

## New Whistleblower Protections Added to the Fair Labor Standards Act

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The new Health Care Reform legislation contains an amendment to the Fair Labor Standards Act that provides strong whistleblower protections for workers.

In particular, Section 1558 of the Patient Protection and Affordable Care Act (“PPACA”) adds a provision (Section 18C) to the Fair Labor Standards Act that prohibits retaliation and discrimination against an employee who provides or is about to provide to an employer, the federal government, or a state attorney general information that the employee “reasonably believes” to be a violation of Title I of the PPACA. The provision also protects employees who testify or participate in investigations and to employees who object or refuse to participate in any activity that the employee reasonably believes to be a violation of Title I of the PPACA. Unlike some other whistleblower laws, Section 1558 does not require employees to notify the employer that they believe they have been asked to perform a task or participate in an activity that violates the PPACA at the time they are asked to perform the task or participate in the activity.

Title I of the PPACA contains a broad range of rules governing health insurance, including a provision regarding denying coverage based upon pre-existing conditions and prohibitions against discrimination based upon an individual’s receipt of health insurance subsidies. Thus, even though Section 1558 is not limited to health care or insurance industries, the

new law will likely be most beneficial to employees in those industries.

Section 1558 incorporates the procedures in the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), 15 U.S.C. §2087(b), by which employees can seek relief if they believe they have been retaliated or discriminated against in violation of Section 1558. Basically, under these procedures, an employee has a 180-day statute of limitations period in which to file a complaint with the Occupational Safety and Health Administration (“OSHA”). An employee may file a civil action in federal court within 90 days of OSHA’s written determination or 210 days after the filing of the complaint. Available remedies include reinstatement, back pay, special damages, and attorneys’ fees.

The rights and remedies in Section 1558 may not be waived by “any agreement, policy, form, or condition of employment.” An employer, therefore, cannot require an employee to sign an agreement to relinquish these statutory rights.

Unlike other provisions in the PPACA, this new whistleblower provision appears to apply to employers regardless of size.

Section 1558 did not include an effective date, and it is presumed to be effective as of March 23, 2010, the date the PPACA was signed into law. Accordingly, employers should begin taking steps now to prepare to comply with the new law.

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