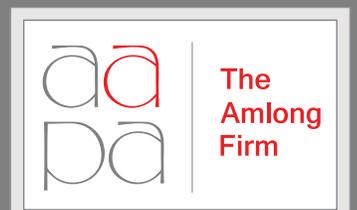


BLOWING THE WHISTLE

When Your Employer Breaks The Law

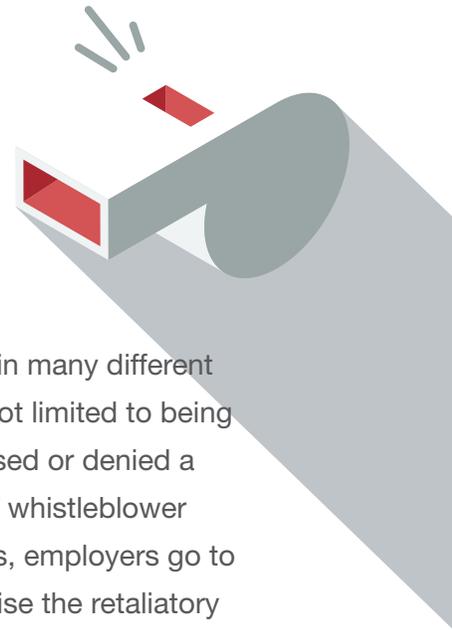


A White Paper Presented By



BLOWING THE WHISTLE

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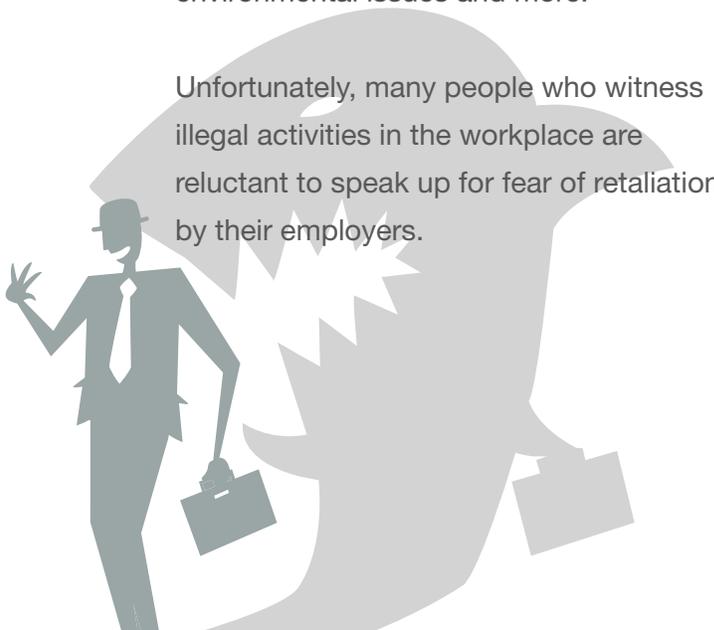


If you have witnessed something illegal at work and wondered what to do about it, the term *whistleblower* may have come to mind. You may be wondering what exactly the term means and whether it applies to you.

In a nutshell, a whistleblower is someone who reports or objects to illegal activities in the workplace.

Whistleblowers serve an important function in our society by helping to put a stop to illegal and dangerous behavior that might otherwise continue unchecked. An employer's illegal conduct in a whistleblower case can take many different forms, including political corruption, financial fraud, public safety, environmental issues and more.

Unfortunately, many people who witness illegal activities in the workplace are reluctant to speak up for fear of retaliation by their employers.



Retaliation can come in many different forms, including but not limited to being fired, demoted, harassed or denied a promotion because of whistleblower activity. In some cases, employers go to great lengths to disguise the retaliatory nature of their actions, while in other cases the cause-and-effect relationship is quite clear.

Whether you have already blown the whistle or are considering doing so, it is important to understand that there are a wide variety of laws in place to protect you from losing your job or suffering other negative employment consequences as a result of standing up for what you know is right.

These laws are designed to encourage workers with knowledge of illegal activities to take the brave and important step of speaking out against corrupt, wasteful and unsafe business practices that can be harmful to the environment, the economy and the lives of people just like you. If you have lost your job or experienced other negative consequences at work because you took a stand against something illegal, these laws also provide a way for you to seek a remedy through the legal system.

