



Whistleblowers

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Background

The protection of whistleblowers exposing [FRAUD](#) or wrongdoing perpetrated by individuals or [CORPORATIONS](#) has been an issue for centuries. Under English [COMMON LAW](#), suits brought on behalf of the government by individuals alleging fraud were known by the Latin phrase describing them, "qui tam pro domino rege quam pro si ipso in hac parte sequitur," meaning "who sues on behalf of the King as well as for himself."

The first [STATUTE](#) to protect whistleblowers in the United States was the federal False Claims Act, inspired by the corruption and fraud that resulted from the Civil War. Passed in 1863, the act allowed private parties to bring suits against those corporations or individuals trying to [DEFRAUD](#) the government, with the bringer of the lawsuit entitled to half the recovery from the fraud, which included a \$2,000 fine for each violation and damages amounting to double the loss from the fraud.

States also began to pass their own versions of whistleblower laws. By the 1980s, such legislation had become common at the state and federal level, and in 1986 the federal False Claims Act was strengthened to give whistleblowers more rights. Despite being unpopular with businesses, the federal False Claims Act has withstood Supreme Court scrutiny and today serves as the most important of the many federal and state laws protecting whistleblowers.

State and federal whistleblower statutes generally fall into two categories: those that encourage whistleblowers by giving them some form of compensation for their action, such as the False Claims Act, and those that protect the whistleblower from retaliation, which constitute the majority of state and federal statutes. As of 2002, all 50 states provide some sort of whistleblower protection.

Federal Whistleblower Statutes

Federal whistleblower statutes are included in a wide range of laws, governing activities ranging from employee safety to environmental protection. The first of all federal whistleblower statutes, and still considered the most important, is the federal False Claims Act.

False Claims Act

The 1863 federal False Claims Act (FCA) has gone through many changes. The act was revised in 1986, which strengthened it and made it the prime federal whistleblower statute. FCA reports of fraud have

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increased from an average of six per year pre-revision to 450 per year in 1998.

Lawsuits brought under the FCA are known as "qui tam" actions. Under the 2002 FCA, a successful lawsuit brought by a whistleblower will net the whistleblower between 25 and 30 percent of all money recovered by the action if the government decides not to join in the lawsuit. If the government does join the lawsuit, the whistleblower can net between 15 and 25 percent of the total proceeds of the suit. This is in addition to reasonable expenses and attorneys fees.

Under the False Claims Act, a business found guilty of defrauding the federal government can be fined from a minimum of \$5,000 to a maximum of \$10,000 for each violation. In addition, a business found liable under the act must pay three times the amount of damages that the government sustains as a result of the violation. There is a [STATUTE OF LIMITATIONS](#) under the act of 10 years. An employee can also file a separate lawsuit if the person is fired, demoted, or harassed at work as a result of bringing an FCA action against the employer.

FCA lawsuits can be very lucrative. Since 1986, over 3,000 FCA cases have been filed and about \$3 billion has been recovered. The average recovery in an FCA case is \$5.8 million, and the average whistleblower's reward has been about \$1 million. The government intervenes in only 21 percent of the FCA cases. The only limitations the FCA puts on these types of suits is that a member of the armed forces is precluded from asserting a claim against another member of the armed forces.

FCA cases generally include three common elements in order to prove fraud under the act. The [DEFENDANT](#) must present a claim for payment to the federal government, or the defendant must cause a third party to submit a claim; that claim must be made knowingly; and the claim must be false or [FRAUDULENT](#).

Claim is defined under the FCA as any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"Knowingly" is defined as actual knowledge of the false information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the truth or falsity of the information.

The Supreme Court recently upheld the FCA. In the 2000 case of Vermont Agency of Natural Resources v. United States, the high court determined that citizens have standing to file whistleblower suits under the act, though the court also ruled that states and their agencies are not liable under the provisions of the act.

Other Federal Laws

Other federal laws with whistleblower provisions generally take a different approach to whistleblowers than the FCA, providing protections to those who act as whistleblowers rather than incentives. These statutes prohibit any retaliatory discharge of or [DISCRIMINATION](#) against the whistleblower and punish violators of the statute.

