaning it's not too late to prosecute fraud or misconduct that happened years ago. The law also has a low burden of proof, meaning it's easier for prosecutors to get convictions – and for whistleblowers to win awards. Because the law is civil, prosecuting a bank is also much faster. This is another benefit for whistleblowers. Faster prosecutions mean faster awards. Bank whistleblowers also like the law because it affords significant confidentiality.

To qualify for a FIRREA whistleblower award, one needs original source information about banking misconduct or fraud. This type of wrongdoing could include banks that ignore FDIC, Federal Reserve, or OCC regulations. Other misconduct may also be eligible for an award.

Other Federal Whistleblower Programs

In addition to the FCA, SEC, CFTC, and FIRREA programs, numerous other programs may be right for your case. For example, if you are aware of healthcare fraud involving a state or private insurance company, like Blue Cross Blue Shield and Aetna, several U.S. states have insurance whistleblower laws governing the actions of these insurance companies.

IRS Whistleblower Program

In addition, the IRS Whistleblower Program allows private citizens to file a claim alleging non-payment of taxes on behalf of the IRS. The IRS whistleblower program provides for two types of awards. If the taxes, penalties, interest, and other amounts in dispute exceed $2 million, and other qualifications are met, the IRS will pay 15% to 30% of the amount collected. If the case deals with an individual, his or her annual gross income must be more than $200,000.

The IRS also has an award program for other whistleblowers whose information does not meet the dollar thresholds of $2 million in dispute or cases involving individual taxpayers with a gross income of less than $200,000. The awards through this program are a maximum award of 15%, up to $10 million.[17]

Motor Vehicle Whistleblower Safety Act Program

Whistleblowers are also collecting large cash awards under the Motor Vehicle Whistleblower Safety Act.[18] Passed by Congress in December 2015, the Motor Vehicle Whistleblower Safety Act was designed to assist the U.S. Department of Transportation and National Highway Traffic Safety Administration in detecting potential violations of vehicle safety laws.

Examples of safety violations that would have been qualified under the Motor Vehicle Whistleblower Safety Act are the GM ignition switch defects, Toyota's defective accelerator pedals, and the Takata airbag ruptures.

17 IRS Whistleblower Informant Award. (2019, February 6). IRS.
18 49 U.S.C. 30172

This whistleblower program pays large cash awards to employees of auto dealerships, auto manufacturers, vehicle part suppliers, and other industry employees who report safety violations that could cause unreasonable risk of death or serious physical injury. Violations do not have to occur in the United States as long as some of the involved auto parts or vehicles are distributed in the U.S. market.

Whistleblowers who file a claim under the Motor Vehicle Whistleblower Safety Act are eligible to collect 10% to 30% of the total monetary sanctions over $1 million that the government imposes based on their original source information. Like other whistleblower programs, the Motor Vehicle Whistleblower Safety Act protects whistleblowers from unlawful employer retaliation. It also protects the whistleblower's identity during an investigation. Motor Vehicle Whistleblower Safety Act whistleblowers do not have to be U.S. citizens or residents to collect an award.

FEDERAL WHISTLEBLOWER PROTECTIONS

Each whistleblower program offers certain legal protections as another incentive to come forward and report fraud. Many programs keep the case secret for months or years. Others withhold the whistleblower's identity throughout the investigation or indefinitely. And many programs offer significant financial compensation for employees who are harassed, threatened, fired, or otherwise retaliated against for reporting misconduct.

When an employee or other individual suspects fraud is occurring within a facility, and chooses to voice their concerns about that activity, either to an internal supervisor or externally, the employer may panic and respond by firing, demoting, threatening, or harassing that employee.

The courts, the Department of Justice, and the SEC are very protective of whistleblowers. There is no dedicated program specifically designed to protect whistleblowers. Instead, most whistleblower programs have incorporated provisions that help protect the whistleblower's identity and offer a financial remedy to whistleblowers who experience retaliation.

Identity Safeguards

For example, the FCA protects whistleblowers in part by requiring that claims be initially filed under seal. This means the defendant will not be

made aware of any whistleblower claim for at least 60 days. During this time, the government will conduct its investigation into the claim. If the government needs more time, they can obtain an extension. Most whistleblower claims end up remaining under seal for at least 6 months. In some cases, a whistleblower claim may remain under seal for years.

Cases filed under seal are kept very secret. Even the whistleblower and their lawyer can be sanctioned if they tell anyone they have filed a claim. The secret nature of these cases allows the government to investigate the claims without the company knowing. While the purpose of keeping a case under seal is to prevent the wrongdoer from hiding damaging evidence, altering documents, or making it more difficult for prosecutors to determine the truth, this window of anonymity is very helpful for whistleblowers who want time to prepare for any repercussions or seek other employment.

When the government completes its FCA investigation, the court will likely order it unsealed. In rare cases involving national security, the case can remain sealed. Once the case is unsealed, the FCA whistleblower may be identified. Depending on the type of whistleblower case, your position may remain completely confidential throughout the entire process. However, it is important to prepare for the likelihood that your whistleblower status will become known, with or without warning.

Some courts allow whistleblowers to file the case under the name of an entity to help protect the whistleblower's identity. Such efforts can be fairly

effective, but FCA whistleblowers should assume that their identity will be revealed.

At this point, you may get media interview requests, friends and coworkers may treat you differently, and you could be exposed to harassment, demotion, or firing. Your lawyer can discuss these scenarios with you well in advance and prepare you for the appropriate responses.

Unlike the FCA, under the SEC whistleblower program, the whistleblower is rarely, if ever, identified to the public. The SEC Whistleblower Program is very serious about protecting securities fraud whistleblowers against any form of retaliation, including demotion, firing, or discrimination when they file a complaint involving suspected securities fraud.

Anti-Retaliation Provisions

In addition to withholding the whistleblower's identity, both federal and state whistleblower laws have powerful anti-retaliation provisions. Under the False Claims Act, employer retaliation in response to "efforts to stop one or more violations" of the False Claims Act is illegal. This includes discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in the terms and conditions of employment. In some situations, it is also illegal for a company to impose policies that prevent the ability of its employees to report suspicions of fraudulent activity.

When an employer chooses to retaliate against an employee for voicing their concerns about a potential False Claims Act violation, the consequences can be expensive. Under the federal FCA, whistleblowers who experience workplace retaliation are entitled to remedies including:

- Job reinstatement with the same seniority status as before retaliation
- Twice the amount of back pay or lost wages
- Interest on the back pay or lost wages
- Compensation for any special damages sustained as a result of retaliation
- Litigation costs and reasonable attorneys' fees

Employees have up to three years to file a False Claims Act retaliation claim against that employer in federal court. Note that, if you have a pending False Claims Act lawsuit, filing the retaliation case becomes tricky.

Since the whistleblower suit is under seal, the retaliation case can't be served on the wrongdoer until the government's investigation concludes and the seal is lifted. In this situation, we can become creative and use another whistleblower program or anti-retaliation law to craft an action that can be brought immediately.

The Sarbanes-Oxley Act of 2002 (SOX) protects workers of publicly-traded companies or companies with SEC-reporting requirements (and contractors and subcontractors of these companies) who disclose information to the SEC about violations of federal securities laws, including mail and wire fraud, bank fraud, securities fraud, or any SEC rule.

SOX offers protection for both internal and external whistleblowers.

Successful SOX anti-retaliation cases must prove that

1. the injured party engaged in protected activity,
2. the injured party suffered an unfavorable consequence, and
3. a causal connection exists between the protected activity and the unfavorable action. Claimants have 180 days to file a retaliation complaint.

Remedies under SOX include reinstatement (including an adjustment for seniority status), back pay with interest, and occasionally damages for reputational harm or emotional distress.

The Dodd-Frank Wall Street Reform and Consumer Protection Act protects publicly-traded company workers who disclose information on federal securities laws violations to the SEC. Protections may or may not extend to those who report violations internally. Under Dodd-Frank, no employer may "discharge, demote, suspend, threaten, harass, directly or indirectly, or [discriminate]" against a whistleblower because that whistleblower provided information to the SEC, assisted in an SEC investigation or made disclosures protected by SOX.

You don't have to win an SEC award to be protected by Dodd-Frank. If you have a good faith basis to believe that a person or company has violated securities laws, you are probably protected. It doesn't matter if the SEC declines your case.

Successful Dodd-Frank whistleblower retaliation claims must prove

1. the whistleblower was engaged in a protected activity,
2. adverse employment action occurred, and
3. the employment action was related to the protected activity. Claimants have 6 years to file a retaliation complaint (up to 10 years in limited circumstances).

Remedies under Dodd-Frank include reinstatement (including an adjustment for seniority status), double back pay with interest, litigation costs, expert witness fees, and reasonable attorneys' fees.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) protects employees of banks and financial institutions who report any possible violation of any law or regulation (including FDIC and Federal Reserve cybersecurity rules), waste or danger to the public (including a bank's failure to safeguard vulnerable customer information). FIRREA protections do not apply to whistleblowers who report internally or who deliberately participated in the wrongdoing.

FIRREA anti-retaliation provisions have yet to be tested in a reported court case. However, it may cover termination, demotion, denial of promotion, threats, harassment, or blacklisting. Claimants have 2 years to file a retaliation complaint.

