

Filing Whistleblower Complaints under the Sarbanes-Oxley Act

Employees who work for publicly traded companies or companies that are required to file certain reports with the Securities and Exchange Commission (SEC) are protected from retaliation for reporting alleged mail, wire, bank, or securities fraud; violation(s) of SEC rules and regulations; or violation(s) of Federal law relating to fraud against shareholders.

Covered Companies

A company is covered by section 806 of the Sarbanes-Oxley Act of 2002 (SOX) if it has a class of securities registered under Section 12 of the Securities Exchange Act or is required to file reports under Section 15(d) of that Act. Its subsidiaries, contractors, subcontractors, or agents may also be covered.

On July 21, 2010, the Sarbanes-Oxley Act was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) to extend coverage to "nationally recognized statistical rating organizations,...as defined in Section 3(a) of the Securities Exchange Act, and their contractors, subcontractors and agents."

Protected Activity

An employer covered under SOX may not discharge or in any manner retaliate against an employee because he or she:

- provided information
- caused information to be provided, or
- assisted in an investigation by
 - a federal regulatory or law enforcement agency
 - a Member or committee of Congress, or
 - an internal investigation by the company relating to alleged mail fraud, wire fraud, bank fraud, securities fraud, violation(s) of SEC rules and regulations, or violation(s) of Federal law relating to fraud against shareholders.

In addition, an employer may not discharge or in any manner retaliate against an employee because he or she filed, caused to be filed, participated in or assisted in a proceeding

relating to alleged mail fraud, wire fraud, bank fraud, securities fraud, violation(s) of SEC rules and regulations, or violation(s) of Federal law relating to fraud against shareholders.

If an employer takes retaliatory action against an employee because he or she engaged in any of these protected activities, the employee can file a complaint with OSHA.

Unfavorable Employment Actions

An employer may be found to have violated SOX if the employee's protected activity was a contributing factor in the employer's decision to take unfavorable employment action against the employee. Such actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Making threats
- Reassignment affecting prospects for promotion
- Reducing pay or hours

Deadline for Filing Complaints

Complaints must be filed within 180 days after an alleged violation of SOX or after the date on which the employee became aware of the violation. An employee, or representative of an employee, who believes that he or she has been retaliated against in violation of SOX may file a complaint with OSHA.

How to File a SOX Complaint

An employee can file a SOX complaint with OSHA by visiting or calling their local OSHA office at 1-800-321-OSHA (6742), or sending a written complaint to their closest OSHA regional or area office. Written complaints may be filed by facsimile, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier. For written complaints, the date the complaint is sent via facsimile, hand delivered, postmarked, or delivered to a third-party commercial carrier is considered the date filed. No particular form is required and complaints may be submitted in any language.

For OSHA area office contact information, please call 1-800-321-OSHA (6742) or visit www.osha.gov/html/RAmap.html.

Complaints must be filed within 180 days of the alleged discrimination or of when the employee learned of the alleged discrimination (see "Deadline for Filing Complaints" section for details). Upon receipt of a complaint, OSHA will first review it to determine whether it is a valid complaint allegation (e.g., timeliness or jurisdiction). All complaints are investigated in accordance with the statutory requirements – see 29 CFR Part 1980.104.

Results of the Investigation

If the evidence supports an employee's claim of retaliation and a settlement cannot be reached, OSHA will issue an order requiring the employer to reinstate the employee, pay back wages, restore benefits, and other possible relief to make the employee whole, including:

- Reinstatement with the same seniority status.
- Payment of back pay with interest.
- Compensation for special damages, attorney's fees, expert witness fees, and litigation costs.

OSHA's findings and order become the final order of the Secretary of Labor, unless they are appealed within 30 days.

After OSHA issues its findings and order, either party may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision and order may be appealed to the Department's Administrative Review Board.

If a final agency order is not issued within 180 days from the date the employee's complaint is filed, then the employee may file the complaint in the appropriate United States district court.

To Get Further Information

For a copy of the Sarbanes-Oxley Act, the regulations (29 CFR 1980), and other information, go to www.osha.gov and click on the link for "Whistleblower Program."

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For information on Federal securities laws, rules and regulations or for information on publicly traded companies, go to www.sec.gov.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.

For assistance, contact us. We can help. It's confidential.



U.S. Department of Labor
www.osha.gov (800) 321-OSHA (6742)

DOE FS-3490 12/2011