Within this context, the statutes can take different approaches to protecting the worker. Some provide the whistleblower with a private cause of action against the employer and allow the person to bring suit himself. These statutes include: the Clean Air Act, the Energy Reorganization Act, the Federal Deposit Corporation Improvement Act, and the Vessels and Seamen Act.

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Other federal laws require the Secretary of Labor or other government official to bring action in a case of retaliatory discharge or discrimination against a whistleblower. Those statutes include: the Age Discrimination in Employment Act, the Civil Service Reform Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Employee Retirement Investment SECURITIES Act, the Federal Surface Mining Act, the Family and Medical Leave Act, the Job Training and Partnership Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Mining Safety and Health Act, the Occupational Safety and Health Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, the Surface Transportation Assistance Act, the Toxic Substance Control Act and the Water Pollution Control Act. These acts do not allow the whistleblower to bring his or her own private cause of action.

Generally speaking, these acts cover whistleblowers when they file a complaint or institute or cause to be instituted any proceeding under or related to the law the provision exists under, or when the whistleblower has testified or is about to [TESTIFY](#) in any proceeding related to the law. If an employer is determined to be liable for discharging or discriminating against an whistleblower employee under one of these laws, the employer can often be fined and required to reinstate the employee to his or her former position; to pay [COMPENSATORY DAMAGES](#); or take other appropriate actions to remedy any past discrimination.

State Whistleblower Statutes

While some states had whistleblower statutes during the early part of the twentieth century, most of the action in regards to state legislation to protect whistleblowers occurred in the latter half of the century. In the 1980s, for example, 15 states passed general whistleblower statutes, and many state courts further developed a [PUBLIC POLICY](#) exception to the at-will employment doctrine for whistleblowers. The result is that state courts have become a major arena for whistleblower cases.

General State Whistleblower Statutes

As a rule, state whistleblower statutes differ from federal whistleblower statutes in several significant ways. The first is that with only a couple exceptions, state whistleblower statutes do not follow the compensation model of the federal False Claims Act. Those exceptions are Illinois, Florida, Oregon, South Carolina, and Wisconsin. Only Illinois and Florida provide compensation for whistleblowers anywhere near what the federal law provides, with the other three states providing less satisfactory compensation.

State whistleblower statutes instead provide protection from retaliation for [WHISTLEBLOWING](#). Unlike the federal governments, the majority of state governments have whistleblower statutes that generally protect all employees who report violations of the law by their employers, in addition to having whistleblower statutes covering the violations of specific laws. In many states, these general whistleblower protections are limited to public employees, although other states have protections for both private and public employees.

States with general whistleblower statutes that protect both private and public employees include: Arizona, California, Connecticut, Florida, Hawaii, Illinois, Louisiana, Maine, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, Oregon, Rhode Island, and Tennessee.

States with general whistleblower statutes that protect only public employees include Alaska, Colorado, Delaware, District of Columbia, Georgia, Idaho, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

Many of the state laws provide employees with a private cause of action, providing another contrast with

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federal whistleblower statutes. This allows the employee to sue directly in the courts, rather than having to go through an agency of the state.

Public Policy Exception

In addition to specific statutes protecting whistleblowers, many state courts have enunciated a public policy exception for whistleblowers to the at-will employment doctrine which allows employees who are not under contract to be dismissed by their employers at any time.

The public policy exception for whistleblowers usually holds that employers should not be able to use their power as employers to subvert public policy as established by the legislatures or the courts. Employees who are fired, demoted, or harassed for refusing to violate a law, rule or regulation, or who report a violation of such, can sue their employer under this theory.

State courts can read this public policy exception either narrowly or broadly, depending on the particular court. More conservative courts may insist on showing the act of the employer caused actual harm to the [PUBLIC INTEREST](#) before allowing a public policy exception. But some state courts will award [PUNITIVE DAMAGES](#) if they find a strong public policy violation.

Federal Preemption

When federal and state whistleblower laws conflict, the federal laws preempt the state laws. Because states tend to have traditionally been responsible for employment issues, courts have been leery of finding preemption when it comes to whistleblower statutes. However, in some instances they have found such preemption exists. The test seems to be whether the federal law concerns an area of strong enough federal concern that it did not leave room for state regulation. Preemption cases involving whistleblower statutes have yielded mixed results over the past two decades.