In addition, there is the Whistleblower Protection Act. A federal agency violates the Whistleblower Protection Act when it takes or fails to take

(or threatens to take or fail to take) a personnel action with respect to any government worker or job applicant because of any disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

It is important to remember that an employer can still fire you for being a bad employee, even if you've tried to stop an act of misconduct. Some corrupt employers may try to set up whistleblowers for failure so they can fire them and prevent them from gathering more evidence. If you have filed a whistleblower lawsuit against your employer, don't fail to keep up your work performance.

For whistleblowers who have filed a claim against their employer, we suggest you stay in constant communication with your whistleblower attorney who can help develop a strategy to protect you from being fired and tell you what to say to trigger the anti-retaliation safeguards.

We also suggest you keep a diary of the times and dates of all activity relevant to your whistleblower case and any potential retaliatory activity on behalf of your employer – making sure the diary isn't kept at work or on a work computer. These precautions can help ensure that your rights and privileges as a whistleblower are protected throughout the process.

NEW YORK STATE WHISTLEBLOWER LEGISLATION

The State of New York has enacted legislation that allows whistleblowers to report misconduct, recover damages for employer retaliation, and earn cash awards. While the New York False Claims Act (NYFCA) whistleblower program largely mirrors federal whistleblower programs, it contains unique provisions.

New York has one of the most powerful whistleblower laws in the nation. Passed by the state legislature in 2007, the New York False Claims Act has been described as a "federal False Claims Act on steroids." New York is one of 29 states with its own whistleblower reward program.

The New York False Claims Act largely mirrors the federal FCA but with some important differences. It includes more powerful anti-retaliation provisions, the extension of the law to local governments such as cities, the inclusion of tax claims, and more relaxed legal standards making it easier to collect a reward.

In this section, we will discuss some of the differences between the federal and New York False Claims Act and give a quick overview of how the law operates.

The New York False Claims Act

Individuals with information regarding fraud, waste, or abuse of New York State government funds or property, including the Medicaid program or subcontractor funds, may be eligible to collect a cash award by bringing a whistleblower lawsuit on behalf of the State of New York.

Award amount: Up to 30% of the total government recovery.
Knowledge: Original source information.
Time Limits: First-to-file bar. 10 years of violation.
Anonymity: Unlike the federal FCA, the NYFCA allows whistleblowers to withdraw their case under seal if the government declines to intervene.

Enacted in 2007, the New York False Claims Act (NYFCA) is similar to the federal FCA, offering whistleblower protections and large cash awards to individuals who report misconduct involving the misuse of government funds or property. But there are a few distinct differences.

First, the NYFCA whistleblower program applies only to cases involving New York State government programs or property, including "any New York county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state."

Under the NYFCA, a false claim is "any claim which is, either in whole or part, false or fraudulent." Examples of NYFCA violations include (but are not limited to):

- Benefitting from inadvertent submission of a false claim, discovering the claim is false, and then failing to disclose the false claim within a reasonable time.
- Knowingly buying public property from one who cannot lawfully sell the property
- Knowingly concealing or decreasing a financial obligation to the state or local government. These types of violations are known as reverse false claims. A common reverse false claims example would be a tax case where the taxpayer is concealing money to avoid taxes. Another example might relate to a wastewater permit that says a company must pay $100 for every gallon of toxic waste discharged into the Hudson River. If the company dumps 1000 gallons but doesn't tell the state, it has "knowingly concealed" or "decreased an obligation" to pay money owed to the state.
- Knowingly making a false statement material to a false claim
- Knowingly presenting false or fraudulent claims to a government entity for payment
- Illegally billing the government for a defective service or product that was never delivered
- Conspiring to commit any of the violations listed above

If the state chooses to intervene in a case filed under the NYFCA, the qui tam relator receives between 15% and 30% of the total recovery. If the New York Attorney General intervenes and takes over the case, the reward will be between 15% and 25% of whatever the state collects from the wrongdoer. If your own lawyer prosecutes the case, the reward will be

between 25% and 30%. The court will generally also award attorney's fees and costs.

Under the NYFCA, total recovery amounts are dependent on losses suffered, the cost of litigation, and the number of false claims. Total recovery in NYFCA cases typically amounts to:

- Triple the amount of damages that the NYFCA violations caused the state,
- Costs of litigation, plus
- Penalties of $6,000 to $12,000 for each false claim. (Higher than the federal FCA's $5,500 to $11,000 per violation).

Tax Fraud and the New York False Claims Act

The federal False Claims and those of most states specifically exclude tax claims. Although the IRS has a whistleblower program for unpaid and unreported federal taxes, the law does not allow whistleblowers and their lawyers to privately prosecute tax violations. If the IRS does not take up your case, it's over. No appeal, no right of private prosecution.

That isn't the case in our jurisdiction. New York State whistleblowers can directly bring and prosecute tax claims for unpaid state taxes if the wrongdoer has net income or sales of over $1 million per year and damages that exceed $350,000.

Under NY State Finance Law Art. 13 §189(4)(a), whistleblowers can bring an action involving unpaid taxes provided that "*(i) the net income or sales of the person against whom the action is brought equals or exceeds one million dollars for any taxable year subject to any action brought pursuant to this article; (ii) the damages pleaded in such action exceed three hundred and fifty thousand dollars.*"

In December 2018, Sprint settled with the New York Attorney General's Office. A whistleblower had filed a claim under the False Claims Act, alleging that Sprint failed to collect state and local sales taxes on wireless phone calls. The fines and penalties in that case were $330 million. The whistleblower in that case was awarded $62.7 million.

Longer Statute of Limitations

New York's whistleblower legislation has a long statute of limitations. Whistleblowers have 10 years to file a claim. The federal law is more complex, but it generally establishes a 6-year deadline.

NY State Finance Law Art. 13 §192(1) provides that, "A civil action under this article shall be commenced no later than ten years after the date on which the violation of this article is committed. Notwithstanding any other provision of law, for the purposes of this article, an action under this article is commenced by the filing of the complaint."

Often, people do not know whistleblower rewards are available. By providing a 10-year statute of limitations, New York has made it easier for former employees to report fraud that occurred several years in the past.

New York Whistleblower Violations Are Easier to Prove

Many whistleblowers come forward only after they have suffered retaliation. Most of the people who seek the New York Whistleblower Lawyer Network's assistance come to us after they have quit. Some come to us after being fired.

The federal and state False Claims Act statutes are considered anti-fraud laws. In almost every jurisdiction, lawyers must plead fraud with "specificity." That means the lawyers drafting your whistleblower complaint must detail the "who, when, when, where, and how." Specific examples of fraud are hard to come by after an employee leaves his or her place of employment. It is frustrating to know that rampant fraud is taking place but being unable to find even a single example.

In a typical lawsuit, lawyers can use discovery techniques such as written questions or depositions to elicit important facts. That is not the way it works in the typical whistleblower claim; one must allege specific incidents of fraud complete with names and dates. If you can't, the result is likely a dismissal of the claim.

New York is the exception. The state's False Claims Act gives more leeway to whistleblowers who have evidence of fraud but lack specifics.

NY State Finance Law Art. 13 §192(1a) states that "the qui tam plaintiff shall not be required to identify specific claims that result from an alleged course of misconduct, or any specific records or statements used, if the facts alleged in the complaint, if ultimately proven true, would provide a reasonable indication that one or more violations of section one hundred eighty-nine of this article are likely to have occurred, and if the allegations in the pleading provide adequate notice of the specific nature of the alleged misconduct to permit the state or a local government effectively to investigate and defendants fairly to defend the allegations made."

New York Whistleblowers Must Provide Original Information

The State of New York is one of the most aggressive in the nation when it comes to prosecuting fraud against taxpayers. From high rewards to excellent whistleblower protections, becoming a whistleblower in NYS offers many benefits.

Under the NYFCA, if you hope to receive a reward, you must be the original source of the information about the fraud or misconduct. The state specifically excludes from rewards information based on allegations contained in "a state or local government criminal, civil, or administrative hearing in which the state or a local government or its agent is a party," allegations included in a government "report, hearing, audit, or investigation" or information "found in the news media."

There are times, however, when an investigation may be ongoing, but a whistleblower can still receive a reward. Typically, this happens if the whistleblower has unique information not known to investigators.

New York Whistleblower Retaliation Protections

Unfortunately, 20% or more of whistleblowers will experience some type of retaliation. New York has stiff penalties for employers who retaliate against present or former workers who blow the whistle.
Retaliation may include termination, demotion, promotion denial, benefits denial, suspension, being placed on unpaid leave, reassignment of duties, job relocation, threats, harassment, and other forms of discrimination.

Under the NYFCA's anti-retaliation provisions, whistleblowers are entitled to "all relief necessary to make the employee, contractor, or agent whole." Relief shall include but not be limited to:

- An "injunction to restrain continued discrimination"
- Job reinstatement "to the position such person would have
- had but for the discrimination or to an equivalent position"
- "Reinstatement of full fringe benefits and seniority rights"
- Two times back pay for lost wages, plus interest
- Special damages sustained as a result of the discrimination
- Litigation costs and "reasonable attorneys' fees"
- Punitive damages in cases of particularly egregious behavior

The NYFCA anti-retaliation protections are broader than those included in the federal False Claims Act. In the State of New York, whistleblowers need not file an FCA lawsuit to be protected.

> The NYFCA protects from retaliation "any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action brought under [the NYFCA] or other efforts to stop one or more [NYFCA] violations."

