

# Alert: President Signs Whistleblower Protection Enhancement Act Into Law

November 30, 2012

A few months ago we issued an Alert about proposed legislation that would strengthen protections for federal employees who blow the whistle on government waste, fraud, and abuse. On November 27, 2012, after this legislation passed both houses of Congress with unanimous support, President Obama signed the Whistleblower Enhancement Protection Act into law.

The Act expands protections provided by the Whistleblower Protection Act of 1989, which bars executive branch departments and agencies from retaliating against employee whistleblowers. Among other things, the Act 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 Act also boosts the remedies available to whistleblowers by providing compensatory damages to whistleblowers that prevail after an administrative hearing and suspends the sole jurisdiction of the Federal Circuit over federal employee whistleblower cases for a two-year experiment. In addition, the Act establishes explicit whistleblower protections for Transportation Security Administration employees, government scientists and other professionals for disclosures related to the integrity of the scientific process.

Congress has attempted to pass versions of this legislation for more than a decade. Similar legislation pertaining to non-federal employees, the Non-Federal Employee Whistleblower Protection Act of 2012, which would protect employees of federal contractors, subcontractors, and grant recipients from retaliation for whistleblowing, is currently pending in the House before three different committees.

If we look at the amendments to the False Claims Act starting in 2009, and including Dodd-Frank, we see a significant policy move on the Hill to expand the use of the FCA to function as a broad, readily-available, anti-fraud enforcement tool. It is also important to consider that the growing number of state FCAs, as well as local ordinances of similar import, will likely open the floodgates for lawsuits against individuals and companies who do not maintain good records in supporting claims that are paid out of government funds. With this most recent legislation, the population of potential whistleblowers who can file these types of cases is now booming.

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