

WHISTLEBLOWER LAWS: STATE OR FEDERAL PROTECTION?

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ABSTRACT

This article will discuss the unique complexities associated with whistleblower laws and programs in the United States. It will focus on discussion of the myriad of current federal and state laws created because of concern over risks in this area. The goal of this article is to compare state and federal legislation, for the purpose of identifying the states that offer the best protection to whistleblowers as well as identifying any states that offer better protection to whistleblowers than federal law currently provides.

INTRODUCTION

There is a wide range of laws at the state and federal level that protect whistleblowers from retaliation, and most states recognize a common law action for wrongful discharge in violation of public policy. The laws were created largely as a result of increasing incidents of fraud and abuse, in both the government and private sectors. As an example, in the wake of the Enron implosion and the numerous subsequent cases of corporate misconduct, legislation was enacted to reform the system of corporate financial oversight to provide enhanced protection of employees and investors (Kohn, 2004). Regulatory reform continues today,

with the most recent regulatory activity in this area being the enactment of, and the protection provided by, the Dodd-Frank Wall Street Reform and Consumer Protection Act.

However, regulatory reform alone cannot solve the problems associated with unethical conduct. For instance, “the Boston whistleblower who tried for years to warn regulators about Bernard Madoff thinks hundreds of people suspected the financier was running a scam—but did nothing to stop it” (Kronenberg, 2009). Individual empowerment and freedom to act with regard to a concern, as well as an understanding of the associated laws, is also critical for the success of any whistleblower program. This article will discuss three unique complexities associated with whistleblower laws and programs in the United States that can be identified through a literature review, and it will add to the literature by contrasting state and federal whistleblower protection laws to determine whether state or federal protection is more advantageous from the employee’s perspective.

The first of the unique complexities is the fact that the current global economic crisis lends itself to increased pressure on people to commit accounting or other reporting irregularities. As a result, the importance of whistleblower program effectiveness and protections is increased. The United States Financial Crisis Inquiry Commission reviewed the causes of the global economic crisis and reported its findings to Congress in January 2011. The commission concluded that the crisis was avoidable and was caused by several factors including breakdowns in corporate governance, the fact that there were too many financial firms acting recklessly and assuming too much risk, and systemic breaches in accountability and ethics at all levels (Levin, 2011).

The second whistleblower complexity is that deficiencies have recently been identified in the current laws as well as in the reporting and investigation processes, as identified in recent Government Accountability Office (GAO) reports. Two reports on the topic identified ineffective resources and investigative tools, complex and numerous whistleblowing laws and statutes, and inadequate tracking mechanisms used for investigations conducted by the Department of Labor’s Occupational Safety and Health Administration (OSHA). OSHA is the primary agency responsible for receiving and investigating most complaints, and OSHA’s responsibility for whistleblower complaints has grown over time (GAO, 2010). Lessons can be learned from the OSHA-related deficiencies identified in the GAO report, because many internal whistleblower programs may mirror the OSHA program.

The third element of complexity with regard to whistleblower law and process is the lack of consistent and effective whistleblower protection advocacy. In April 2009, the Government Accountability Project (GAP) released a report stating that several groups had asked President Obama to follow through on a campaign promise to strengthen whistleblower protection (GAP, 2009). On July 21, 2010, Congress fulfilled that promise when President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which included a new kind of whistleblower program (Hornblower, 2011). Due to the

fact that the administration has already taken steps to improve government accountability and transparency, further changes could occur in the area of whistleblower protection.

On the other hand, a weakening of the provisions of the current Dodd-Frank Act could also occur. Senator Dodd was a keynote speaker at the June 2012 Association of Certified Fraud Examiners Conference and Exhibition. In personal communication with the authors, Senator Dodd expressed his concern that when the funding established by the Dodd-Frank Act of 2010 is exhausted, he is not certain that a bipartisan congress will work together to establish renewed funding sources.

LITERATURE REVIEW

According to the book *Whistleblowing: When it works—and why* (Johnson, 2003), there is a widely accepted definition for a “whistleblower” that includes four parts. First, an individual acts with the intention of making information public. Second, the information is given to parties outside of the organization concerned. Third, the information is related to wrongdoing. Finally, the person reporting the information is an employee or former employee of the company. Specifically, the term whistleblower was coined in the 1960s to describe FBI informants against the Mafia. Since the 1970s, “whistleblowing has been commonly used for describing dissent in a bureaucracy” (Johnson, 2003: 3). Events such as those that occurred at Enron and WorldCom fixed the importance of the topic of whistleblowing in the mind of every investor. Consequently, the terminology associated with whistleblowing has become prominent in North American vocabulary. In fact, United States citizens “blow the whistle on waste, fraud, and abuse more than anywhere else in the world” (Johnson, 2003: 3).

Impact of the Global Economic Crisis

The literature review offered here was conducted for each of the previously described complexity components. The first element is the impact of the global economic crisis of the last few years. In the wake of the financial crisis resulting from the global economic events of 2007 and 2008, Congress enacted financial reform legislation to reorganize financial regulators and to reform the regulation of financial markets and financial institutions (Tienhaara, 2009).

In 2011, it was noted that it had been three years since the financial crisis crippled the American economy, and “much to the consternation of the general public and the demonstrators on Wall Street, there [had] not been a single prosecution of a high-ranking Wall Street executive or major financial firm” (Kroft, 2011). This lack of prosecution was evident even though fraud and financial misrepresentations played a significant role in the economic meltdown (Kroft, 2011). Eileen Foster never spoke to the Justice department although she was Countrywide’s executive vice president in charge of fraud investigations. When

asked what drove the meltdown at Countrywide, Ms. Foster indicated that “the loan officers received bonuses, commissions. They were compensated regardless of the quality of the loan. There’s no incentive for quality. The incentive was to fund the loan” (Kroft, 2011). Ms. Foster indicated that her efforts to address the wrongdoing were circumvented by executive management and she was ultimately fired.

If you had looked at the financial statements of the major banks on Wall Street in the weeks prior to the financial crisis of 2008, you would not have guessed that most of them were in financial jeopardy and would require a trillion dollar bailout from the taxpayers. The question must be raised as to whether the executive management of these banks withheld information from investors. If they did, they may be subject to criminal prosecution under the Sarbanes Oxley Act for knowingly certifying false financial reports and statements about the effectiveness of their internal controls. Kroft (2011) noted that “The Justice Department has not brought a single case against Wall Street executives for violating Sarbanes Oxley, in spite of some compelling evidence.”

