

A Reminder to Federal Contractors: Whistleblower Protections Many Employers May Not Be Considering

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Arising out of an uncommon source, for nearly two years, employees of most federal contractors and grantees have had additional whistleblower protections with regard to certain disclosures and employers need to remember these protections when considering adverse personnel actions. The 2013 National Defense Authorization Act (NDAA) was signed into law. Although its name does not conjure up visions of employee protections, the law actually provides for some of the broadest and strongest whistleblower protections to employees of most federal government contractors and grantees.

A covered employee is protected from reprisals where he or she discloses to, among other persons or bodies, a Member of Congress, an Inspector General, the Government Accountability Office, a federal employee responsible for contract or grant oversight or management at the relevant agency, an authorized official of Department of Justice or other law enforcement agency, a court or grand jury, or a management official or other employee of the contractor or subcontractor who has the responsibility to investigate and remedy misconduct, any information that the disclosing employee reasonably believes is evidence of:

- “gross mismanagement” of a federal contract;
- a “gross waste” of federal funds;
- a “violation of law, rule, or regulation related to a Federal contract”;
- an abuse of authority relating to a Federal contract or grant; or
- a substantial and specific danger to public health or safety.

To go along with the enhanced protections, the law also provides a very low burden of proof. To prevail, the employee plaintiff in an NDAA whistleblower action need only show that the protected disclosure was a contributing factor in the adverse personnel action. As with many other whistleblower and anti-retaliation law, remedies for employer violations include reinstatement, back pay, and attorney fees and costs. Additionally, there is no statutory limit to the amount of compensatory damages (emotional distress damages) an employee may seek or be awarded.

Federal contractors need to be particularly cognizant of the application of the NDAA whistleblower protections. To best protect themselves, these employers should review their reporting and investigatory procedures, and ensure that supervisory employees are trained on how to respond to disclosures.