New York's anti-retaliation protections are somewhat unique in that they specifically extend to former employees.

The anti-retaliation protections in New York don't stop with the False Claims Act. Two other state laws provide valuable protections.

Section 740 of New York's Labor Law prohibits an employer from taking retaliatory action against an employee when the employee discloses information about the employer's policies, practices, or activities to a regulatory, law enforcement, or other similar agency or public official. Unlike the New York False Claims Act, these protections only apply if the employee first reports the improper activities internally and gives the

employer a reasonable opportunity to correct the alleged violation. If the employer takes retaliatory action, the employee may seek reinstatement to his or her former position (or an equivalent position), back wages, lost benefits, and attorneys' fees.

A parallel provision under section 741 of the Labor Law allows courts to assess an additional $10,000 if the aggrieved employee is a healthcare worker, and the court finds the employer acted in bad faith. This section applies when a healthcare worker seeks to report conduct that poses a "substantial and specific danger" to public health or a "significant threat" to the health of a specific patient.

WHISTLEBLOWER AWARD AMOUNTS

Each whistleblower program offers the relator a percentage of the funds recovered through a settlement or verdict. That percentage varies based on the program used to file the whistleblower claim. For each program, receivable awards fall within a specific range. Whether you land at the very top of that dollar range or the very bottom depends largely on how well you prepare your case.

The New York False Claims Act tracks the federal statute when it comes to rewards. If the New York Attorney General intervenes and takes over the case, the reward will be between 15% and 25% of whatever the state collects from the wrongdoer. If your own lawyer prosecutes the case, the reward will be between 25% and 30%. The court will generally also award attorney's fees and costs.

The actual percentage is based on several factors, including the value of the information provided by the whistleblower, how much assistance the whistleblower and their lawyer provided, and whether the misconduct involved a safety issue.

Both the federal and New York False Claims Act allow the government to collect triple damages. Fines under the New York law are between $6,000

and $12,000 per violation. Because wrongdoers often submit hundreds or thousands of false claims, the number of violations can be huge, and that translates to big fines resulting in huge whistleblower rewards.

Determinations of the exact amount awarded to a whistleblower depend on the monetary range offered by each applicable statute. Within that range, the court determines the exact whistleblower award amount based upon:

- Ability to follow reporting requirements and required deadlines
- Value of information supplied by whistleblower
- Amount of damage resulting from misconduct
- Whether or not the government chooses to intervene
- Extent to which whistleblower aids the investigation
- Extent to which whistleblower participated in misconduct
- Timeliness of the whistleblower claim
- First-to-file status

Most cases are settled, but if a case does go to court, the government can receive both triple damages and fines. For example, if New York Medicaid paid $2 million in false claims to a hospital, the government damages would be $2 million. Triple that amount, and the damages are $6 million.

Whistleblowers whose information leads to successful government recovery may also receive amounts to cover reasonable attorneys' fees and litigation costs.

Now, the New York False Claims Act also penalizes each false claim. From the time the hospital submitted invoices knowing that illegal kickbacks were involved until the problem was corrected, the hospital would be liable for millions in civil penalties.

If the State of New York recovered, for example, a total of $15 million, the whistleblower award would be up to 25%, or $4 million. If the government didn't intervene in the case, the award could increase to up to 30%, or $4.5 million.

Notice that we say "up to" 30%. This is because, as noted above, certain factors determine the amount. For example, if the whistleblower contributed to the False Claims Act violations, they may receive a lesser amount. If a whistleblower had initially been involved in the alleged scheme, then later realized it was wrong and decided to blow the whistle, the award amount would be lessened (but still within the range required by statute).

What Happens When The Whistleblower Participated in the Fraud?

Some of the best whistleblowers are those closest to the fraud. It's better to come forward and cooperate than spend the next 10 years looking over your shoulder.

Under New York law, you can still qualify for a reward even if you participated in the wrongdoing. We often see this with billing clerks who

were ordered by their boss to submit false billing statements to Medicaid. Typically, prosecutors aren't interested in rank and file workers or those just carrying out orders.

If you merely participated in the wrongdoing and nothing more, you can receive a reward. If you were the mastermind or a leader of the wrongful scheme, the court could reduce your reward to less than 15%. If you were criminally convicted for your role in the scheme, you are prohibited from receiving a reward.

Section 190 (8) of the New York False Claims Act provides that "If the court finds that the qui tam civil action was brought by a person who planned or initiated the violation. . . then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise be entitled to receive. . . If the person bringing the qui tam civil action is convicted of criminal conduct arising from his or her role in the violation. . . that person shall be dismissed from the qui tam civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to supersede or intervene."

If you are worried about your involvement in a questionable scheme, speak with the New York Whistleblower Lawyer Network first. In NY State, prosecutors can grant immunity to whistleblowers.

Maximizing Awards

Consulting an experienced whistleblower attorney is crucial to maximizing the cash award amount. Not only does the whistleblower attorney help their client collect evidence and offer investigative services to obtain proof of fraud, an experienced attorney understands the legal complexities of the whistleblower claims process, how to adhere to filing procedures, and how to meet the deadlines required for each specific case.

Claiming a reward requires filing a lawsuit under seal in the New York Supreme Court. You need a lawyer to file a lawsuit in the name of New York State or a city, county, or another local government.

Like the federal whistleblower program, New York typically only pays an award to the first person who files a False Claims Act case. So, if you think you may qualify for a reward, it is important to contact an experienced New York whistleblower attorney right away.

Multimillion-Dollar New York Whistleblower Awards

In 2019, Walgreen Co. agreed to pay $22.4 million to resolve whistleblower allegations that its New York subsidiary, College Point-based Trinity HomeCare, charged Medicaid for improperly prescribing and dispensing the pediatric drug, Synagis. The whistleblower, a New York doctor named Susan Vierczhalek, received a $4 million share of the recoveries.

In 2018, a New York whistleblower received a $62.7 million award after filing a lawsuit against Sprint Communications over unpaid taxes. Sprint paid a total of $330 million to resolve the whistleblower's allegations, filed under the New York False Claims Act. This has been the largest recovery to date under a single state False Claims Act.

In 2018, a whistleblower received $15.4 million after filing a tax evasion case against Harbinger Capital Partners. New York State and New York City recovered a total of $30 million as a result of the tipster's information. In a press release announcing the settlement, the DOJ referred to the New York False Claims Act as "a powerful tool for government to use to compel tax law compliance."

In 2017, Israeli whistleblower Dani Shemesh received a $10 million award after blowing the whistle on Manhattan-headquartered CA Inc., a government contractor that offered illegal discounts to private buyers. The total settlement paid by the defendant amounted to $45 million.

In 2014, a New York Medicaid whistleblower helped both the state and the federal government recover $10 million in a case against CareMed Pharmaceutical Services. A specialty pharmacy located in New Hyde Park, NY, the defendant allegedly engaged in fraudulent practices in connection with its sale of prescription drugs to Medicare and Medicaid beneficiaries. The whistleblower received a reward of $1.85 million.

TIME LIMITS AND STATUTES OF LIMITATIONS

Because of the various time limits involved in filing a whistleblower claim, it is critical that you don't wait too long to start the process. Most whistleblower statutes include "first-to-file" bars, meaning you must be the first to report misconduct to collect a cash award. In addition, numerous statutes of limitations can apply to each claim. Meeting all legal deadlines is critical to every whistleblower case.

Do not hesitate to contact one of the New York Whistleblower Attorney Network's lawyers the minute you suspect you may have a claim. Delay is the number one fatal flaw in filing a successful whistleblower claim. Several important deadlines exist across the process, and missing any one of them can impede your chances of success. You may have the strongest case in years, worth millions to both the government and you, but if you don't file promptly, it's worth nothing.

First, if another employee or government agent reports concerns before you, you can lose all rights to a whistleblower cash reward under the first-to-file bar.

Second, statutes of limitations dictate how long you have to file a claim. Statutes of limitations in whistleblower lawsuits are complex and highly dependent on each specific case.

For example, under the federal New York False Claims Act, a whistleblower lawsuit must be brought within 10 years after the date on which the violation is committed. Other state and federal whistleblower legislations impose shorter deadlines.

The earlier you report, the better the potential of earning a large award. In addition to the NYFCA, many associated statutes may impose time limits. These deadlines can be as short as 30 to 180 days. Contacting an experienced whistleblower lawyer immediately can mean the timely analysis of those whistleblower laws that apply to your specific case, ensuring that all deadlines are met.

COMMON TYPES OF FRAUD

Knowing what constitutes misconduct under the various whistleblower laws can help you determine whether you have a case. A majority of whistleblower claims filed today are based on the types of fraud listed here, including the provision of substandard products or services, misrepresentation, records falsification, illegal kickbacks, off-label marketing, Stark law violations, manufacturing violations, contract compliance violations, procurement fraud, securities violations, and cybersecurity violations.

As mentioned earlier in this Guide, the type of whistleblower program one uses to file a claim depends on the type of misconduct they are reporting. Here, we will cover the most common types of fraud and regulatory violations seen in whistleblower cases today.

Under the False Claims Act, whistleblowers are eligible for a cash award if they have original source knowledge of false claims being submitted to the U.S. government for payment. Therefore, a large majority of today's False Claims Act cases involve health care fraud, pharmaceutical fraud, or government contractor fraud.