CONTEXT MATTERS:

MAKING SENSE OF A MULTITUDE OF LAWS

Whistleblower protection laws are not only numerous, but also highly complex and variable. As a result, it can be difficult to determine which of these laws, if any, apply to you and your specific circumstances.

Some protections for whistleblowers are provided for in the state laws of Florida, while many more exist at the federal level. The applicability of each of these laws depends on several different factors, including the nature of the employment relationship and the type of illegal activity involved.

Many Whistleblower Claims Arise From Situations Involving:



Violation of environmental protection laws



Fraud against the government
(including Medicare and Medicaid fraud)



Corruption and abuse of
public authority



Violation of health and
safety regulations



Waste or gross mismanagement
of public funds



Corporate fraud

The examples listed here are some of the most common types of whistleblower scenarios, but this list is not exclusive. Many other types of criminal activity and unlawful conduct can also trigger whistleblower protections for workers who take a stand against it.

FLORIDA LAW OFFERS BROAD PROTECTIONS FOR PRIVATE EMPLOYEES

At the state level in Florida, there are two main laws that protect whistleblowers: one for workers employed in the private sector and another for public employees. While these two laws are similar in many ways, there are also some important differences between them.

If you are a private sector employee in Florida, state law provides you with broad protections that encompass three different types of whistleblowing activities:

1. DISCLOSURE



Reporting your employer's illegal conduct to a government agency.

2. ASSISTANCE



Aiding authorities in the investigation of your employer's illegal conduct.

3. OBJECTION



Opposing or refusing to participate in your employer's illegal conduct.

An important thing to understand about this law, however, is that disclosure of your employer's unlawful activity to the authorities is not always considered a protected whistleblower activity.

In order to be protected under Florida's anti-retaliation law for reporting illegal conduct to outside authorities, you first must take the following two steps:

The Two Steps Needed to Be Protected Against Retaliation



You must notify your employer in writing of your objection to the illegal activity.



You must give your employer a reasonable opportunity to remedy the situation before making your report.¹

Internal complaints and refusals to participate in illegal behavior are protected without any requirement for a written objection.

IF YOU ARE A PUBLIC EMPLOYEE, THE RULES ARE DIFFERENT

If you are a public employee in Florida — for example, a police officer, firefighter or public school teacher — state law offers you a somewhat different and more limited set of protections than those that apply to private employees.

Specifically, if you work in the public sector, your employer is prohibited by law from firing, demoting, disciplining or otherwise retaliating against you for reporting unlawful activities to your supervisor or to the appropriate authorities. These protections apply to situations in which your employer has violated any law, rule or regulation (federal, state or local) that puts the public health, safety or welfare at risk.²

In addition, as a public employee in Florida, you are also protected from retaliation if you report any of the following acts committed by an agency employee or independent contractor:

- *Gross mismanagement*
- *Gross waste of public funds*
- *Medicaid or Medicaid fraud or abuse*
- *Gross neglect of duty*

Unlike private sector employees, however, if you are a public employee, you must put your complaint in writing in order to be protected under Florida law.



MANY FEDERAL PROTECTIONS ARE AVAILABLE, TOO



In addition to Florida’s public and private whistleblower statutes, there is a vast array of federal laws that protect workers who blow the whistle in a wide range of circumstances. Key examples include:

FEDERAL STATUTE	PURPOSE	TIME LIMIT
 The Whistleblower Protection Act ³	Protects federal employees who disclose illegal government activities.	Varies according to the circumstances.
 The Sarbanes-Oxley Act ⁴	Protects employees of publicly traded companies who report acts of fraud.	180 days
 The Clean Air Act ⁵	Protects employees who report illegal air pollution.	30 days
 The Occupational Safety and Health Act ⁶	Protects employees who report workplace health and safety violations.	30 days
 The False Claims Act ⁷	Rewards individuals who report fraud against the U.S. government by giving them a share of any funds that are recovered.	Three to 10 years, depending on the circumstances.

The examples listed here represent only a small sampling of the numerous federal laws containing provisions designed specifically to protect and reward whistleblowers. A lawyer with a background in whistleblower and employment law can help you determine which of these laws may apply to you based on the individual circumstances of your case.

WHAT REMEDIES ARE AVAILABLE?