According to a 2011 report issued by the Transactional Records Access Clearinghouse at Syracuse University, the federal government was on track to file just 1,365 prosecutions for financial institution fraud in fiscal year 2011. The number of prosecutions at that time was the lowest in at least 20 years. “The falling number of fraud prosecutions is concerning given what many claim is a strong pattern of financial-sector misconduct in recent years, culminating in a housing crisis characterized by alleged rampant mortgage fraud and improper foreclosure, as well as the weakening of the national and global economy” (Eichler, 2011). The Transactional Records Access Clearinghouse (TRAC), which compiles Justice Department data obtained through the Freedom of Information Act, noted that 2011’s rather low number of financial fraud prosecutions was the continuation of a trend spanning more than a decade (TRAC, 2011).

The second key complexity associated with whistleblowing involves whistleblowing program deficiencies coupled with the complexity of the current laws. Such programs are important tools that enable workers who “blow the whistle” on prohibited or unlawful practices discovered during their employment to remove potentially insurmountable barriers to enforcement.

Potential Barriers

The barriers to a successful internal whistleblowing program include fear of retribution, belief that management is not held to the same standards as others, and fear of being isolated. Many employees avoid whistleblowing because they do not like the stigma attached to being a “snitch” and others might have suffer from misguided union solidarity (Ravishankar, 2003). Additional barriers include overall mistrust with regard to the management and administration of the whistleblowing program (Ravishankar, 2003).

As an example of this last-mentioned problem, as far back as 1989, reports criticized activities associated with whistleblower protection. For instance, in 1989, the Project on Military Procurement criticized federal hotlines. The entity had two primary concerns. The first was that, once “whistleblowers report an allegation, they are shut out of the process” (Johnson, 2003: 107). This has been a problem for building trust and rapport, and it limits the amount of additional information the whistleblower can provide to investigators.

The second key concern reported by the Project on Military Procurement was that often the investigatory process directed the information back down to the responsible member of management. This not only gives management, which may be involved, time to cover its tracks but also provides opportunities for management to identify the source of the whistleblowing (Johnson, 2003).

Whistleblower Protection Advocacy

To overcome the potential barriers to whistleblower activity, the United States Congress recognized a need to enact legislation which fosters consistent and effective whistleblower protection advocacy. Such legislation encourages participation by those employees most likely to have access to the information related to wrongdoing in the workplace. While congress began cultivating whistleblower activity with enactment of both the Whistleblower Protection Act (WPA) in 1989 and Sarbanes-Oxley Act in 2002, the most sweeping of reforms came in 2010 with the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”). Both of these acts are discussed in detail below, along with state whistleblower protection policies.

Federal: Whistleblower Protection Act of 1989

In 1989, the federal government first took measures to cover federal government employees for whistleblower activity by passing the federal Whistleblower Protection Act (WPA) (Walsh, 2007). WPA prohibits the taking of action against an employee who reports information related to a potential violation of law, mismanagement or misconduct, abuse of authority or funds, or safety concerns. Even with the provisions included in the Whistleblower Protection Act, most plaintiffs still do not win court decisions on appeal (Walsh, 2007). This is supported by the 2009 Government Accountability Office report, which indicated that whistleblowers received a favorable outcome in only 21% of cases. On appeal, only one third of outcomes or fewer favored the plaintiff (GAO, 2009). Therefore, while protection provisions exist at a federal level, case outcomes have not historically favored the whistleblower.

With the low success rate in federal whistleblowing claims for plaintiffs, it is important for employers to provide a trusted, independent, and clearly revealed avenue for employees to report claims without fear of repercussions.

Federal: The Sarbanes-Oxley Act

Before the Sarbanes-Oxley Act was passed into law in July of 2002, employers had little incentive to set up internal policies to encourage whistleblower activity. Sarbanes-Oxley, also known as the Public Company Accounting Reform and Investor Protection Act in the Senate, and the Corporate and Auditing Accountability and Responsibility Act in the House, finally made civil remedies for whistleblowing available. “The whistleblower provision, which was unanimously passed by the Judiciary Committee, was incorporated into the larger SarbanesOxley Act as part of the Leahy-McCain amendment” (Kohn, 2004: 23). Furthermore, regulators have mandated that companies have codes of ethics to protect whistleblowers and that they implement whistleblower hotlines (Moberly, 2012). However, it should be noted that the Sarbanes-Oxley Act does not apply to all employees. It primarily applies to those who are involved in the financial dealings of the suspect organization. Additionally, Kim (2009: 245) found that “what constitutes a whistleblowing activity currently depends on the reviewing court’s interpretation.”

Kim (2009) also pointed out that the legislative branch has not been able to protect whistleblowers as initially intended. The reason for this lack of protection is mostly attributed to the Sarbanes-Oxley Act’s procedural difficulties, coupled with OSHA’s inexperience in investigating securities fraud and the lack of appropriate remedies (Kim, 2009).

Although the whistleblower provision of the Sarbanes-Oxley Act seems at first glance to be employee centric, in reality, it is the employer that has an advantage under the statute (Kim, 2009). Because most states have adopted the at-will employment doctrine, broad latitude is provided to employers for documenting legitimate reasons for terminating an employee.

In that same regard, a report from the United States Government Accountability Office (GAO) concludes that whistleblowers are not adequately protected from retaliation by their employers. The GAO’s report, entitled *Whistleblower protection program: Better data and improved oversight would help ensure program quality and consistency*, concluded that “problems stem from a lack of resources and proper tracking of complaints, as well as a complicated patchwork of regulations” (GAO, 2009: 2). As recently as July 25, 2011, the GAO released a report recommending that whistleblower protections should be added to the Antitrust Criminal Penalties Enforcement and Reform Act (GAO, 2011). Currently, whistleblowers who report criminal antitrust violations lack a civil remedy if they experience retaliation, so they may be hesitant to report criminal wrongdoing, and past reported cases suggest that retaliation occurs in this type of situation (GAO, 2011). Additionally, OSHA reports that 65% of its Whistleblower Protection Program managers believe that the program is under stress and 29% believe that the program is broken (Dworkin, 2010; Earle & Madek, 2007; Moberly, 2007).

The GAO’s findings are supported by a study conducted by Richard Moberly (2007). Moberly found that during the first three years of the implementation of

the Sarbanes-Oxley Act, only 3.6% of Sarbanes-Oxley whistleblowers won relief through the initial administrative process and only 6.5% of whistleblowers won appeals (Moberly, 2007). The detailed analysis conducted by Moberly concluded that “administrative decision makers strictly construed, and in some cases misapplied, Sarbanes-Oxley’s substantive protections to the significant disadvantage of employees” (Moberly, 2007: 65).

While the Sarbanes-Oxley Act was intended to address some of the problems associated with the patchwork of state-level whistleblower provisions, the act’s coverage extends only to companies that issue publicly traded shares. Therefore a key weakness of Sarbanes-Oxley is that an “employee must demonstrate that the claim was within the boundaries of Sarbanes-Oxley. The whistleblower must be a covered employee, work for a covered employer, engage in a protected activity, and suffer covered adverse employment action” (Moberly, 2007: 72).