Health Care Fraud

Up to three out of four False Claims Act cases involve some form of health

care fraud. This category encompasses a wide range of agencies, including hospitals, clinics, private practices, medical billing centers, health care facilities, and all other entities that bill government health care programs for products or services.

Approximately 80% of all U.S. health care expenses are paid through state Medicaid programs, Medicare, and veterans' programs like TRICARE. These government-funded programs require that health care facilities provide a high standard of care and distribute funds in a way that ensures this quality level of care. When a health care provider supplies substandard care or poor-quality services and submits claims for those services, or falsified information supporting a claim for payment, that provider may be violating the False Claims Act.

Unfortunately, many health care facilities take advantage of government-funded programs in an attempt to make a profit. Corrupt activities like double billing, illegal kickbacks, shortcuts in staffing, billing for inadequate services, falsification of medical records, and off-label drug marketing violate federal and state False Claims Acts and put financial gain over the interest of the patient.

Common signs of fraud in health care facilities include:

- Inadequate staffing, equipment, or resources
- Unlicensed or insufficiently trained staff
- Poor care standards, neglect, or abuse

- Misrepresentation of services
- Falsification of medical records
- Staffing up prior to inspection
- Illegal kickbacks
- Unbundling and upcoding
- Off-label marketing

Inadequate Staffing, Equipment or Resources

When a physician, nurse or health care resident is faced with a constant shortage of staff, equipment that is difficult to locate or is non-functioning, and/or other supplies or services that are constantly overbooked or poorly operated, the health care residents and patients inevitably suffer from a lack of adequate care – and potentially face dangerous situations.

Many corrupt health care facilities choose to keep staff levels at a bare minimum, refuse to maintain functioning equipment and supplies, and take other similar shortcuts in an attempt to profit from Medicaid, Medicare, and other government-funded health care programs. When a facility submits a claim for payment to Medicaid or Medicare for services that do not meet the required high standard of care, that facility may be violating the False Claims Act.

Unlicensed or Insufficiently Trained Staff

Another tactic that dishonest health care facilities use to illegally profit

from Medicaid, Medicare, or TRICARE is to allow unlicensed or untrained staff to perform certain services. While hiring untrained staff or letting unqualified personnel perform certain duties may save a facility money and time, unqualified staff providing treatments or writing prescriptions for patients and residents raises the potential for life-threatening mistakes.

Medicare and Medicaid require that all treatments, surgeries, and other services are performed by qualified, licensed, or credentialed staff. When a facility submits a claim for payment to Medicaid or Medicare for services performed by unqualified or insufficiently trained staff, that facility may violate the False Claims Act. No "mistake" or error by the untrained staff member is necessary to file a health care whistleblower claim. The fact that the staff member is performing services they are unqualified for is enough to file a claim.

Poor Care Standards, Neglect or Abuse

When a nursing home, hospice, assisted living facility or other health care provider neglects a patient, fails to supply prescribed medications or treatments, fails to assist with hygiene or other mobility needs, uses physical force or aggression, participates in unauthorized or inappropriate physical or chemical restraint, fails to provide proper nutritional needs, fails to maintain a clean and safe environment for the resident (including providing working plumbing, electricity, and other necessities), or fails in any other aspect of the resident's well-being and then bills Medicaid or Medicare for its services, that health care facility violates the False Claims Act.

Misrepresentation of Services

Another example of fraud against government-funded health care programs includes the deceitful representation of patient numbers, diagnoses, or care plans. Dishonest health care facilities may attempt to profit from Medicaid, Medicare, or TRICARE by reporting false information on medical records, documents, care plans, or patient population charts.

This category includes diagnosing a terminal illness to either admit a healthy Medicare beneficiary to a hospice facility, or to perform costly, yet medically unnecessary treatments on a healthy beneficiary. All treatments must be medically necessary and performed by qualified staff. False diagnosis can be difficult to detect, but laboratory test results or radiographs that suggest a false diagnosis can be strong evidence of fraud. Health care facilities may also falsify treatment schedules in an attempt to obtain payment for services that were never performed or for medically unnecessary services. In addition, reporting a false bed count to increase Medicare or Medicaid payments is another form of False Claims Act violation.

Falsification of Medical Records

Like the misrepresentation mentioned above, falsifying medical records is another way health care facilities may attempt to profit from a government program that violates the False Claims Act. Even slight modifications to medical records are serious issues, as these slight modifications are likely occurring more often than you realize. Alterations of or false recordings

of names, dates, times, medication dosages, treatment staff, treatment procedures, diagnoses, or any other information on medical records is illegal.

All treatments must be medically necessary and performed by qualified staff. Anyone who notices the falsification of medical records should contact a health care whistleblower lawyer right away to learn their options in reporting this information and putting a stop to a dangerous practice.

Staffing Up Prior To Inspection

Suddenly increasing staff numbers before a facility inspection is a major warning sign that the health care facility is not functioning at the level required by law. Inspections are meant to evaluate the function of a facility occurring on a daily basis.

When a facility scrambles to double the staff, repair long-broken lighting plumbing or other neglected maintenance issues, replace broken equipment, move in new equipment, or implement new activities for residents that are not normally provided, it often means that the facility is attempting to hide deficiencies from regulators.

Make note of any noticeable changes that occur in the health care facility prior to inspection by a regulatory agency. These changes may indicate inadequacies and illegal practices occurring within your facility, knowledge of which may qualify you for a whistleblower cash award.

Illegal Kickbacks

The federal Anti-Kickback Statute prohibits offering, paying, soliciting, or receiving anything of value to induce or reward referrals or generate business with a Federal health care program like Medicare or TRICARE. The thing of "value" given in exchange for a referral or service can be anything, including cash, discounted office rent, free office staff, speakers' fees, expensive travel arrangements, or medical directorships.

The underlying concept is that medical professionals should make decisions based on what is best for the patient rather than how much money they can get from a provider. Several examples of common anti-kickback violations include:

- Durable medical equipment manufacturers paying incentives to medical providers or staff members to prescribe products to Medicare beneficiaries.
- Ambulance companies providing taxi transport services for ambulatory patients in return for hospital patient referrals.
- Diagnostic laboratories providing discounted or free tests to hospitals or clinics in return for specimen referrals.

Providers who violate the Anti-Kickback Statute may be assessed monetary fines under the Civil Monetary Penalties Law, which imposes civil fines of up to $50,000 per kickback plus three times the value of the kickback. Violations may also be punished under the federal False Claims Act.

Stark Law Violations

The Stark Law, also known as the Physician Self-Referral Law, prohibits physicians from referring Medicare/Medicaid patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship. It also prohibits the designated health services entity from submitting claims to Medicare/Medicaid for services resulting from a prohibited referral.

The three most common Stark law violations center on physician-owned laboratories, home healthcare services, and radiology/imaging services. Other "designated health services" under the law include:

- Physical therapy,
- Occupational therapy;
- Radiation therapy services;
- Durable medical equipment (DME) and supplies;
- Prosthetics, orthotics, and prosthetic devices and supplies;
- Outpatient prescription drugs; and
- Inpatient and outpatient hospital services.

Like violations of the Anti Kickback Statute, a violation of the Stark Law can trigger substantial fines and penalties – along with cash whistleblower awards.

Unbundling and Upcoding

Billing schemes like unbundling and upcoding are a favorite among fraudulent health care facilities. Many health care facilities are required to submit claims for reimbursement using the Healthcare Common Procedure Coding System from the American Medical Association's Current Procedure Terminology. This system assigns certain billing codes to treatments and services. Corrupt facilities may attempt to maximize their reimbursement through "unbundling" or "upcoding."

Upcoding health care fraud is where one provides a service to a patient, then assigns a more expensive code to that service when submitting a claim for payment. Similarly, health care facilities who unbundle services and charge for each component separately to obtain higher reimbursement, rather than following regulations requiring that the service be billed as a package, or "bundled" cost under a single code, may be violating the False Claims Act. Medical billing clerks and bookkeepers, as well as treatment staff, may recognize these discrepancies in billing codes. If so, they could qualify for a health care whistleblower cash award.

Off-Label Marketing

Marketing drugs or medical devices for uses not approved by the federal Food and Drug Administration (FDA) is considered "off-label marketing" and a dangerous, yet common practice. When a pharmaceutical company

markets drugs for off-label uses, it endangers patients and wastes valuable taxpayer dollars meant for the safe treatment of patients.

Drug companies and medical device manufacturers who want to increase profits on their new invention may choose to come up with several alternative applications of their drug or device. A drug approved to treat condition "A" may not get much use, especially when condition "A" is rare. So the drug manufacturer may market the drug for both condition "A" and condition "B" (an FDA unapproved use). Any health care facility that bills Medicare or Medicaid for treatments involving these unapproved uses of drugs or devices violates the False Claims Act. Billion-dollar settlements have come out of False Claims Act cases involving off-label marketing practices.

A wide variety of individuals serve as FCA whistleblowers in the health care arena, including patients, residents, family members, physicians, nurses, medical clerks, EMTs, medical device representatives, pharmacists, administrators, accountants, and financial officers.