Just as there are many different protections available to whistleblowers, there are also a variety of legal remedies provided for in these laws. The specific remedies available to you will depend on the individual circumstances of your case, but may include:

	Back pay for your lost wages and benefits.
	Reinstatement to the same position you had before, or to an equivalent position.
	Reinstatement of your fringe benefits and seniority rights.
	Compensation for the earnings you would have received if you had been reinstated to your original position, in the event that you are not.
	Payment of your legal fees and related costs.
	A percentage of the amount recovered on behalf of the government.
	Compensation for your emotional pain and suffering.

In addition, if your whistleblower claim is successful, your employer may be ordered to discontinue the illegal activity and take steps to repair the damage that has been done.

LEAVE A

PAPER TRAIL

If you find yourself in the position of blowing the whistle, there are some important things to keep in mind to help protect your legal rights in case you experience negative employment consequences as a result. One of the most important things you can do to protect yourself in this situation is to document your objection to the behavior in question and any resulting interactions with your employer — particularly if you believe you are at risk of being fired.

By documenting your opposition to your employer's behavior as well as your efforts to stop that behavior, you create valuable evidence that you can use to help prove your case in court should that become necessary. This type of evidence can potentially be very beneficial to you and, as discussed above, may even be required in order to prove your case.



DO NOT

MAKE THREATS

Although Florida's whistleblower laws require that you make your position known to your employer, it is also important to avoid making statements that could be construed as threats or extortion. Doing so could not only undermine your legal claim, but also expose you to potential counterclaims and even criminal prosecution.

Thus, you must take care not to suggest, request or accept any type of arrangement in which you will keep quiet about the matter in exchange for a severance package, payment, continued employment or any other benefit.

Likewise, you must not threaten to report the illegal activities to the press or the authorities if your employer does not comply with your wishes. In fact, even threatening legal action can be potentially problematic, especially if you do not intend to follow through, so it is wise to consult an attorney before making any statements to that effect.

GRAY AREAS: WHAT IF I'M WRONG?

Sometimes the line between legal and illegal behavior is not clearly drawn. If you suspect but are not certain that your employer is breaking the law, this can put you in a difficult situation. The good news is that, in many cases, you may still be protected as a whistleblower even if it turns out that your employer has not actually broken the law, so long as your suspicion was sincere and objectively reasonable under the circumstances.

However, mere rumors or speculation may not be enough to trigger whistleblower protections unless they are backed up by actual evidence. Therefore, it is important not to rush into blowing the whistle before you have a chance to check your facts. It is also a good idea to talk things over with an attorney to learn more about your rights and how to protect yourself before taking that step.



STRICT TIME LIMITS MEAN SWIFT ACTION IS ESSENTIAL



Just as the numerous whistleblower laws vary in terms of the circumstances they apply to and the remedies they provide, they also differ with regard to the time limits they impose.

If you are a public employee in Florida and wish to file a whistleblower claim under state law, you must do so within 60 days after the date of the retaliatory action by your employer. On the other hand, if you are a private sector employee seeking relief under Florida state law, your window of opportunity is considerably longer: two years from the date that you learn that a retaliatory employment action was taken, or four years from the date that the action was taken — whichever comes first.

For federal whistleblower claims, the time limits for filing a whistleblower claim are often quite short — in many cases just 30 days from the date that you receive notice of your employer's retaliatory action. Many other federal laws provide somewhat longer deadlines of 60, 90 or 180 days, depending on the specific circumstances involved.

Because the time limits on whistleblower retaliation claims are often very short, this may mean that your right to seek protection under the law could expire before the retaliatory employment action even takes effect.

Therefore, it is important to take swift action and get the help you need to protect your rights and seek a remedy through the legal system.

TIMELINE TO FILE A WHISTLEBLOWER CLAIM

PUBLIC EMPLOYEE
within 60 days

after the date of the
retaliatory action by
your employer

PRIVATE SECTOR
2 years

from date that retaliatory
employment action was
taken or 4 years from date
action was taken

FEDERAL EMPLOYEE
30 days

from the date that you
receive notice of
your employer's
retaliatory action.

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Sources

¹ Fla. Stat. Ann. § 448.102

² Fla. Stat. Ann. § 112.3187

³ 5 U.S.C. § 1211, et seq.

⁴ 18 U.S.C. § 1514A

⁵ 42 U.S.C. § 7622

⁶ 29 U.S.C. § 660

⁷ 31 U.S.C. § 3729

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