The low employee success rate documented by Moberly was also attributed to OSHA’s tendency to misapply Sarbanes-Oxley’s burden of proof. Moberly (2007: 72) suggested that “OSHA’s regulations and budgetary restraints [have] contributed to its failure to apply Sarbanes-Oxley’s burden of proof appropriately”. The GAO report echoes Moberly’s claim.

As a consequence of increased awareness and regulatory intervention, in 1983, OSHA began investigating whistleblower complaints from trucking employees. OSHA revised its “Whistleblower investigations manual” most recently in September 2011. Three chapters were added and various other chapters modified to provide guidance for the processing and investigation of whistleblower complaints under the Federal Railroad Safety Act, the National Transit Systems Security Act, and the Consumer Product Safety Improvement Act (OSHA, 2011). The three new acts bring the current number of whistleblower statutes investigated by OSHA to 22. These statutes are listed in Table 1. In a study conducted in 2007, Ramirez went as far as suggesting that OSHA is not the appropriate entity to handle investigative activity (Ramirez, 2007). Ramirez (2007: 210) pointed out that “each anti-retaliation provision is linked to a particular statute thereby requiring OSHA investigators to become familiar with the strictures of each statute, its procedural requirements, and the relative burdens of proof”. Ramirez’s research also revealed that practitioners observe that OSHA investigators and supervisors lack the disposition, training, and experience to adequately assess Sarbanes-Oxley claims.

The Ethics Resource Center (ERC) has reported that the percentage of employees who observe misconduct and report it has risen consistently (Moberly, 2012). Some research reporting that whistleblowing is on the increase indicates that this may be due to the increase and strengthening of regulations (Moberly, 2012). In addition, the Ethics Resource Center (ERC) reported in 2012 that 22% of workers reporting workplace misconduct experience some form of retaliation, compared to 12% in 2007 (DiMauro, 2012), which may also influence the increase in whistleblowing.

Table 1. Statutes Included in OSHA's Whistleblower Protection Programs

Act and Citation	Regulation
Section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. §660(c)	29 CFR Part 1977
Asbestos Hazard Emergency Response Act, 15 U.S.C. §2651	29 CFR Part 1977
International Safe Container Act, 46 U.S.C. §80507	29 CFR Part 1977
Surface Transportation Assistance Act, 49 U.S.C. §31105	29 CFR Part 1978
Safe Drinking Water Act, 42 U.S.C. §300j-9(l)	29 CFR Part 24
Federal Water Pollution Control Act, 33 U.S.C. §1367	29 CFR Part 24
Toxic Substances Control Act, 15 U.S.C. §2622	29 CFR Part 24
Solid Waste Disposal Act, 42 U.S.C. §6971	29 CFR Part 24
Clean Air Act, 42 U.S.C. §7622	29 CFR Part 24
Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9610	29 CFR Part 24
Energy Reorganization Act, 42 U.S.C. §5851	29 CFR Part 1979
Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. §42121	29 CFR Part 1980
Corporate and Criminal Fraud Accountability Act of 2002, Title VII of the Sarbanes-Oxley Act, 18 U.S.C. §1514A	29 CFR Part 1981
Pipeline Safety Improvement Act, 49 U.S.C. §60129	29 CFR Part 1982
Federal Railroad Safety Act, 49 U.S.C. §20109	29 CFR Part 1983
National Transit Systems Security Act, 6 U.S.C. §1142	
Consumer Product Safety Improvement Act, 15 U.S.C. §2087	
Affordable Care Act, 29 U.S.C. §218C	
Consumer Financial Protection Act of 2010 (CFPA), Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 12 U.S.C. §5567	
Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281	
FDA Food Safety Modernization Act (FSMA), 21 U.S.C. §399d	

Source: OSHA (2011).

Federal: The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Enacted on July 21, 2010, and effective from August 12, 2011, the sweeping reforms known as the Dodd-Frank Act established a whistleblower program that requires the U.S. Securities and Exchange Commission (SEC) to pay a financial reward to eligible whistleblowers who voluntarily provide the SEC, either directly or through an entity's internal compliance program, with "original information" about a violation of the federal securities laws that leads to "the successful enforcement of a covered judicial or administrative action." The Dodd-Frank legislation also strengthens the whistleblower protection elements of the Sarbanes-Oxley Act.

State Statutes

The complexity of current laws is best illustrated by pointing out the inconsistencies between state laws. Forty states have attempted to strengthen and enhance their whistleblowing laws for public employees and have added protections for private employees as well (Moberly, 2012). Many states have laws protecting employees from retaliation for filing a claim or reporting a violation of the law through the act of whistleblowing. However, the protection offered to employees varies widely from state to state. “Most states have whistleblower protection laws, although some of these statutes apply only to public sector employees” (Walsh, 2007: 559). The National Whistleblowers Center (2014) provides information regarding current state statutes.

The information included in Table 2 identifies the states with “Qui Tam” statutes as well as those without. Qui Tam refers to “a lawsuit brought by a private citizen, popularly called a ‘whistleblower,’ against a person or company who is believed to have violated the law in the performance of a contract with the government or in violation of a government regulation, when there is a statute which provides for a penalty for such violations” (Hill & Hill, 2002).

Qui Tam laws afford the whistleblower the ability to assist the investigative agency in a case against an individual or corporation for financial wrongdoing and allow the whistleblower to collect a portion of the money recovered. Qui Tam also allows the government to decide when to join with a concerned individual in filing a claim and pursuing an investigation. A Qui Tam law at the state level allows an individual to file a federal claim.

In addition to Qui Tam statutes, various states have other whistleblower statutes. Table 2 also shows the 17 states with these statutes. The remaining states have piecemeal whistleblower protections. Table 2 also includes a third option at the state level, namely, common law protections for whistleblowers. Further whistleblower information about state law is available at National Whistleblowers Center (2014).

As shown in Table 2, most states have laws protecting employees from retaliation for filing a claim or reporting a violation of the law through the act of whistleblowing. However, states vary widely in terms of the coverage offered to whistleblowers. Table 3 provides a comparison of the various state codes associated with whistleblowing protection. For instance, some state statutes apply only to public sector employees, while some apply to both public and private employees. Some statutes cover a broad array of circumstances, such as prohibiting employers from dismissing workers for disclosing information about a violation of law, gross mismanagement or fund waste, or danger to public safety and health. Other statutes, however, are much narrower in scope, for example, limiting the protection of public and private employees to retaliation for reporting possible violations.

