
BOND INFORMATION MEMO

Labor and Employment Law

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Recent OSHA Activity Underscores Attention to Whistleblower Statutes

In August of 2011, a former employee of DISH Network filed a complaint with OSHA that DISH had “blacklisted” him. Specifically, the complainant alleged that DISH had given him a negative job reference, and had refused to do business with the complainant’s subsequent employers. What was the alleged reason for the “blacklisting”? The employee, who worked in the marketing department in New York, had reported possible financial fraud to his superior in 2008, and the employee contended the actions against him by DISH — a publicly traded company — amounted to retaliation for his reporting the fraud, in violation of the Sarbanes-Oxley Act. In March of 2014, OSHA completed its investigation, finding merit to the employee’s complaint, and ordering hefty fines of over \$250,000 against DISH: \$157,024 in back wages, \$100,000 in compensatory damages and attorneys’ fees. DISH has 30 days to file an appeal before an Administrative Law Judge.

We highlight this recent decision because it is not widely known that OSHA is the agency tasked with investigating whistleblower provisions in **twenty-two** different laws, ranging from the Occupational Safety and Health Act itself, to the Surface Transportation Assistance Act and even the Affordable Care Act. Thus, for example, an employer can be subject to a whistleblower investigation and an order from OSHA if it retaliates against an employee for participating in activities protected by these laws, such as complaining about workplace safety, reporting driving a commercial motor vehicle longer than allowed by law or receiving a subsidy under the Affordable Care Act. When OSHA completes a whistleblower investigation in which it finds merit or after which it files suit in federal court, it has historically issued a corresponding [press release](#) as it did regarding the DISH decision. For an example of a press release announcing a lawsuit, see this [link](#).

A complete list of laws with whistleblower provisions subject to enforcement by OSHA is available [here](#). Employers are well advised to review the list and their policies, and to provide training to their managers and supervisors who make employment decisions, in order to ensure compliance with any applicable whistleblower provisions.

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