Pharmaceutical Fraud

As pharmaceutical fraud is a form of health care fraud, much of the misconduct listed above applies to the pharmaceutical industry. For example, illegal kickbacks and off-label marketing are two common False Claims Act violations involving the pharmaceutical industry. However, some forms of fraud are unique to the industry, including the U.S. Food

and Drug Administration (FDA) Current Good Manufacturing Practice (cGMP) violations and pay-for-delay schemes.

cGMP Violations

Both domestic and international whistleblowers who report FDA cGMP violations, fraudulent neglect of safety standards, ingredient misrepresentations, defective medical devices, and policies that promote deceitful FDA reporting may qualify for an FCA whistleblower award.

Under the Federal Food, Drug and Cosmetic Act, the FDA regulates not only the manufacturing of prescription medications but also many of the component ingredients. The Act requires that pharmaceutical suppliers of active pharmaceutical ingredients (APIs), intermediates, and excipients follow current good manufacturing practices in the manufacturing, processing, packing, and storage of these raw materials.

In addition, the FDA requires that pharmaceutical laboratories establish scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity.

Through its cGMP regulations, the FDA also regulates raw material acquisition, facility equipment maintenance, staff qualifications, quality

management systems, standard operating procedures (SOPs), testing lab operation, sterile environments, and data and quality control records protocols. You can find FDA pharmaceutical manufacturing guidelines in C.F.R. Title 21, §§ 1-99, 200-499, and 600-1299.

Though international facilities manufacture a majority of the APIs and excipients that are sold to U.S. formulators today, they are still subject to FDA regulations. They must produce the same standard of quality as any domestic manufacturer.

Typically, when an FDA inspection or complaint suggests that a pharmaceutical supplier is manufacturing FDA-regulated products without meeting cGMP requirements, the FDA will take several actions.

In cases that don't pose an immediate threat to public safety, the FDA will issue a Form 483 to notify the company of the findings. If the company doesn't respond, the FDA will issue a warning letter and give the facility a chance to correct the violations. If the misconduct continues, the FDA can ban products from U.S. importation or order the facility to stop producing until they can prove cGMP compliance.

Under the Federal Food, Drug and Cosmetic Act, a drug or device produced in non-compliance with FDA cGMP regulations is considered "adulterated." The drug in question can be considered adulterated once the FDA issues a warning letter regarding cGMP non-compliance.

The Food, Drug and Cosmetic Act prohibits any adulterated drug from being introduced (or delivered for introduction) into interstate commerce. Pharmaceutical companies that don't comply with FDA cGMP regulations violate the Federal Food, Drug and Cosmetic Act and can face both civil and criminal penalties.

All the government has to prove to prevail on an adulteration charge is that the manufacturer failed to comply with cGMP regulations. The drug doesn't actually have to be faulty or substandard in quality or purity.

Briefly, here is a list of examples that constitute FDA cGMP violations (taken from several FDA warning letters):

- Analytical anomalies (like relying on assay results obtained from the average of two independent sample results when one of the sample results was out of spec (OOS)
- Destruction of batch record documents before one year following expiration
- Failure to establish and follow procedures to prevent contamination of sterile products
- Failure to establish written control protocols that ensure product strength, purity, and quality
- Failure to investigate OOS batches, and then examine other batches and products associated with the spec failure
- Failure to investigate repeated contamination
- Failure to maintain validated computer systems

- Failure to propose corrective action and review other production records to ensure no additional incidents
- Failure to reject test batches OOS for identity, strength, quality, and purity
- Failure to review and approve all drug production records for compliance before release
- Failure to routinely and appropriately maintain manufacturing equipment
- Failure to write validation protocols, isolate process parameters, and demonstrate that product performance is consistent and reproducible from batch to batch
- Omission, addition or alteration of raw data from lab control records
- Poor cleaning and sanitization practices
- Poor electronic data management
- Preparing, packing and holding products in unsanitary conditions
- Significant deviations in bulk drug substance and drug component manufacture
- SOPs are outdated, aren't cGMP compliant or aren't readily accessible
- Unqualified, untrained or inexperienced employees engaged in the manufacture, processing, packing or holding of a drug
- Using lots prior to testing and quality control approval

Unfortunately, many pharmaceutical companies are in dangerous violation of FDA cGMP regulations. In 2008, the FDA revealed that many Americans

were killed after Baxter Pharmaceuticals relied on a Chinese producer to make its heparin API. The FDA alleged the supplier used a chemically similar, but medically worthless, ingredient to pass quality control testing. There was a vast difference in cost between the real heparin API ($900 per pound) versus the fake ($9 per pound).

In a 2016 inspection of a Vista Pharmaceuticals plant in India, FDA investigators found corroded manufacturing equipment. Prior to the inspection, the FDA received a complaint about isoxsuprine hydrochloride (Vasodilan) pills that were shipped to the U.S. The pills contained metal fragments.

It turns out that Vista never bothered getting the isoxsuprine approved, nor did it submit a validation process for the drug manufacturing process to the FDA.

Companies that fail to comply with FDA regulations not only violate the Federal Food, Drug and Cosmetic Act. They may also be in violation of federal and state False Claims Acts. When Medicare, Medicaid, or TRICARE are billed for adulterated drugs, each bill is considered a false claim.

Pharmaceutical companies may violate the FCA by selling adulterated drugs, or by receiving funding from Medicare or other government-funded programs to produce products. Medical device manufacturers are equally susceptible to FCA liability.

Despite what your employment agreement may say regarding HIPPA violations and releasing internal information, the HIPPA Privacy Rule has a strong exemption for those who chose to report misconduct. Many pharmaceutical companies use the threat of prosecution for HIPPA violations to keep their employees quiet. But know that any protected information that suggests misconduct can legally be shared with an FDA Pharma Whistleblower lawyer or public health agency.

Pay-for-Delay Schemes

Another form of pharmaceutical fraud that may qualify for a False Claims Act whistleblower award is the "pay-for-delay" scheme. Once a brand-name drug's patent runs out, the drug's sales can plummet. Medicare and most other insurance programs require physicians to dispense less costly generics. To prevent substantial profit loss, many pharmaceutical companies will pay millions of dollars to other drug companies to hold off on producing a generic form of their medication. This pay-for-delay tactic, in effect, extends the company's monopoly on pricing.

According to the Federal Trade Commission, pay-for-delay costs taxpayers, insurance companies, and consumers almost $4 billion per year. Many of these pay-for-delay schemes violate federal anti-trust laws. Original source knowledge of a pay-for-delay scheme may qualify an individual for an FCA whistleblower award.

Without the aid of pharmaceutical whistleblowers, the risk to public safety would be exponentially higher. Common pharmaceutical whistleblowers include drug or medical device quality assurance (QA) professionals, drug calibration specialists, pharmaceutical sales representatives, public health administrators, drug manufacturing and medical device company executives, and other drug safety or quality control specialists.

Government Contractor Fraud

Just as health care providers must abide by Medicare standards and pharmaceutical companies must adhere to FDA regulations, government contractors must stay within the lines of their contractual agreement, including requirements involving environmental protection regulations, equal employment opportunity laws, and competitive bidding laws. Failure to abide by the terms of the government contract and all applicable rules and regulations can result in an FCA action.

Defense contractor fraud is the most common type of government contractor fraud seen in FCA cases today. Examples of government contractor fraud include compliance violations, procurement fraud, and Buy American violations.

Compliance Violations

Competition for government contracts is fierce. Corrupt companies who want to beat the competition may make false certifications that they meet compliance

criteria necessary to win the contract. In this case, any claims submitted to the government for payment under the guise of compliance could be considered false claims. Companies who fail to maintain compliance or otherwise breach the terms of the contract and submit claims for payment without disclosing those failures may also be in violation of the False Claims Act.

Procurement Fraud

Deceptively charging the government inflated rates for labor, materials, or products, billing for goods or services of substandard quality, false billings, participating in collusive billing arrangements, issuing illegal kickbacks, and offering bribes to win government contracts are all forms of procurement fraud and may be in violation of the False Claims Act.

Buy American Violations

In 1933, Congress passed the Buy American Act to stimulate the American economy and preserve U.S. manufacturing jobs. These laws require the federal government to give preference to American made products. When a government contractor or vendor substitutes foreign materials or goods for American-made products, they may be in violation of the False Claims Act.

There are exceptions to the law. A waiver may exempt the obligation if a product is not produced in the United States or is prohibitively priced. Treaties like the North American Free Trade Agreement (NAFTA) also exempt certain goods from specified countries.

Other laws that give preference to American made goods include the American Recovery and Reinvestment Act of 2009, which requires that construction of public buildings or buildings built with public funds must use American steel, iron, and other products. The National Defense Authorization Act says that certain arms and ammunition critical to our defense must be made in the U.S. The Berry Amendment on American Sourced Military Clothing & Food requires that textiles, clothing, and food for the military be sourced within the United States.

Government contractors who misrepresent the country of origin or otherwise violate requirements to buy American-made products may be in violation of the False Claims Act.

Securities Fraud

Securities fraud is estimated to cost investors over $40 billion annually. Investors, bankers, brokers, dealers, traders, accountants, stockholders, and public company insiders, among others, are subject to the Dodd-Frank Act.

