

New Developments in Whistleblower Law

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- **Sarbanes-Oxley Act**
- **Dodd-Frank Act**
 - **SEC Whistleblower “bounty” provisions**
 - **Anti-retaliation protections re securities whistleblowers**
 - **Consumer financial services retaliation protections**

Sarbanes-Oxley: Basics

- **Covered employers:**
 - **Publicly traded companies**
 - **See the statutory definition!**

SOX: Prohibited acts

Retaliation: Broad definition

Discharge

Demote

Harass

Threaten

“Any other manner”

discriminate

SOX: Protected activity

**Internal and some external
complaints**

About predicate frauds

Enforcement

- **File charge at DOL**
- **OSHA investigation**
- **Preliminary determination**
- **ALJ hearing**
- **Appeal to Administrative Review Board**

If DOL isn't done in 180 days:

**Employee can bring de novo
action in federal court.**

But --

**If DOL does finish in 180 days,
the only appeal is to the Court of
Appeals**

Sarbanes-Oxley: New developments

- **Changing environment for SOX cases:**
- **Employee friendly Department of Labor?**
- **Dodd-Frank amendments to SOX:**

Jury trial

No mandatory pre-dispute arbitration

Longer limitations period

Wholly-owned subsidiaries covered

Sarbanes-Oxley – New developments

Privately-held contractors or subcontractors of a publicly-traded corporation are employers and can be sued by their employees under SOX

Lawson v. FMR Securities

134 S. Ct. 1158 (2014)

**What's a reasonable
belief?**

Dodd-Frank bounty provisions – Sec. 922

Reward whistleblowers who provide original information to the SEC, relating to violation of securities laws

Recovery must be \$1 million or more

Mandatory reward of 10% – 30%

No internal reporting required (SEC regs)

Dodd-Frank's anti-retaliation provisions for securities whistleblowers

Apply to all employers -- not just public companies.

A “whistleblower” is an individual who provides information to the SEC relating to a violation of the securities laws, BUT:

- **Internal SOX complaints protected?**
 - **SEC regulations**
 - **Conflicting court cases**

Implications:

Longer statute of limitations

No DOL filing required

Stronger remedies (mandatory double back pay and reinstatement)

Arbitration?

Extra-territorial reach?

Dodd-Frank whistleblower protections concerning consumer financial protections

- **Covered employees and employers**
- **Enforcement**
- **Remedies**