Table 2. State and Common Law Provisions

	States with Qui Tam Statutes	States with Other Whistleblower Protections	States with Common Law Protections
Alabama			
Alaska			√
Arizona		√	√
Arkansas	√		√
California	√	√	√
Colorado			√
Connecticut		√	√
Delaware	√	√	√
Florida	√	√	√
Georgia	√		
Hawaii	√	√	√
Idaho			√
Illinois	√	√	√
Indiana	√	√	√
Iowa	√		√
Kansas			√
Kentucky			√
Louisiana	√		
Maine		√	
Maryland			√
Massachusetts	√		√
Michigan	√		√
Minnesota	√		√
Mississippi			√
Missouri			√
Montana	√		
Nebraska			√
Nevada	√		√
New Hampshire	√	√	√
New Jersey	√	√	√
New Mexico	√		√
New York	√		
North Carolina			√
North Dakota		√	√
Ohio		√	√
Oklahoma	√		√
Oregon			√
Pennsylvania			√
Rhode Island	√	√	
South Carolina	√		√
South Dakota	√	√	√
Tennessee	√	√	√
Texas	√		√
Utah	√		√
Vermont		√	√
Virginia	√		√
Washington			√
West Virginia			√
Wisconsin	√		√
Wyoming			√

COMPARING STATE AND FEDERAL LEGISLATION

A careful comparison of state versus federal legislation highlights the fact that, overall, employees are better protected under state statutes. The federal Sarbanes-Oxley Act offers only certain protections for employees of companies that issue publicly traded shares, and the parameters of this law are still being worked out in court cases. The older, 1989, federal WPA, while designed to protect federal workers who disclose improper or illegal government activities, has unfortunately been weakened so much since its implementation that it offers virtually no protection from retaliation. Therefore the focus of federal legislation employee protection is on a limited portion of the employee population, those working for companies issuing publicly traded shares.

In support of this assessment, a comparison of state versus federal legislation highlights states that have explicit statutory protections for whistleblowers as depicted in Table 2. An analysis based on the comprehensiveness of coverage in Table 2 indicates that the states offering a higher level of protection than is offered on the federal level include the following: California, Delaware, Florida, Hawaii, Illinois, Indiana, New Hampshire, New Jersey, South Dakota, and Tennessee. It should be noted that a comparison of actual claim results (success or failure) is not included in this current research analysis and would provide an additional argument for the strengthening of employee whistleblower protection.

Numerous states and the District of Columbia have recognized a public policy exception to the "employment at will doctrine." These, in addition to the District of Columbia, currently include Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (Muhl, 2001). An employee living in or experiencing the alleged wrongdoing in the aforementioned states and the District of Columbia has stronger protection on the state level than on the federal level if the concern is public policy related.

The at will doctrine exception is yet another example of the piecemeal protection offered on the state level. Piecemeal employee protections are best highlighted in Table 3. However, even piecemeal protection is better than federal whistleblower protection in most cases. Important considerations identified through Table 3 include the fact that if an employee has a health and public safety concern, the states offering the best protection regardless of employment sector currently are Alaska, Arizona, California, Florida, Kentucky, Louisiana, Maine, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Tennessee, and Vermont.

As further summarized in Table 3, the states offering better employee protection from a penalty assessment perspective, include Arizona, California,

Table 3. State Whistleblower Provision Comparison

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Alabama	25-5-11.1 25-8-57	May not retaliate against employee or individual who tries to remedy violations of the state code's chapter on child labor; Also may not discharge, discipline, threaten, harass, blacklist, or in any manner discriminate if employee has disclosed information, refused to obey an illegal order, or revealed any violation of the child labor chapter.	Both	May bring civil action within 2 years of violation; court may award back pay, front pay, and compensatory damages	—
	36-26A-3	May not discharge, demote, transfer, or otherwise discipline regarding compensation, terms, conditions, or privileges	Public	May bring civil action within two years of violation; court may award back pay, front pay (awarded for lost compensation during the period between judgment and reinstatement), and compensatory damages	—
Alaska	18.60.088, .089, .095	May not discharge or discriminate if employee or representative files a complaint, institutes proceedings, or testifies regarding a violation of a safety or health standard that threatens physical harm or imminent danger	Private	May file complaint with commissioner of health and safety within 30 days of the violation to get reinstatement, back pay, and other appropriate relief	—
	39.90.100 to .150	May not discharge, threaten, disqualify, or otherwise discriminate for actual or expected reports to a public body or for participating in court action, investigation, hearing, or inquiry held by public body on matter of public concern	Public	May initiate civil action for punitive damages as well as other appropriately found relief; a municipality is not liable if it adopts an ordinance that provides similar protections	Civil fine, maximum \$10,000

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Arizona	23-425 & 23-418	May not discharge or discriminate if employee files a complaint, institutes a proceeding, or testifies regarding a violation of health or safety statutes	Both	May file a complaint with commissioner within 30 days of violation, for reinstatement, back pay, and other relief	If willful or repeated violating: maximum \$7,000 for each violation; otherwise minimum \$5,000 for each violation
	38-531 to 38-534	An employer who has control over personnel actions may not act in reprisal against an employee for disclosure of information to public body on violation of any law or mismanagement, waste of funds, or abuse of authority	Public	May recover, under civil action, attorney's fees, costs, back pay, general and special damages, and full reinstatement or injunctive relief; may make a complaint to appropriate independent personnel board, school district governing board, or community college governing board if discharged for disclosing; excludes state university or boards of regents with a rule or provision for protecting employees at time personnel action is taken; employee may appeal final administrative decision or get trial de novo in superior court	Civil penalty, maximum \$5,000
Arkansas	16-123-108, 107	May not discriminate if employee in good faith has opposed an act or practice made unlawful, or testified or participated in a proceeding regarding a violation of Arkansas Civil Rights Act	Both	May file civil action within one year of violation to prohibit further violations, recover compensatory and punitive damages and court and attorney's fees	—
California	Labor §1102.5 to 1105	May not prevent employee from disclosing or retaliate against employee for disclosing to government or law enforcement agency when employee has reasonable cause to believe there is a violation	Both	May recover damages for injury suffered	Misdemeanor: individual, up to 1 year in county jail and/or \$1,000 fine; corporation, maximum \$5,000 fine

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Colorado	24-50.5-101-107	May not initiate or administer disciplinary action if employee discloses information on actions of state agencies that are not in the public interest, unless employee knows information is false or discloses with disregard for truth, or discloses information on records closed to public inspection, or discloses information that is confidential under any other law	Public	Employee in state personnel system may file a written complaint within 30 days with state personnel board to get reinstatement, get back pay, restore lost service credit, have records expunged, and obtain any other additional relief as found appropriate by the board. If not found appropriate or employee has already filed a complaint, but complaint denied, employee may bring civil suit to recover damages or court costs and obtain other relief	—
	§24-114-101, et. seq.	May not initiate or administer any disciplinary action if employee discloses information unless employee knows information is false, or information is confidential under law	Private	May bring civil action; court may award damages, court costs, and other appropriate relief	—
Connecticut	31-51m, 4-61dd	May not discharge, discipline, or otherwise penalize because employee or his/her representative reports a violation or suspected violation or requests an investigation, hearing, or inquiry or if public employee reports to a public body concerning unethical practices, mismanagement, or abuse of authority, unless employee knows such report is false	Both	If employer violates statute, employee may, after exhausting all available administrative remedies, bring civil action within 90 days of final administrative decision or the violation, for reinstatement, back pay, to reestablish benefits, and court and attorney's fees. If public employee, may transmit facts and information to auditors of public accounts; if discriminated against may file claim within 30 days of incident with employee review board or in accordance with collective bargaining contract	—