The types of securities fraud that are commonly involved in SEC whistleblower actions include:

- Accounting fraud
- Bribery
- Front running
- Insider trading

- Market manipulation
- Mishandling of investor funds
- Misrepresentation of company finances
- Mutual fund fraud
- Ponzi schemes
- Stockholder embezzlement

Cybersecurity Violations

Businesses, banks, and government contractors have an obligation to safeguard the information entrusted to them. Whistleblowers with information about lax cybersecurity involving banking, public companies, mortgage companies, investment agencies, brokerage firms, commodities brokers, defense contractors, government vendors, or government subcontractors may also be eligible to file a whistleblower lawsuit.

There is no single program for whistleblowers who seek to report cybersecurity violations. Most cases fall under the False Claims Act. However, public companies and certain other businesses with SEC reporting requirements also have a legal duty to safeguard customer data. Depending on the severity and the nature of the incident, whistleblower awards may be available through the SEC, CFTC, and FIRREA.

IT professionals, federal contract administrators, and other defense contractor or subcontractor employees are in prime position to detect weaknesses in security measures or breaches in cybersecurity systems. The

Federal False Claims Act, the Justice Department's bank fraud programs, and the SEC pay cash rewards to whistleblowers who report otherwise-unknown information about:

- Failure to promptly report cybersecurity breaches
- Failure to promptly report suspected cyberhacking incidents
- Failure to provide adequate data security
- Failure to regularly update cybersecurity programs
- Failure to adequately safeguard customer and government data

The Defense Federal Acquisition Regulation Supplement (DFRAS) cybersecurity rule, titled Safeguarding Covered Defense Information and Cyber Incident Reporting, requires that those participating in any kind of defense department contract:

- Have security measures in place on all computer systems, and
- Report all incidents of cyber hacking or security breaches to the Department of Justice within 72 hours of discovery.

Specifically, contractors and their subcontractors must implement "adequate security" commensurate with potential consequences and probability of loss, misuse or unauthorized access to, or modification of information.

Contractors must report any cyber incident that affects the contractor's information system, covered defense information, or the contractor's ability to provide operationally critical support within 72 hours of discovery.

Whether hackers succeed or not in acquiring sensitive information, any breach in cybersecurity that goes unreported could violate the False Claims Act. FCA whistleblower awards aren't paid for publicly known information, but if a contractor fails to implement appropriate cybersecurity measures or fails to report a breach in the system, a False Claims violation may exist.

As mentioned above, cybersecurity is also a top SEC enforcement concern. Cybersecurity mismanagement can violate securities laws for companies and agencies regulated by the SEC and may amount to securities fraud. Bankers, financial advisors, broker-dealers, IT professionals, and other financial employees are in a unique position to detect security breaches or cybersecurity system errors that may qualify for an SEC whistleblower award.

The SEC's Regulation Systems Compliance and Integrity rule requires organizations to incorporate computer networking systems with security levels "adequate to maintain operational capacity and fair and orderly markets," and to "take corrective action" and report incidents following system breaches. In addition, the Dodd-Frank Act commands the SEC and CFTC to require financial institutions to design and execute robust identity theft prevention measures.

The SEC's Safeguards Rule (Rule 30(a)) of Regulation S-P) requires that investment companies and their agents adopt policies to implement certain safeguards. The safeguards must be designed to:

- Ensure security and confidentiality of customer information,

- Protect against anticipated threats or hazards to the security or integrity of customer records and information, and
- Protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customers.

The SEC also requires public companies to report cyber breaches that have a significant impact on investors and corporate finances.

Because banks are such a big target, the FDIC, Comptroller of the Currency and Federal Reserve have passed rigorous cybersecurity guidelines that banks must follow. Some financial hacks involve both financial institutions and brokerage firms. Two whistleblower awards are potentially available in these type cases. SEC awards and FIRREA awards. The FIRREA program pays whistleblower awards of up to $1.6 million for information about misconduct that jeopardizes the financial security of banks and financial institutions. Maximum awards are common.

Issues may come up when cybersecurity violations involve top-secret programs. Companies may try to dissuade whistleblowers from coming forward by suggesting they will face charges for disclosing classified information. However, while classified information must be protected, companies can't engage in wrongdoing and hope to hide behind federal secrecy laws. If the information you possess is highly classified, your whistleblower lawyer can make arrangements directly with the appropriate authorities to safeguard that information.

Having highly classified information does not give companies a right to intimidate their workers or get away with cybersecurity violations. In fact, breaches involving highly classified data usually get immediate attention from investigators and prosecutors.

HOW TO REPORT FRAUD

You've decided to blow the whistle. Now, it is vital that you take the right steps to protect your rights as a whistleblower and earn your cash award. Avoid government agencies and companies who attempt to get your original source information through hotlines, internal reporting options, or $1,000 offers. Only by consulting with an experienced whistleblower lawyer can you ensure your case is safe and your award is maximized.

While there are various ways you can go about reporting misconduct, only one way ensures you will collect a maximized whistleblower award.

First, internal reporting (reporting your concerns to a supervisor, manager, human resources department, or other company member) is often the first route many well-meaning whistleblowers take – giving the company a chance to correct the behavior. Unfortunately, contacting anyone within the company before consulting with your whistleblower attorney can result in the loss of your original source information and your chances for the cash award.

Second, many people opt to report wrongdoing via a government fraud hotline. That is the most common method of reporting. But it doesn't earn you an award. If you call us soon enough, we may still be able to file. Wait

too long, and it is simply too late. There are very specific steps needed to collect an award. Under the False Claims Act, that includes filing a sealed lawsuit.

Third, some people feel they should call the Department of Justice or State Attorney General to report knowledge of fraud. You may receive a $1,000 consolation prize, but again, this type of report can result in the loss of your original source information and your chances for a cash whistleblower award.

The only way to report fraud and simultaneously ensure that you do not lose your eligibility for a whistleblower award is to consult with your whistleblower attorney first. Even the mere suspicion of fraud offers enough cause to contact a whistleblower lawyer, who can then confidentially evaluate your information and eligibility for a whistleblower award.

For any whistleblower claim, it is critical to prepare and plan your case in advance of reporting to anyone other than your lawyer. The FDA, DOJ, SEC, and other agencies receive thousands of complaints and only select a small percentage for prosecution. Calling an experienced whistleblower lawyer is vital to solidifying your role as a whistleblower, protecting your rights to a retaliation claim, and activating the maximum possible cash award.

GATHERING EVIDENCE

Both the means you use to gather evidence and the evidence itself are important to your case. Collecting documents, emails, photos, video, or other evidence illegally could destroy your very important claim. Make certain you follow the law when gathering evidence, utilize your lawyer's investigative team, and know what types of evidence will be most helpful in proving your claim.

Whistleblower cases must be based on facts. Speculation and rumor are not enough to file a claim. Most whistleblower programs do not require proof of intent to violate regulations. Evidence suggesting the wrongdoer acted knowingly, with deliberate ignorance or reckless disregard, is often enough to file a whistleblower claim.

In order to prove your case, you must be able to prove motive and pretext. Valuable information can include a documented timeline of events, evidence of intent to defraud a government program (that the fraud was done intentionally and knowingly in an attempt to benefit financially), and a general idea of possible monetary damages of the misconduct.

Keep a detailed record of the details and insights involved. Quietly gather names and phone numbers of prospective witnesses and identify supporting digital and hard copy documents.

It isn't unusual for organizations to suspect a potential whistleblower. Though you may not be fired, you may be escorted to a different position or sent on paid leave and lose access to your computer, email account, and records. Keep claim-related documents and notes in a personal location. For non-classified information, make a set of digital or hard copies for yourself. If possible, keep backup copies in a separate location.

If the court ascertains that you have violated the law in order to collect evidence, the case may be dismissed, your rights may be lost, and criminal prosecution can result. In some states, taking documents from the workplace is illegal. Speak with your whistleblower lawyer about any evidence you have already gathered and always ask if you have any questions regarding what may or may not be okay. Your lawyer will help you determine what you can and cannot take according to the law. As a general rule, wait until you speak with your lawyer to take documents or gather other forms of evidence.

DO YOU NEED A WHISTLEBLOWER LAWYER?

Yes. Most whistleblower statutes require that a lawyer represent you. The job of counsel is to protect your rights as a whistleblower and ensure that your case is successful. Your lawyer will help you understand the law, gather compelling evidence, build a persuasive case, follow appropriate procedure, meet all deadlines, protect your rights, file an anti-retaliation claim, and maximize your cash award.

To qualify for the cash whistleblower award, yes, you will need to consult with a whistleblower lawyer. The FCA requires that the whistleblower have a lawyer. Under the SEC whistleblower program, to remain anonymous, the whistleblower must have a lawyer. This needs to happen as early as possible, preferably from the moment you suspect you may have original source information regarding misconduct - before you report internally, before you take any documents, and before you discuss your plan to blow the whistle with trusted friends or coworkers.

Whistleblower award programs are geared to the first to file. If you wait too long, you might not get an award. Some award programs also have a public disclosure bar. If the information comes out in the media before you file, you may not get an award.

