

Alert: House Bills Encourage Employees to Whistle While They Work

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On September 13, 2012, Representatives Jackie Speier (D-CA) and Todd Platts (R-PA) introduced legislation that would extend whistleblower protections to non-federal employees who disclose information about the misuse of federal funds.

The Non-Federal Employees Whistleblower Protection Act would shield employees of federal contractors, subcontractors, and grant recipients from being discharged, demoted, or otherwise discriminated against for disclosing information that the employee reasonably believes is evidence of (1) gross mismanagement, waste, or abuse of authority related to the use of covered funds; (2) a substantial and specific danger to public health or safety related to the implementation or use of covered funds; or (3) a violation of a rule or regulation related to an agency contract or grant. Protected disclosures include those made to the employee's supervisors, as well as to inspectors general, the Attorney General, federal agencies, members of Congress, courts, or any other state or federal law enforcement agency.

If an employee believes he has been retaliated against, he may submit a complaint regarding the reprisal to the appropriate agency inspector general. Generally speaking, the inspector general has 180 days to investigate and prepare a report which is subject to review by the agency head. The employee alleging retaliation would have the burden of proving that the disclosure was a "contributing factor" to the act of reprisal. If the employee satisfies this burden, the employer would then have the opportunity to rebut the allegation by presenting "clear and convincing" evidence that the employer would have taken the same actions despite the disclosure. If the agency head determines that the evidence supports a prohibited reprisal, the claimant's employer must abate the reprisal, reinstate the employee with back pay and other compensatory damages, or reimburse the employee for costs incurred in bringing the complaint. In instances where the reprisal was willful or malicious, the employee may receive 10 times the amount of his or her lost wages and compensatory damages.

In a similar vein, on September 28, 2012, the House approved the Whistleblower Protection Enhancement Act, a bill that would strengthen protections for federal employees who blow the whistle on government waste, fraud,

and abuse. Among other things, the bill closes loopholes created by court decisions that limit whistleblower protections to those scenarios where the whistleblower was the first person to report the misconduct and the misconduct was unconnected to the whistleblower's job duties. The bill would also boost the remedies available to whistleblowers by providing compensatory damages to whistleblowers that prevail after an administrative hearing.

The Whistleblower Protection Enhancement Act won bipartisan support from its sponsors, Elija Cummings (D-MD), Darrell Issa (R-CA), and Chris Van Hollen (D-MD). The Senate, which passed its own version of the legislation in May, is expected to act on the bill in November.

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