Delaware	29 §5115	May not discharge, threaten, or otherwise discriminate because employee reports to an elected official a violation or suspected violation of law or regulation unless employee knows report is false	Public	May initiate civil action for injunctive relief, actual damages, or both within 90 days of alleged violation
Florida	112.3187	May not dismiss, discipline, or initiate other adverse personnel action against employee for disclosing information on any violation or suspected violation of law or regulation or act by independent contractor that creates a substantial and specific danger to the public's health, safety, and welfare or act of gross management malfeasance, gross public waste of funds, or gross neglect of duty unless information known by employee to be false	Both	Employee of state agency may file complaint after pursuing administrative remedy or civil action within 180 days after receipt of notice of investigation termination. Local public employee has 60 days after violation to file complaint with appropriate local government authority. An individual may bring civil action within 180 days after final decision of local governmental authority, or 180 days after violation if authority does not have an administrative procedure by ordinance or contract. Any other person after exhausting all available contractual or administrative remedies may bring civil action within 180 days after violation. Relief: reinstatement, back and full benefits, lost wages, reasonable costs, injunction, temporary reinstatement
Georgia	45-1-4	May not take or threaten any action by any public employer with the authority to take, direct others to take, recommend, or approve actions, as a reprisal for making a complaint or disclosing information to the public employer unless information was disclosed with knowledge that it was false or with willful disregard for its truth or falsity	Public	May have any prohibited action taken by employer set aside in a proceeding in court

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Hawaii	378-61, et seq.	May not discharge, threaten, or otherwise discriminate because employee or his/her representative reports or is about to report to public body a violation or suspected violation of law or rule or is requested by public body to participate in a hearing, investigation, inquiry, or court action unless employee knows report is false	Both	May initiate civil action for injunction, actual damages, or both, within 2 years after violation. Court remedies: reinstatement, back pay, full reinstatement of benefits and seniority rights, actual damages, and any other appropriate relief as well as court costs and attorney's fees	Civil fine: minimum \$500, maximum \$5,000 for each violation
Idaho	6-2101, et seq.	May not take adverse action against an employee because employee or his/her representative communicates in good faith the existence of any waste of public funds, property, or manpower or violation or suspected violation of a law, rule, or regulation including participating in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review, or where employee has refused to obey or object to directive he/she reasonably believes violates law, rule, or regulation; and employer may not implement rules or policies that unreasonably restrict employee's ability to document a violation	Public	May initiate civil action for injunction and/or actual damages within 180 days of violation. Court remedies: injunction, reinstatement, reinstatement of full benefits and seniority rights, back pay, reasonable court costs, and attorney's fees	Civil fine: maximum \$500
Illinois		May not reprimand, suspend, discharge, demote, deny promotion, or transfer because employee of a constitutional office reports violation of any law, rule, regulation, mismanagement, gross waste of funds,		Employee may bring action or all civil relief necessary to make employee whole, including but not limited to 1) reinstatement with same seniority status that employee would have had but for the employer's	Civil penalty available. Class A misdemeanor.

<p>abuse of authority, or substantial and specific danger to public health and safety unless disclosure is prohibited by law</p>	<p>retaliation; 2) back pay with interest; and 3) compensation for any damages sustained, including litigation costs, expert witness fees, and reasonable attorneys fees</p>
<p>Indiana</p>	<p>4-15-10-4 & 36-1-8-8 (public); 22-5-3-3 (private)</p>
<p>May not dismiss, withhold salary increases or employment-related benefits, transfer or reassign, deny promotion or demote if employee reports violation of federal law or regulation, state law or rule, violation of ordinance of a political subdivision, or misuse of public funds</p>	<p>Both</p>
<p>Employee may report to supervisor or appointing authority or state ethics commission if supervisor or appointing authority is involved with violation. May also seek a legal remedy</p>	<p>Class A infraction</p>
<p>May not discharge, or deny appointment or promotion, if employee discloses information he/she reasonably believes evidences a violation of law or rule, mismanagement, gross abuse of funds, abuse of authority, or a substantial and specific danger to public health or safety. unless disclosure is prohibited by statute</p>	<p>Public</p>
<p>Employee may enforce through civil action if employer is not the head of a state department/agency or serves in a supervisory capacity within the executive branch of state government, and employee is eligible for affirmative relief including reinstatement, back pay, or any other equitable relief including attorney's fees and costs</p>	<p>Simple misdemeanor</p>
<p>May not prohibit employee from discussing the agency's operation with member of legislature, reporting violation of state or federal law, rules or regulations; may not require prior notice before report is made</p>	<p>Public</p>
<p>If employee is permanent, classified or given special protections under Kansas law, may lodge an appeal to state civil service board, any court of law, or administrative hearing, if filed within 30 days of alleged disciplinary action. If employee is unclassified, may bring civil action for injunction and/or actual damage, within 90 days of alleged violation. Court may grant reinstatement, back wages, full reinstatement of benefits and seniority rights, actual damages, and reasonable attorney's fees and witness fees</p>	<p>If officer or employee who commits the violation is permanent, classified, suspension on leave without pay for maximum of 30 days; if willful or repeated violation, may require resignation or disqualification for appointment to or employment as a state officer or employee for maximum of two years</p>
<p>Kansas</p>	<p>75-2973</p>

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Kentucky	338.121 & 338.991	May not discharge or discriminate if employee or representative files a complaint, institutes a proceeding, or testifies regarding a violation of any occupational safety or health statute that threatens physical harm and imminent danger	Both	Employee may file a complaint with OSHA commissioner for reinstatement, back pay, and other appropriate relief	If employer willfully or repeatedly violates, minimum \$5,000 and maximum \$70,000 fine per violation; otherwise civil penalty, maximum \$10,000 per violation
	61.101, et seq.	May not subject to reprisal, threaten to use authority against, or influence in any manner any person who supports, aids, or substantiates a report or an employee who in good faith reports, discloses, or divulges any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance, or any mismanagement, fraud, waste, abuse of authority, or substantial and specific danger to public health or safety	Public	Civil action for injuries or punitive damages within 90 days after violation	—
Louisiana	42:1169	May not discipline or take reprisals against an employee who reports a violation of any rule, order, or regulation, or any acts of impropriety within a government entity or related to the scope and/or duties of public employment or public office within state government	Public	If employee is suspended, demoted, or dismissed, then he/she may report to the board of ethics for elected officials or the commission on ethics for public employees. Remedies: reinstatement, back pay, and benefits	—
	30:2027	May not act in a retaliatory manner against an employee who discloses or threatens to disclose a violation of environmental law,	Both	Employee must first report violation to a supervisor and give the employer a reasonable opportunity to correct it unless	—