The whistleblower lawyer is the single most important tool a whistleblower uses to obtain their cash whistleblower award. From the instance a whistleblower becomes suspicious of his or her employer's activities, to the point the whistleblower cashes the award check – and beyond - the whistleblower lawyer is helping direct his every move. Why? These experienced professionals understand and help their clients with:

- The complexities of whistleblower laws
- The detailed procedures and statutes of limitations involved in reporting misconduct
- Special challenges regarding military or intelligence contracting that involve highly confidential documents
- How to protect the rights of the whistleblower
- What documents or evidence are helpful for your case
- Whether you can legally take those documents from the workplace
- The best means for approaching a whistleblower claim based on the information supplied by the whistleblower
- How to protect the whistleblower's identity and career
- How to maximize the cash award amount
- How to pursue an anti-retaliation claim if necessary

The job of counsel is to protect your rights as a whistleblower and ensure that your case is successful. You and your lawyer are becoming partners in a process that can potentially take years. Often, your lawyer will need to ask tough questions or give advice you may not immediately understand. It can be easy to get offended or take the process to heart; however, your lawyer

must find and correct weaknesses in your case and needs to know the facts. Always ask questions if you don't understand a procedure and follow your counsel's expert advice as closely as possible to ensure the process is positive and successful.

What happens once I contact a whistleblower lawyer?

Your first consultation with a whistleblower lawyer often involves a confidential discussion around your suspicions or evidence of misconduct, and whether or not your information makes you eligible for a cash whistleblower award. Based on your specific information, your lawyer will discuss how best to proceed in a way that will protect your rights as a whistleblower – i.e., how to collect further evidence, how to keep notes on employer activities, how to craft language should you want to give your employer a chance to fix the problem before filing a claim. Should you choose to file a claim, your lawyer will then assist you in preparing your case, meeting required deadlines, maximizing your award, and safeguarding your rights.

How do I find the right whistleblower lawyer for my case?

Lawyers know that whistleblower cases can result in huge awards. We often see employment and personal injury lawyers advertising for these cases. Unfortunately, many are incapable of seeing valuable whistleblower cases through to their full potential. Here are a few criteria you can use to ensure you select the right lawyer for your case.

First, your whistleblower lawyer must be willing and able to proceed with your case without government intervention. Do not hire an employment or personal injury lawyer who will file your case and simply hope the government intervenes. A specialized whistleblower lawyer with years of experience is willing to take your claim all the way, whether the government opts to intervene or not.

For example, obtaining a False Claims Act whistleblower award requires filing a lawsuit in federal court. That task sounds daunting to many lawyers, but specialized whistleblower lawyers have years of experience investigating claims, preparing complaints, and working with the Justice Department and investigative agencies. If necessary, they are willing to prosecute the case through trial. Don't be shy about asking your lawyer to discuss his or her track record, experience, and willingness to try the case if the government declines to prosecute.

Your whistleblower lawyer must be fully equipped to take on the most complex of cases. This means being well-versed in whistleblower law, having experience with huge, powerful corporations like Ford, Boeing or Bank of America, and having access to the best investigative experts in the nation to help prepare your case.

As many whistleblower cases span a number of jurisdictions, your whistleblower lawyer must have wide jurisdictional knowledge and expertise. Choose a whistleblower lawyer who works with clients nationwide and has filed cases in numerous jurisdictions. This level of experience and

scope of practice can be paramount in persuading the government to devote resources to your case.

Familiarity with the multitude of anti-retaliation laws is also vital in handling whistleblower claims, especially when the company in question still employs you. Experienced whistleblower lawyers will have a dedicated employment lawyer who helps to answer questions, mitigate risks, and guide clients through every step of the process.

Don't worry about lawyer fees. Whistleblower cases are typically handled on a contingency or "success" fee basis, meaning the lawyer earns nothing if you do not get an award. A reputable whistleblower attorney won't ask for any fees upfront. Your lawyer will provide all expenses and only collect their fee when you collect your cash whistleblower award.

AFTER FILING A WHISTLEBLOWER CLAIM

After you file a claim, your case moves ahead according to statute procedure. Most claims will proceed with government investigation, decision whether or not to intervene, and prosecution. Whistleblowers must ensure they have selected a lawyer willing to continue through trial should the government decline to intervene.

After your whistleblower case is filed, the government has a set period of time to investigate your claims. For False Claims Act claims, it is at least 60 days; however, the court often gives prosecutors six months or longer. Your whistleblower case will typically be assigned to a local assistant U.S. attorney where the case was filed. If the case has a national interest, the Justice Department in Washington DC may also assign one or more trial attorneys to the case.

Once the government's investigation is complete, the government agency must decide what direction it wants to take. They can either intervene and take over the case, decline to take the case, or tell the court there is no case. If the government tells the court there is no viable case, the court can dismiss the action. Believe it or not, that does not happen often.

If the government opts to intervene in your whistleblower case, it will lead the prosecution with the assistance of the whistleblower and the whistleblower attorney.

For approximately 80% of FCA cases, the government declines to intervene, either because they lack resources for investigation, they are too busy, the case is too small, or they simply have doubts regarding your claims. If the government chooses not to intervene in the case, the whistleblower and whistleblower attorney can continue the lawsuit on their own.

This where having a whistleblower attorney willing to take your case to trial makes all the difference. An experienced whistleblower attorney has national recognition, knows their way around the federal courtroom, has the investigative resources to gather all appropriate evidence, and knows how to create a compelling case.

In cybersecurity cases, one or more auditors or criminal special agents will be assigned. If the case involves banks or financial institutions, you may find FBI agents along with agents from FinCEN (Financial Crimes Enforcement Network), Treasury, or agents from the Federal Reserve's Office of Inspector General. Several experienced auditors frequently back these agents.

If the case involves defense contracting, there are a plethora of possible law enforcement agencies that may be involved. For other government contracts, expect to see a representative from the Inspector General of the agency holding the contract.

8 STEPS TO A SUCCESSFUL WHISTLEBLOWER CLAIM

If you read only one section of this Guide, this is the most important. A successful whistleblower claim comes with numerous rewards - a sizeable financial award, the ability to replenish misspent taxpayer dollars, and the power to stop wasteful, potentially dangerous misconduct. It also means knowing that you made a difference.

But whistleblower claims are a complex process, with many potential snares. You must know how to protect your original source information, how to gather evidence legally, and how to navigate some challenging procedural processes. The process of filing a whistleblower claim must be followed to the letter to ensure your eligibility for a whistleblower reward. Any holes or skipped steps, and the case can unravel early on.

To help simplify the process, we've prepared these 8 Steps to a Successful Whistleblower Claim. Follow these steps, and you will be off to a solid start.

Step #1: Contact A Whistleblower Lawyer Immediately

This is the most important step to ensure your rights are protected, and your case is built solid from the very start. Contact an experienced whistleblower lawyer the moment you suspect fraud may be occurring. Make sure you contact a lawyer before you report your suspicions to your coworkers,

supervisors, or other internal sources and before you begin collecting documents or other evidence. Do not call government agencies or hotlines until you speak with a lawyer. Reporting fraud to an agency or hotline won't get you an award and may even diminish your chances for recovery.

Some companies may have policies and procedures for employees to confidentially report suspected fraud internally to a supervisor or other administrator. Still, it is critical that you contact an experienced whistleblower attorney BEFORE any internal report. Your attorney can help you craft your language appropriately and guide you through the internal reporting procedure in a way that protects your rights as a whistleblower and your career.

Step #2: Protect Your Information

To be eligible for a whistleblower award, you must protect your information as the "original source." Do not share it with anyone but your lawyer. Even speaking about your situation with a friend can result in an innocent leak to the media – meaning your information is no longer original source and no longer eligible for the cash award.

Due to "first-to-file" requirements, if anyone reports your specific information, you lose your eligibility for the cash award. Your lawyer will lead you through the appropriate reporting procedures while safeguarding your information, protecting you from illegal retaliation, and helping to maximize your cash award amount.

Step #3: Keep A Detailed Diary

Create a safe place to log information, including specific dates, times, incidents, phone numbers, places, names of relevant individuals, and lists of important documents that have any relationship to your original information regarding a potential violation. Remember to keep information that may relate to a retaliation claim as well. Do not keep this diary at work or on a public computer and do not send any information via your work email account.

Step #4: Follow Proper Procedures for Gathering Evidence

Evidence can be critical to the success of a whistleblower claim. Important evidence may include memos, invoices, billing records, medical records, treatment plans, contracts and agreements, test results, raw study data, payroll information, internal inspection records, email communications, text messages, video and audio files, database content, scanned images, radiographs, PDFs and other such evidence.

In general, evidence obtained from public sources (media, internet, published studies, published court documents) is not going to contribute to your case (unless your analysis of that information is original).

Remember, collecting this evidence can prove a delicate situation in certain industries like health care or government security. To be safe, list

the important piece of evidence and where it can be found (file cabinet, computer network folder) in your diary.

Never forward, copy, or collect the evidence for yourself until you consult with your whistleblower attorney. Never email yourself massive amounts of documents. Many companies have sophisticated IT programs that look for possible whistleblower activity by monitoring emails being sent to home email addresses.

Your attorney can help you determine what documents or evidence are helpful for your case and whether you can legally take these documents from the workplace. Any evidence taken in violation of the law may not be admissible and may get you into trouble. Your whistleblower lawyer can guide you through this process and will always be available to answer any specific questions you may have as they arise.

Step #5: Keep Things Confidential

Throughout the whistleblower claims process, don't speak to anyone about your case. This includes strangers, friends, coworkers, government agencies, company ethics hotlines, and the media. Because most whistleblower awards must follow first-to-file guidelines, you could lose your whistleblower eligibility if someone else decides to report your suspicions about non-compliance.

