

WHISTLEBLOWER BASICS IN FLORIDA

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Richard Celler



Most of us do not expect our workplace to be a paradise nor do we expect our employer to be perfect. We do, however, expect our employer to follow the laws and to operate the business in a morally acceptable manner. If you find yourself in a situation where your employer, or a prospective employer, is not just operating in the “grey” area, but is clearly violating the law and/or putting employees and the public at risk, it can put you in a rather tenuous position. Reporting the illegal or risky activity could put your job, even your life in some cases, at risk; however, doing nothing could put the general public at risk. You could also become a party to fraud committed against the government in some cases by keeping silent.

Fortunately, the law understands this dilemma and has implemented a number of “whistleblower” laws to protect individuals who choose to come forward and report employers. Because of the inherent complexity of the various

whistleblower laws, and the need to proceed with caution, it is always best to consult with an experienced Florida employment law attorney before filing a whistleblower complaint. It may, however, be beneficial to have a basic understanding of how the whistleblower laws work and how they can protect you should you decide to file a complaint.

WHAT IS A WHISTLEBLOWER?



A “whistleblower” is someone who comes forward and files a complaint, or otherwise exposes, the illegal or unconscionable activity of an employer. A whistleblower can be a current employee, a past employee, or even a job applicant. Numerous state and federal laws protect

whistleblowers who have been retaliated against because of their “whistleblower” activity.

WHISTLEBLOWER LAWS

A whistleblower may be protected by numerous individual federal laws as well as Florida's Whistleblower Act. At the federal level, just a few of the whistleblower laws that offer protection from retaliation include:

- The Clean Air Act
- Occupational Safety and Health Act
- Safe Drinking Water Act
- Compensation and Liability Act
- Solid Waste Disposal Act
- Federal Railroad Safety Act

Each of these federal Acts provide protection for a whistleblower who exposes specific types of employers.

At the state level, the Florida Whistleblower Act, found in the Florida Statutes 112.3187, covers a broad range of activity on the part of an employer or potential employer, including:

“Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.” OR

“Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.”

WHAT IS “RETALIATORY CONDUCT”?

The purpose of both federal and state whistleblower laws is to protect individuals who choose to report prohibited activity from “retaliatory conduct” on the part of the employer. An employer may retaliate in a number of ways, including, but not limited to:

- Failing to hire
- Firing
- Blacklisting
- Demoting
- Failing to promote
- Disciplinary action
- Laying off
- Denying benefits
- Harassing
- Intimidating
- Threatening
- Reassignment to a less desirable position
- Reducing pay or hours

Suspension

COMPENSATION IN A WHISTLEBLOWER CASE

In certain types of whistleblower cases a whistleblower may be entitled to a significant amount of compensation for “blowing the whistle”. Specifically, the federal False Claims Act (FCA) allows a “relator” (someone who files a claim for a violation of the FCA) to be compensated in an amount ranging from 10 to 30 percent of the amount recovered by the government from the defendant. The FCA addresses situations in which a false claim (fraud) was submitted to the government. For example, if you work for a company that has government contract and you become aware that the invoices being sent to the government are being “padded”, that would likely be considered a violation of the FCA. If the government ultimately recovered \$1 million from your employer (the defendant) as a result of your claim you could be entitled to anywhere from \$100,000 to \$300,000.



WHISTLEBLOWER PROCEDURES



Filing a whistleblower complaint or claim is often a complicated endeavor for a variety of reasons. First, you must determine which law(s)

covers your particular situation. If both state and federal law apply a decision must be made regarding which route is potentially the most advantageous. If you are filing a FCA claim you may wish to remain anonymous for obvious reasons. This can be done; however, the desire for anonymity highlights the need to consult with an experienced Florida employment law attorney as soon as you suspect you have the basis for a whistleblower claim. Of equal importance are the time frames, or “statute of limitation”, within which complaints for retaliation must be filed.

For most federal acts the time you have to file a complaint is short. Consider the following Acts and corresponding time frames:

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| • Moving Ahead for Progress in the 21 st Century – | 180 days |
| • Clean Air Act -- | 30 days |
| • Safe Drinking Water Act -- | 30 days |
| • International Safe Container Act -- | 60 days |
| • Asbestos Hazard Emergency Response Act -- | 90 days |
| • Occupational Safety and Health Act | 30 days |

If you believe that you have suffered retaliation for reporting illegal or unsafe conduct on the part of an employer or potential employer it is imperative that you consult with an experienced Florida employment law attorney as soon as possible to ensure that your rights are protected.

Florida Statutes, [112.3187](#)

Florida Commission on Human Relations, [Florida Whistle-blower's Act](#)

United States Department of Labor, [The Whistleblower Protection Programs](#)

National Whistleblowers Center, [Know Your Rights FAQs](#)

About the Author



Richard Celler

Richard Celler is the Managing Partner of Richard Celler Legal, P.A., a/k/a the Florida Overtime Lawyer. He created this firm after having served as the Founding Member and Managing Partner of one of the largest employee/plaintiff side employment law divisions in the United States.

In November 2013, Mr. Celler left big firm life with the idea of reopening his own litigation firm with an emphasis on something most big firms cannot provide – a lower volume of cases, and more focus on the needs and attention of every single client.

Mr. Celler's practice focuses on all areas of the employment context from discrimination, harassment, and retaliation under the Florida Civil Rights Act, Title VII, the Family Medical Leave Act, and other employment related statutes. Additionally, Mr. Celler represents individuals in whistleblower and wage and hour litigation (overtime, minimum wage, commissions, final paychecks).

Many firms charge clients for an initial consultation to discuss their claims. Mr. Celler does not. You can call him or email him to discuss your case for free. If he elects to represent you, your case will be handled on a contingency basis, which means that he only gets paid, if you get paid. We encourage you to look at the remainder of our website for information on your rights and benefits in the workplace – www.floridaovertimelawyer.com.

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