<p>Maine</p> <p>26§831, et seq.</p>	<p>rule, or regulation or provides information to or testifies before an investigation hearing</p> <p>May not discharge, threaten, or otherwise discriminate if employee reports a violation of a law or rule of the state, political subdivision, or U.S. government a condition or practice that would put at risk the health or safety of that employee or if employee is requested to participate in an investigation, hearing, or inquiry or refuses to carry out a directive that violates the relevant act</p>	<p>Both</p>	<p>employee has specific reason to believe that reports to employer will not result in correction</p> <p>Employee must first report violation to a supervisor and give the employer a reasonable opportunity to correct it unless employee has specific reason to believe that reports to employer will not result in correction</p>	<p>—</p>
<p>Maryland</p> <p>SPP 5-301, et seq.</p>	<p>May not take or refuse to take any personnel action as reprisal if applicant or employee discloses abuse of authority, gross mismanagement or waste of money, violation of law, or substantial and specific danger to public health or safety and seeks a remedy</p>	<p>Public</p>	<p>May submit a complaint to the secretary of labor within 6 months of first knowledge of violation; if violation found, secretary may remove detrimental information from complainant's personnel record, order reinstatement, promotion, or end of suspension, award back pay, leave, or seniority and attorney and court fees</p>	<p>—</p>
<p>Massachusetts</p> <p>149§185</p>	<p>May not discharge, suspend, demote, or take other retaliatory action if employee discloses or threatens to disclose, provides information or testifies, or objects to participation or refuses to participate in violation of law, violations of rule, or actions that constitute risk to public health, safety, or environment</p>	<p>Public</p>	<p>May file civil action within two years of incident; court may give all civil law tort remedies including: temporary restraining order, preliminary/permanent injunction, reinstatement, reinstate full benefits and seniority rights, back pay, benefits, court and attorney's fees</p>	<p>—</p>
<p>Michigan</p> <p>15§361, et seq.</p>	<p>May not discharge, threaten, or otherwise discriminate if employee or representative of employee reports or is about to report violation of law, regulation, or rule or because employee testifies in hearing or a court action unless employee knows disclosure is false</p>	<p>Both</p>	<p>May file civil action within 90 days of violation, for injunction and/or actual damages, including attorney's fees. Court may award reinstatement, back pay, reinstatement of benefits and seniority rights, and court costs</p>	<p>Civil fine, maximum \$500</p>

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Minnesota	181.931, et seq.	May not discharge, discipline, threaten, or otherwise discriminate or penalize if employee reports violation of federal or state law or rule or is requested to testify or refuses to perform an action that he/she reasonably believes is in violation unless this involves disclosure of information that is protected as confidential under common law	Both	May file civil action to recover all damages and attorney's fees as well as injunctive relief	Civil penalty: \$25 per day per injured employee, maximum \$750 per injured employee
Mississippi	25-9-171, et seq.	May not dismiss or otherwise adversely affect compensation or employment status if employee testifies or provides information to an investigative body	Public	May file civil action (without exhausting administrative remedies) for back pay and reinstatement	Each member of any agency's governing board or authority or executive director may be individually liable for civil fine; maximum \$10,000 per violation
Missouri	105.055	May not take disciplinary action or prohibit employee's disclosures, if employee discusses operations of agency, with any member of legislature or state auditor, any violation of law, rule, or regulation, mismanagement, gross waste of public funds, abuse of authority, or substantial and specific danger to public health or safety, as long as disclosure is not specifically prohibited by law	Public	May file an administrative appeal, if disciplinary action taken, with state personnel advisory board within 30 days of action; board may modify and/or reverse disciplinary action and order appropriate relief	State personnel advisory board may recommend that violator be suspended without pay for maximum of 30 days; if willful or repeated violation, may recommend forfeiture and disqualification of appointment or state employment for a maximum of 2 years

Montana	39-2-901, et seq.	May not discharge or otherwise terminate employee in retaliation if employee has refused to violate constitutional provision, statute, or administrative rule regarding public health, safety, or welfare or reports a violation of the same	Both	Must first exhaust internal procedures for appealing discharge, but after 90 days or exhaustion, whichever comes first, may file an action (within 1 year of discharge) to get back pay and fringe benefits (for a maximum 4 years, minus interim earnings) and punitive damages if employer engaged in fraud/malice in discharging the employee
Nebraska	81-2701, et seq.	Person with authority to recommend, approve, direct, or take other personnel action may not dismiss, demote, transfer, reassign, suspend, or take other personnel action if employee discloses information or testifies before public counsel or other officials	Public	If incident occurs or is about to occur, employee should obtain public counsel who sends finding to personnel appeals board or director/chief operations officer of agency, who, after a hearing, may stay or reverse personnel action, grant back pay or other appropriate relief and reasonable attorney's fees, or employee may maintain an action under Administrative Procedures Act for damages/reinstatement/back pay/or other relief
Nevada	618.445	May not discharge or discriminate if employee files a complaint, institutes a proceeding, or testifies regarding a violation of health and safety statutes	Both	May file a complaint after first notifying employer and division, within 30 days of the violation, for reinstatement, applying for back pay and lost work benefits
	281.611, et seq.	May not directly or indirectly intimidate, threaten, coerce, command, or influence another state officer or employee or prevent disclosure of violation of state law/ regulation, abuse of authority, substantial and specific danger to public health or safety, or gross waste of public money	Public	May file a written appeal with department of personnel within two years of disclosing; hearing officer may order wrongful actor to desist and refrain from such unlawful action
New Hampshire	98-E:1, et seq.	May not interfere in any way with employee's right to publicly discuss and give opinions as an individual on all matters concerning the state and its policies, unless this involves disclosure of confidential and privileged records or communication	Public	Employee must first make a reasonable effort to remedy incident through in-house grievance procedure, then can get hearing with labor commissioner or his/her designee who can reinstate, order back pay, fringe benefits, and seniority rights as well as injunctive relief If employer willfully and knowingly violates any provision, is guilty of a violation