Some whistleblower laws have a "public disclosure" prohibition. That means telling anyone could jeopardize your claim. Many courts have a sealing

order issued by a judge, meaning that you could be sanctioned (fined, jailed, or other punitive action), and your claim dismissed for breaking confidentiality.

Remember, there is no such thing as "off the record."

In addition, putting information on the internet or speaking on the phone can be dangerous. Never call your attorney from a company phone or email documents from a work computer or using a work email account. There is little expectation of privacy and little legal protection of that privacy when you use a work computer, company telephone, or your employee email address.

If you have any uncertainty about whether to speak with someone, ask your lawyer first.

Step #6: Assist with the Investigation

Once the government decides to investigate your claim, they will begin collecting further evidence. Much of their initial evidence will come from you, and your whistleblower award amount increases with the level that you contribute to the government's investigation.

Keep a running log of any information you want to share with investigators during interviews and any potential names of witnesses you may want them to speak with.

Depending on the severity of your allegations, the government's investigation may involve the FBI and include full searches of the facility and associated facilities, numerous witness interviews, and document searches. You should cooperate to the best of your ability and remain available to investigators.

After the investigation, the government will decide whether or not to intervene in your whistleblower lawsuit. Should they decline to intervene, the whistleblower is free to pursue the case on their own with the aid of their whistleblower lawyer. In some cases, the government may decide to intervene once the case gets rolling.

Remember, hiring a lawyer who is willing to take your case all the way through trial is crucial. Switching lawyers mid-case can drastically harm your chances for success. Whistleblowers who achieve a successful settlement or verdict in cases where the government does not intervene are eligible to collect an increased award of between 25% and 30% of the total recovery.

Step #7: Prepare for Potential Retaliation

While every whistleblower's experience is different, there are a few things you can almost be certain of. Your identity will eventually become known (except for SEC whistleblower cases), you will experience some level of retaliation, and you will likely need (or want) a new job. Planning for these things in advance can help to lessen any stress associated with your whistleblower case.

Depending on the type of whistleblower case, your identity may never be released. However, we prepare our clients for the probability their identity and whistleblower status will eventually become known. When this happens, friends and coworkers may treat you differently. You may get calls from the media. Discuss these scenarios with your lawyer well in advance of the day it happens.

While employer retaliation in response to an employee reporting misconduct is illegal, many people who report misconduct either internally or externally will experience some form of discrimination in response to their actions. It's much easier to bear if you are prepared.

Both federal and state whistleblower laws have strong anti-retaliation provisions that compensate whistleblowers for retaliation - but they don't prevent it. They simply allow you to file a claim for job reinstatement, double back pay, and other special damages.

If your whistleblower attorney feels you have a strong case, it may be a good idea to start considering another job or career path. Anti-retaliation laws don't offer much immediate comfort if you suddenly find yourself without a job, and court battles can take years.

It is best to have a plan in place to support yourself and your family in case you are the target of retaliation. Unfortunately, your identity as a whistleblower can make it difficult to find a job within your same career path in the future. These factors are always important to consider earlier

rather than later. Often your whistleblower lawyer can help you keep your identity confidential, at least as to third parties and potential employers.

Step #8: Have Check in Hand Before Spending the Money

Whistleblower cash awards can be significant. A majority fall into the hundreds of thousands to millions of dollars range. This is exciting, and whistleblowers more than deserve these massive cash awards for their efforts. But remember, the case isn't over until the check is in your bank. Whistleblower cases require patience, and no matter how promising your case appears, it is important to remain financially smart.

Of course, it is fine - even advisable - to begin planning your estate and getting guidance from financial advisors on how best to handle your upcoming cash award, but don't make the mistake of spending more than you currently have.

While your lawyer can estimate your cash award amount, it is impossible to know the exact amount until you have it in your hands. The Court uses several factors to determine your exact award amount, including your ability to follow reporting requirements and required deadlines, the value of your information, the amount of damage resulting from the misconduct, whether or not the government intervened, the extent to which you aided the investigation, and the extent to which you participated in the misconduct (among other criteria).

Some whistleblowers are reluctant to step forward for fear that they may be prosecuted for participating in the wrongdoing. That is rarely a problem if you were simply following orders or doing what you were told. Unless you were the mastermind of the scheme, there isn't much to worry about. But talk to your lawyer. A good whistleblower lawyer can help determine in advance if there might be a problem or if your conduct could impact the size of the award.

7 COMMON WHISTLEBLOWER MISTAKES

Mistake #1: Waiting too long to report your information to a lawyer

One common mistake made by potential whistleblowers is putting off the call to a lawyer, even for a few hours or days. Chances are if you have discovered a potential violation, someone else has too. And, by law, only the first to report an incidence of misconduct is eligible to collect a whistleblower award.

It can be devastating to lose a potential million-dollar cash award for saying, "I'll just wait until tomorrow to contact a lawyer." Your lawyer is there to protect your original source information, your rights as a whistleblower, and the success of your claim. This protection must begin immediately upon the discovery of a potential violation.

Mistake #2: Reporting information to a government program or hotline

Would-be whistleblowers who make the unfortunate mistake of contacting a government program or hotline with their concerns before consulting with their lawyer are at high-risk for losing their eligibility for a cash award. Any information you supply to an outside source may no longer be considered "original information" and may cause you to forfeit your rights and protections as a whistleblower.

Mistake #3: Reporting concerns internally before speaking with your lawyer

Reporting knowledge of a potential violation of law to a supervisor, coworker, or other company personnel before speaking with your lawyer can result in any number of problems. Employer retaliation is common. Even when an employee raises a simple concern about potential company wrongdoing, it can set off a cascade of events that may damage your career.

Though some state laws require employees to bring the fraudulent activity to the attention of a supervisor and give the employer reasonable opportunity to correct the activity, there are instances when this disclosure is not required, such as when the employee reasonably believes that the activity is known to a supervisor or when the employee fears physical harm as a result of the disclosure. Your whistleblower lawyer will advise you on when and with whom you should discuss your claim to best ensure the safety and eligibility of the claim.

Mistake #4: Speaking about your case with coworkers or friends

Discussing your concerns about potential company misconduct with coworkers almost guarantees your original source information will no longer be "original source." Word spreads fast in the workplace. It is best to refrain from mentioning anything about your information to anyone without consulting your lawyer first. Even seemingly innocent discussions

with friends can lead to a potential news media leak that may harm your eligibility for a whistleblower award.

Mistake #3: Taking evidence from work before consulting with your lawyer

Be careful when gathering evidence to support your information. Whistleblowers must follow proper procedures when collecting documents, data, media, or other evidence to support their case. Your lawyer can help you determine what documents or evidence are helpful for your case and whether you can legally take these documents from the workplace. Any evidence taken in violation of the law may not be admissible and may get you into trouble.

Mistake #4: Failing to keep a detailed (and private) diary of information

From the moment you suspect misconduct, create a safe place to log information, including specific dates, times, incidents, phone numbers, computer files, places, and names of relevant individuals that have any relationship to your suspicions. These details can be critical to proving your case. Remember to safeguard this information carefully. Do not keep your diary at work or on a public computer.

Mistake #5: Emailing or calling your lawyer from company email or work phone

From the moment they suspect a violation, whistleblowers are on the phone with or emailing their lawyer. Be sure not to make the mistake of picking up your work phone to contact your lawyer or typing out a quick email on your company account. Anytime you have a question, step out of the office and use your personal phone or switch to a personal email account.

Mistake #6: Signing paperwork or making agreements

Your company or coworkers may become aware of your whistleblower status at any moment, with or without your knowledge. Once you have decided to file a claim, it is important to seek the advice of counsel before signing any contract revisions or other documents that could affect your eligibility to collect a reward.

Sometimes whistleblowers are fired and asked to sign a release while being escorted from the premises. When employers demand you sign their separation agreement "on the spot," it is usually because that agreement contains a release and lawsuit waiver. Courts are split on whether these releases are enforceable. The law is quite unsettled. You probably do not want to give up a multimillion-dollar whistleblower award simply because your boss offered a month's severance pay.

An employer can't prevent you from filing a claim, but they may be able to stop you from collecting whistleblower benefits. It is essential to speak to legal counsel before signing any documents through the process to ensure your rights are kept safe.

Do not respond to offers by your employer to take "hush money" or to be bought off. Though such offers may be tempting, accepting them can destroy your chances of receiving a much more lucrative cash whistleblower reward and can damage your rights to career and future protections. It is important to make note of any such offers and report them to your legal counsel as soon as they occur.

Mistake #7: Aggravating your employer

Follow workplace rules and continue with your work to the best of your ability. As a potential whistleblower, be mindful that support staff may be asked to observe you or security police may be used to investigate you. Act as a model employee to prevent cause for disciplinary measure. The less likely there are obstacles and distractions, the safer you will be, and the greater your chances of success.

ABOUT HALPERIN BIKEL

Representing New York Whistleblowers in

New York and throughout the United States

Whistleblowers, perhaps more than anyone else, need an experienced attorney to protect and advocate their rights, from retaliation protection through stopping fraud and maximizing government rewards.

We hope you find this information helpful. If you are considering becoming a whistleblower or have questions about any of the several programs or about your information or job please call me, Steve Halperin at Halperin Bikel at 929.290.1266.

Our subject matter experts, e.g. pharmaceutical fraud, healthcare... and legal team will help you evaluate your circumstances from every side so you will have the best information on your risks and opportunities.

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