State-by-State Guide to Whistleblower Coverage

Besides statutes protecting whistleblowers in general, most states protect whistleblowers in specific areas, such as employment of minors, abuse of children, nursing home violations, or wage and hour violations. Whether the whistleblower is protected in a specific area depends on the state.

The following is a state-by-state guide to some of the different areas where whistleblowers are protected if they report violations in those areas:

ALABAMA: Child labor violations

ALASKA: Occupational safety and health violations, the Alaskan Railroad Company violations, [CHILD CARE](#) facilities violations, assisted living homes violations, legislative employees violations

ARIZONA: Water quality control violations, occupational safety and health violations

ARKANSAS: CIVIL RIGHTS violations, fair housing violations, long term care violations

CALIFORNIA: State universities violations, savings associations violations, health care facilities violations, elderly care facilities violations, occupational safety and health violations, toxic substances violations, fraudulent unemployment actions violations, mental health facilities violations

COLORADO: MINIMUM WAGE law violations, false disclosures to the state violations

General State Whistleblower Statutes

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CONNECTICUT: Environmental violations, information to auditors or public accountants violations, child care violations, violations committed by leaders or employees of a foundation violations, civil rights violations, [COLLECTIVE BARGAINING](#) for state employees violations, public schools violations, nursing homes violations, minimum wage violations, Labor Relations Act violations, [CHILD ABUSE](#) violations

DELAWARE: Public and private schools violations, nursing homes violations, civil rights violations, workers compensation fraud violations, long term care facilities violations, child labor violations, minimum wage violations, firefighters violations, public works contractors violations, hazardous chemical control

DISTRICT of COLUMBIA: Procurement issues violations, discrimination and civil rights violations, unfair labor practices violations, workers compensation fraud violations, minimum wage violations, occupational safety and health violations, long term care facilities violations

FLORIDA: Child abuse violations, long term care facilities violations, continuing care facilities violations

GEORGIA: Fraud in state programs violations, unfair labor practices violations, gender discrimination in minimum wage laws violations

HAWAII: Unfair labor practices violations, elder care violations, minimum wage laws violations, civil rights violations, occupational safety and health violations

IDAHO: Sanitation violations on farms violations, fair wage law violations, environmental protection violations, PCB waste disposal violations, minimum wage laws violations, state [HUMAN RIGHTS](#) law violations, long term care facilities violations

ILLINOIS: Field sanitation for agricultural workers violations, prevailing wage law violations, disclosures by transportation authority workers violations, civil rights laws violations, migrant worker conditions violations, unfair labor practices violations, public and private schools violations, elder care violations, nursing home facilities violations, minimum wage laws violations, equal pay laws violations, occupational safety and health violations, toxic substances violations

INDIANA: Elder care violations, health care facilities violations, long term care facilities violations, education violations, political subdivisions violations

IOWA: Collective bargaining violations, public health facility personnel violations, civil rights violations

KANSAS: Reporting disease violations, child abuse violations, elder care violations, working conditions violations

KENTUCKY: Occupational safety and health violations, long term facilities violations, firefighters violations

LOUISIANA: Health care providers violations, lead hazard reduction licensing of certification violation violations, insurance code violations, hospitals violations, long-term care facilities violations, environmental laws violations

MAINE: Human rights law violations, occupational safety and health violations, employment practices violations, state universities violations, judicial branch violations, agricultural violations, public utility violations

MARYLAND: Occupational safety and health violations, civil rights violations

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MASSACHUSETTS: Domestic service violations, health care violations, asbestos [ABATEMENT](#) violations, hazardous substances violations, child care violations, minimum wage violations, civil rights violations

MICHIGAN: Adult care provider violations, civil rights violations, long-term care facility violations, occupational safety and health violations

MINNESOTA: Child care facility violations, [UNFAIR LABOR PRACTICE](#) violations, civil rights violations, occupational safety and health violations, health services violations, asbestos abatement violations

MISSISSIPPI: Workers compensation violations, vulnerable adult violations

MISSOURI: Nursing home violations, public health violations, Department of Correction violations, mental health facility violations, in home care provider violations, long term care facility violations