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
New Hampshire	275-E:1, et seq.	May not discharge, threaten, or otherwise discriminate if employee reports violation of any state, federal, or political subdivision law or rule, or testifies to a violation or refuses to execute a directive that would result in a violation	Both	Employee must first make a reasonable effort to gain redress through internal grievance procedure, then may obtain hearing with labor commissioner or his/her designee, who may reinstate, order back pay, fringe benefits, and seniority rights, and provide injunctive relief	Failure to comply with rules shall be a violation for each day of noncompliance
New Jersey	34:19-1, et seq.	May not discharge, suspend, demote, or take other retaliatory action if employee discloses or threatens to disclose an activity, policy, or practice of employer or other, with whom there is a business relationship, if employee testifies or objects to or refuses to participate if action violates law, or if rule is fraudulent or criminal or incompatible with clear mandate concerning public health, safety, welfare, or protection of the environment	Both	May file civil action within one year of incident and receive all remedies available in civil law torts including injunction, reinstatement, reinstatement of full benefits and seniority rights, awarding of back pay and benefits, reasonable court and attorney's fees, and/or punitive damages	Civil fine, maximum \$1,000 for first violation and maximum of \$5,000 for each subsequent violation
New Mexico	50-9-25	May not discharge/discriminate if employee files complaint, testifies, exercises a right, or institutes an OSHA investigation	Both	May file complaint with secretary within 30 days of incident and get reinstatement/rehiring with back pay	—
New York	Labor §740	May not discharge, suspend, demote, or take other adverse employment action if employee discloses or threatens to disclose, provides information or testifies, or objects to or refuses to participate in an action that violates law, rule, or regulation or presents a substantial and specific danger to public health or safety	Both	May file a civil action within one year of incident to get an injunction, reinstatement, full fringe benefits and seniority rights, back pay, and reasonable attorney's and court costs	—

North Carolina	126-84, et seq.	May not discharge, threaten, or otherwise discriminate if employee or his/her representative reports or is about to report a violation of state or federal law, rule, or regulation, fraud, misappropriation of state resources, or substantial and specific danger to public health and safety	Public	May file in superior court for damages, an injunction, or other appropriate relief within one year of incident. Remedies include reinstatement, back pay, full fringe benefits and seniority rights, and reasonable attorney's fees. If court finds willful violation, damages three times the amount of actual costs and reasonable attorney's fees	—
	95-240, et seq.	May not discriminate, discharge, suspend, demote, or take other adverse action if employee or representative files claim, initiates an action, or testifies on worker's compensation, OSHA, and wages or hours	Both	May file complaint with Commission of Labor within 180 days of the incident; after 180 days, employee may request a right-to-sue letter, then may file civil action within 90 days of issuance of the right to sue and get injunction, reinstatement, full fringe benefits and seniority rights, back pay and benefits, and reasonable attorney's fees. If court finds willful violation, may get treble damages	—
North Dakota	34-11.1-04, -07, -08	May not dismiss, withhold salary increase or benefits, transfer, reassign, deny promotion, or demote, if employee reports in writing a violation of federal or state laws, agency rules or misuse of public funds	Public	All available legal remedies	Class B misdemeanor
Ohio	4113.52	May not take any disciplinary or retaliatory action including withholding pay or benefits, transfer/reassigning, removing/suspending, reducing pay/position, or denying a promotion if employee reports a violation of state or federal statute, ordinance, or regulation of a political subdivision	Both	May file a civil action for injunction, reinstatement, back pay, full fringe benefits and seniority rights, and court and attorney's fees. If employer deliberately violates statute, court may award interest on back pay	—
Oklahoma	40§402, et seq.	May not discharge, discriminate, or take adverse personnel action if employee files a complaint, institutes a proceeding, or testifies regarding a violation of the Occupational Safety and Health Act that causes or is likely to cause death or serious physical harm	Public	Employee may file complaint with Labor Commissioner	Misdemeanor

Table 3. (Cont'd.)

State	Code section	Prohibited Employer Activity	Protection for Public or Private Employee	Remedies for Whistleblower	Penalties
Tennessee	50-3-106; 50-3-409	May not discharge or discriminate if employee files a complaint, institutes a proceeding, or testifies regarding a violation of any statute or regarding occupational safety and health	Both	May file a complaint with Commission of Labor within 30 days of the violation, for reinstatement, back pay, and other appropriate relief	—
	50-1-304	May not discharge or terminate if employee refuses to participate in or refuses to remain silent about violation of criminal or civil code, or U.S. laws, or failure to protect public health, safety or welfare	Public	May sue employer for retaliatory discharge, get damages, and reasonable attorney's fees and costs	—
Texas	554.001 et seq.	May not suspend, terminate, or take other adverse personnel action if employee reports a violation of law by employer or other employee	Public	Must report to appropriate law enforcement authority, then exhaust grievance or appeal process before suing no later than 90th day after violation, for injunction, actual damages, court costs, and reasonable attorney fees. May also get reinstatement, back pay, full fringe benefits, seniority rights, and compensatory damages up to a set maximum amount	Supervisor, maximum \$15,000 fine
Utah	67-21-1, et seq.	May not discharge, threaten or otherwise discriminate if employee reports, testifies, or objects to or refuses to carry out directive	Public	May file civil action within 180 days of violation, for injunction or actual damages and court and attorney's fees. In addition,	Violator subject to civil fine, maximum \$500

Vermont	21 §231	that violates law, rule, or regulation of state, U.S. government, or political subdivision or shows waste of public funds, property, or manpower	Public	court may award reinstatement, back pay, full fringe benefits and seniority rights
Virginia	40.1-51.2:1 & 51.2:2	May not discharge or discriminate if employee files a complaint, institutes a proceeding, or testifies regarding a violation of occupational health and safety code May not discharge or discriminate if employee files, testifies, or otherwise acts to exercise rights under safety and health statute	Both Private	May file a complaint with labor commissioner within 30 days of violation to get reinstatement with back pay as well as other relief May file complaint with labor commissioner within 60 days of violation, for reinstatement and back pay. If commissioner refuses to issue a charge, employee may file in circuit court for appropriate relief
Washington	42.40.010, et seq.; 49.60.210; 42.41.010, et seq.	May not intimidate, threaten, coerce, command, influence, or attempt the above if employee discloses to auditor information on improper government action or identifies rules warranting review or provides information, unless disclosing is prohibited by law	Public	May file complaint with governing body of the local government within 30 days of violation, then may request a hearing to get reinstatement, back pay, injunctive relief, and costs and attorney's fees Retaliator subject to maximum \$3,000 penalty and suspension or dismissal
West Virginia	6C-1-1, et seq.	May not discharge, threaten, or otherwise discriminate or retaliate if employee or his/her representative reports or testifies to a violation of state or federal statute or regulation, or ordinance of political subdivision, or regulation or code of conduct or ethics designed to protect public from employer waste	Public	May file civil action within 180 days of violation for reinstatement, back pay, full fringe benefits and seniority rights, actual damages, court and attorney's fees Civil fine, maximum \$500. If violator holds a public office by election or appointment and committed violation with intent to discourage disclosure, then subject to suspension, maximum 6 months

Hawaii, Indiana, Kentucky, Michigan, Minnesota, New Hampshire, and New Jersey, regardless of employment sector.

