



CONGRESS SEEKS TO EXPAND FEDERAL PROTECTIONS FOR WHISTLEBLOWERS

Several states have passed laws that protect public employees who blow the whistle on misconduct within state and local government. Some states have taken the additional step of passing legislation that protects private employees, or some subset of the private workforce, in certain circumstances.

Alabama has the State Employers Protection Act to shield public employees who report violations of state or local laws, regulations, or rules from employer reprisals. Alabama law protects private employees from discrimination and retaliation for filing or participating in claims, hearings, or investigations related to age discrimination, child labor law violations, and worker's compensation claims. While the protections for whistleblowers in Alabama are broader than in some states, they leave considerable gaps where a public or private employee could face retaliation for reporting misconduct.

In order to provide a more comprehensive set of protections for both public and private employees that report violations of federal law and misconduct related to federal contracts, grants, and programs, the U.S. House of Representatives introduced two bills in September. If passed this legislation would put in place new federal safeguards for whistleblowers and strengthen some of the existing ones.

The Non-Federal Employees Whistleblower Protection Act (H.R. 6406) is aimed at encouraging federal contractors to report misconduct in the performance of contracts, grants, and other programs receiving federal funds. The bill would prohibit an employee from being discharged, demoted, or discriminated against as a reprisal for initiating or participating in any proceeding related to the misuse of federal funds, reasonably opposing the misuse of federal funds, or disclosing to certain federal agencies or officials information that the employee reasonably believes is evidence of: (1) gross mismanagement of an agency contract or grant relating to covered funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety, or an abuse of authority, related to the implementation or use of covered funds; or (4) a violation of law, rule, or regulation related to an agency contract, subcontract, or grant relating to covered funds.

This would be an expansion of existing federal whistleblower protection laws, which currently cover employees of a federal contractor that disclose to a federal official information relating to a substantial violation of law related to a public contract. An employee that believes he or she has been retaliated against in violation of this bill could provide notice of such action to the contracting agency's inspector general for investigation.

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Upon exhaustion of the claimant's administrative remedies, there would be a right to file suit based on the violation. A companion bill has been passed by committee in the Senate, but not by the full Senate. The Private Sector Whistleblower Protection Streamlining Act of 2012 (H.R. 6409) would provide whistleblower protections for private sector, state, and municipal employees who are retaliated or discriminated against by an employer for disclosing threats to public safety or violations of any federal law or state law that implements a federal law. This bill would allow a whistleblower to file a complaint with the Secretary of Labor, if the bill's provisions are violated, or bring an action in federal district court. If enacted, the bill would also create the Whistleblower Protection Office in the Department of Labor, as well as creating an Administrative Review Board within the Department of Labor that would decide appeals from administrative decisions and issue final agency decisions regarding alleged violations. The bill would not apply to any retaliation or discrimination based on an employee reporting or being involved in a claim alleging the violation of a federal law that already has its own anti-retaliation provisions, as long as those provisions meet certain requirements. For instance, civil rights laws administered by the Equal Employment Opportunity Commission that include anti-retaliation provisions would not be covered.

Upcoming Events

Contracting with the Customer: What the EMS Manager Needs to Know

Date: February 21, 2013

Time: 9:00 a.m. - 5:00 p.m.

Location: San Diego, California

Fees & Burgess, P.C. shareholders, Allen Anderson and Jeffrey Roth, will be instructing a class, Contracting with the Customer, at the 2013 IPC APEX EXPO on Thursday, February 21, 2013 in San Diego, California.

Without a doubt, negotiating with OEMs is one of the biggest challenges facing EMS managers. What needs to be covered in the contract? Is your company protected? What should you do if there is a dispute? This comprehensive, two-part course addresses the specific contractual issues faced by EMS companies. Gain a step-by-step understanding of the contracting lifecycle between an EMS provider and its customer, starting with initial engagement and signing of a nondisclosure agreement, through the bid process and formal contract negotiation, to resolution of disputes under the applicable contract(s). Using real-life situations, the contracting process as well as the questions that must be answered before entering into an agreement will be covered. Participants must be representatives of EMS organizations to attend.

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The Agenda is:

Part 1 - 9:00 AM - 12:00 PM

Confidentiality agreements, credit and financial risk, letters of credit, and bids (Exercises 1 and 2) ; Letters of intent and preliminary contract documents, purchase order acknowledgment, and "battle of the forms" (Exercises 3 and 4) .

Lunch - 12:00 PM - 2:00 PM

Part 2 - 2:00 PM - 5:00 PM

Negotiation of contract terms, warranties, limitation of liability, and product liability (Exercise 5) ; Contract guidelines, claim negotiation, and dispute resolution (Exercise 6).

It is recommended that participants attend both Part I (PD-47) and Part II (PD-48) in the afternoon.

For more information, including how to register for this class, click [here](#).

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International Contracting

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Limiting Liability for Sexual Harassment

Construction Contracting

Managing Employee Use of Internet and E-mail in the Workplace

Diversity Training

Managing Gender Identity Issues in the Workplace

Electrical Manufacturing Services Contract

Reducing Employee Benefits Costs

Employment Law Survival Training for Managers

Reducing Risk in Purchasing Terms and Conditions

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Michael L. Fees

mfees@feesburgess.com

Allen L. Anderson

anderson@feesburgess.com

Stacy L. Moon

smoon@feesburgess.com

Ryan G. Blount

rblount@feesburgess.com

FEES & BURGESS, P.C.

213 Green Street

Huntsville, Alabama 35801

Telephone (256) 536-0095

Facsimile (256) 536-4440

www.feesburgess.com

C. Gregory Burgess

gburgess@feesburgess.com

Jeffrey L. Roth

jroth@feesburgess.com

Allison B. Chandler

achandler@feesburgess.com

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