MONTANA: Unlawful discrimination violations

NEBRASKA: Occupational safety and health violations, unlawful discrimination violations, Industrial Relations Act violations, nursing home violations

NEVADA: Long term care facility violations, occupational safety and health violations, mental health care facility violations

NEW HAMPSHIRE: Hazardous waste law violations, human rights law violations, asbestos management and control violations, elder care violations, dog and horse racing facility violations, toxic substance control violations, child care facility violations

NEW JERSEY: Ski tow lift and tramway violations, hazardous substance violations, civil rights violations, child abuse violations, occupational safety and health violations, minimum wage violations, elder care violations

NEW MEXICO: Long term care facility violations, residential care facility violations, occupational safety and health violations, radiation control violations

NEW YORK: Civil rights violations, elder care facility violations, occupational safety and health violations, minimum wage violations, Labor Relations Act violations, toxic substances control violations, health care facility violations

NORTH CAROLINA: Long term care facility violations, violations of state law by department, agency or local political subdivision

NORTH DAKOTA: Child abuse and welfare violations, adult care facility violations, mentally and physically handicapped violations, minimum wage law violations, long-term facility care violations, agency misuse of funds violations

OHIO: Long term care facility violations, child care facility violations, minimum wage law violations, nursing home violations, health care facility violations, abuse of mentally handicapped adult violations

OKLAHOMA: Children's group home violations, civil rights violations, violations occurring in group homes for person with developmental or physical disabilities, child abuse violations, foster care violations, occupational safety and health violations, nursing home violations

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OREGON: Adult care facilities violations, long term care facilities violations, collective bargaining violations, occupational safety and health violations, civil rights violations

PENNSYLVANIA: Occupational safety and health violations, radioactive waste violations, Community Right to Know Act violations, toxic substances violations, civil rights violations, seasonal farm workers rights violations, public utility company violations

RHODE ISLAND: State hospital violations, long-term care facility violations, asbestos abatement violations, insurance company violations, HMO violations, nonprofit hospital violations

SOUTH CAROLINA: Occupational safety and health violations, long-term care facility violations

SOUTH DAKOTA: Civil rights violations, collective bargaining violations

TENNESSEE: State educational system violations, nursing home facility violations, child care facility violations, mental health and [DISABILITY](#) facilities violations, adult care facilities violations, minimum wage violations, occupational health and safety violations

TEXAS: Agricultural laborer violations, worker health and safety violations, immediate-term care facility violations, treatment facility violations, hospital and health care facility violations

UTAH: Minimum wage law violations, occupational safety and health violations, long term care facility violations

VERMONT: Occupational safety and health violations, **POLYGRAPH** Protection Act violations, fair employment practices violations, state labor practices violations, long term care facilities violations

VIRGINIA: Occupational safety and health violations, adult care facilities violations, child welfare protection violations, nursing home facilities violations

WASHINGTON: Agricultural laborer violations, long-term care facility violations, minimum wage law violations, nursing home violations, state hospital violations

WEST VIRGINIA: Miners health, safety and welfare protection violations, nursing home violations, personal care home violations, residential care violations, asbestos abatement violations, occupational safety and health violations, equal pay law violations, minimum wage law violations

WISCONSIN: Residential care facility violations, long-term care facility violations, rural medical center violations, collective bargaining violations, solid waste facility violations

WYOMING: Long-term care violations, equal pay act violations, occupational safety and health violations

Additional Resources

"Bringing Rogues to Justice: The Qui Tam Provisions of the False Claims Act," Androphy, Joel, Adam Peavy, Texas Bar Journal, February 2002.

"The State of State Whistleblower Protection." Callahan, Elletta Sangrey, Terry Morehead Dworkin, American Business Law Journal, Fall 2000.

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"State Whistleblower Statutes and The Future of Whistleblower Protection." Vaughn, Robert G.,
Administrative Law Review, Spring 1999.

"Silencing the Whistleblower: The Gap Between Federal and State Retaliatory Discharge Laws." O'Leary,
Trystan Phifer, Iowa Law Review, January 2000.

Organizations

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