CONCLUSION

Recent public corporate scandals and the now famous Paeans scheme created by Bernard Madoff have led to a renewed focus on the topic of whistleblowing. It is troubling that someone reported a concern to the Securities and Exchange Commission years in advance of Bernard Madoff's actual arrest for investment fraud. The deficiencies highlighted in the GAO (2011) report regarding funding and resources and investigative agency training underscore the fact that while we have come a long way in raising awareness, more work must still be done. The points raised by the GAO (2011) report highlight the need for training and funding for OSHA investigators. The same should hold for Securities and Exchange Commission investigators as well as corporate individuals assigned the responsibility of investigating and reporting on whistleblower concerns.

When researching the topic of whistleblowing, one can reasonably conclude that employees will be better served if the 23 states not currently providing Qui Tam statutes enact legislation with the purpose of improving upon employee rights/advocacy in all 50 states. Qui Tam strengthens employee rights, by providing the ability to bring a lawsuit for violations with a government contract or regulation, and is strengthened by penalty provisions. As highlighted in Table 2, employees are better protected in states with Qui Tam provisions.

In a similar manner, the Dodd-Frank whistleblower provisions could be enhanced to ensure that federal law is consistently strengthened by enacting state-level Qui Tam language with the highest penalty provisions. In this way, federal whistleblower provisions would protect employees regardless of state of residency. Consistent with this recommendation, state-level provisions such as the provisions of the New York State Incorporation Laws enacted in 2014 should not only require companies working with government contracts to provide a mechanism for reporting concerns but should also expand to require those companies to point out the state level provisions applicable to employees working in the state of incorporation.

Continued reform is necessary at the federal level to adapt state-like coverage levels beyond the category of public employees. Additionally, it must be advocated that no future whistleblower rights legislation be permitted to contain a "poison pill" provision that would weaken or eliminate currently legislated rights.

REFERENCES

- DiMauro, J. 2012. Retaliation rate against U.S. company whistleblowers climbs, senior staff affected, survey finds. Retrieved from <http://blogs.reuters.com/financial-regulatory-forum/2012/09/06/retaliation-rate-against-u-s-company-whistleblowers-climbs-senior-staff-affected-survey-finds/>, May 2014.

- Dworkin, T. M. 2010. U.S. whistleblowing: A decade of progress? In D. B. Lewis (Ed.), *A global approach to public interest disclosure: What can we learn from existing whistleblowing legislation and research?* 36–55. Cheltenham, UK: Edward Elgar.
- Earle, B. H., & Madek, G. A. 2007. The mirage of whistleblower protection under Sarbanes-Oxley: A proposal for change. *American Business Law Journal*, 44: 1–54.
- Eichler, A. 2011. Federal prosecution of financial fraud falls to 20-year low, new report shows. Retrieved from http://www.huffingtonpost.com/2011/11/15/financial-fraud-prosecution_n_1095933.html, April 2012.
- GAO (Government Accountability Office). 2009. Whistleblower protection program: Better data and improved oversight would help ensure program quality and consistency. Retrieved from <http://www.gao.gov/new.items/d09106.pdf>, April 2009.
- GAO (Government Accountability Office). 2010. Whistleblower protection: Sustained management attention needed to address long-standing program weaknesses. Retrieved from <http://www.gao.gov/assets/310/308767.pdf>, May 2014.
- GAO (Government Accountability Office). 2011. Criminal cartel enforcement: Stakeholder views on impact of 2004 antitrust reform are mixed, but support whistleblower protection. Retrieved from <http://www.gao.gov/assets/330/321794.pdf>, May 2014.
- GAP (Government Accountability Project). 2009. Groups seek whistleblower rights clarification from Obama. Retrieved from <http://gaproject.nonprofitsoapbox.com/press/press-release-archive/2009/164-groups-seek-whistleblower-rights-clarification-from-obama>, May 2014.
- Hill, G., & Hill, K. 2002. Qui tam action. Retrieved from <http://dictionary.law.com/default.aspx?selected=1709>, July 2014.
- Hornblower, L. 2011. Outsourcing fraud detection: The analyst as Dodd-Frank whistleblower. *Journal of Business and Technology Law*, 6: 287–326.
- Johnson, R. A. 2003. *Whistleblowing: When it works—and why*. Boulder, CO: Lynne Rienner.
- Kim, J. 2009. Confessions of a whistleblower: The need to reform the whistleblower protection of the Sarbanes-Oxley Act. *John Marshall Law Review*, 43: 241–264.
- Kohn, S. M. 2004. *Whistleblower law: A guide to legal protections for corporate employees*. Westport, CT: Praeger.
- Kroft, S. 2011. Prosecuting Wall Street. Retrieved from <http://www.cbsnews.com/news/prosecuting-wall-street/>, May 2014.
- Kronenberg, J. 2009. Bernard Madoff whistleblower on “60 Minutes.” *Boston Herald*, March 1.
- Levin, C. 2011. U.S. Senate Investigations Subcommittee releases Levin-Coburn report on the financial crisis. Retrieved from <http://www.levin.senate.gov/newsroom/press/release/us-senate-investigations-subcommittee-releases-levin-coburn-repo>, May 2014.
- Moberly, R. 2007. Unfulfilled expectations: An empirical analysis of why Sarbanes-Oxley whistleblowers rarely win. *William and Mary Law Review*, 49: 65–155.
- Moberly, R. 2012. Sarbanes-Oxley’s whistleblower provisions—Ten years later. *South Carolina Law Review*, 64: 1–54.
- Muhl, C. J. 2001. The employment-at-will doctrine: Three major exceptions. *Monthly Labor Review*, 124(1): 3–11.
- National Whistleblowers Center. 2014. State whistleblower statutes. Retrieved from http://www.whistleblowers.org/index.php?option=com_content&task=view&id=742&Itemid=161, March 2014.

- OSHA (Occupational Safety and Health Administration). 2011. Whistleblower investigations manual. Retrieved from https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-03-003.pdf, April 2012.
- Ramirez, M. K. 2007. Blowing the whistle on whistleblower protection: A tale of reform versus power. *University of Cincinnati Law Review*, 76: 183–233.
- Ravishankar, L. 2003. Encouraging internal whistleblowing in organizations. Retrieved from <http://www.scu.edu/ethics/publications/submitted/whistleblowing.html>, April 2009.
- Tienhaara, K. 2009. A tale of two crises: What the global financial crisis means for the global environmental crisis. Retrieved from <http://www.glogov.org/images/doc/WP37.pdf>, May 2014.
- TRAC (Transactional Records Access Clearinghouse). 2011. Criminal prosecutions for financial institution fraud continue to fall. Retrieved from <http://trac.syr.edu/tracreports/crim/267/>, May 2014.
- Walsh, D. J. 2007. *Employment law for human resource practice*. Mason, OH: Thomson Corporation.

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