

FLORIDA SARBANES OXLEY ACT

What a Whistleblower Needs to Know

“Corporations have a legal and moral obligation to both their employees and their investors to ensure that the company is both profitable and law abiding. In the wake of a series of corporate scandals that occurred during the early part of the 21st century Congress passed the Sarbanes-Oxley Act of 2002 in an attempt to ensure that corporations fulfill those obligations.”



Richard Celler



Corporations have a legal and moral obligation to both their employees and their investors to ensure that the company is both profitable *and* law abiding. In the wake of a series of corporate scandals that occurred during the early part of the 21st century Congress passed the Sarbanes-Oxley Act of 2002 in an attempt to ensure that corporations fulfill those obligations. Non-compliance with provisions of the Act can have serious consequences for both a corporation and high ranking officers of the corporation. To encourage the reporting of violations of the Act by employees, the Sarbanes-Oxley Act also includes some of the most thorough and aggressive “whistleblower” protection ever incorporated into legislation of its type. If you find yourself in the position of a whistleblower you would be wise to consult with an experienced employment law attorney

immediately; however, in the meantime it may help to gain a better understanding of the Sarbanes-Oxley Act and how it protects whistleblowers.

CORPORATE SCANDALS LEAD TO THE SARBANES-OXLEY ACT



At the close of the 20th century, the American economy was doing well and investor confidence was high. Before long, however, investors began to seriously question not only individual investments, but the securities market in general as corporate scandals shook companies such as Enron, Tyco International, Adelphia, Peregrine Systems, and WorldCom. It soon became clear that significant changes were needed in the areas of corporate governance and accountability. Those changes were introduced in the form of legislation drafted

by U.S. Senator Paul Sarbanes (D-MD) and U.S. Representative Michael G. Oxley (R-OH) which would eventually be referred to as the Sarbanes-Oxley Act of 2002, frequently shortened to SOX.

WHAT IS THE MAIN PURPOSE OF SOX?

The over-simplified goal of SOX was to restore investor confidence after the series of corporate scandals that shook the country around the turn of the century. In 2001, Enron filed for Chapter 11 bankruptcy, at the time the largest



corporate bankruptcy ever filed in the U.S. The following year, WorldCom followed suit and usurped Enron's "largest corporate bankruptcy" title. Investors lost billions of dollars but, more importantly, they lost confidence in the system when investigations by the Securities and Exchange Commission, or

SEC, uncovered poor financial management, inadequate reporting, evasion and even deception at the highest levels of Enron, Worldcom, and other major corporations. How could this have happened? The simplistic answer appeared to be that corporations had far too much autonomy when it came to self-governance and far too little accountability to shareholders. The main purpose of SOX was to change both of those problems.

WHAT DID SOX ATTEMPT TO ACCOMPLISH?

The Sarbanes-Oxley Act

- **Created new standards of accountability for corporations**
- **Created harsher penalties for wrongdoing**
- **Changed how corporate boards interact with auditors**
- **Created new financial reporting requirements**
- **Established a public company accounting board**
- **Holds CEOs and CFOs personally accountable for accuracy with regard to corporate financial statements.**

WHO DOES THE SARBANES-OXLEY ACT IMPACT?



The Sarbanes-Oxley Act impacts all public company boards, corporate management (including CEOs, CFOs, etc.), and public accounting firms. In addition, certain provisions of SOX also apply to privately held companies.

SARBANES-OXLEY ACT HIGHLIGHTS

SOX is divided into eleven sections, or titles. Although the Act is extremely complex, the following provides a brief explanation of each title:

- **Title I**– establishes the Public Company Accounting Oversight Board (PCAOB) which provide independent oversight to public accounting firms that provide audit services to corporations.
- **Title II**– decreases conflicts of interest by creating standards to be used for external auditors, including things such as mandatory partner rotation and auditor reporting requirements.
- **Title III** – makes senior executives personally responsible for accuracy of financial reports filed on behalf of the company. Also addresses the relationship between external auditors and corporate auditors or boards.
- **Title IV** – created enhance reporting requirements for financial transactions, including stock transactions involving officers. Title IV also requires a corporation to report changes to the company’s financial health in a timely manner.
- **Title V**– creates a code of conduct for security analysts as well as requires the disclosure or known, or knowable, conflicts of interest.

- **Title VI**– provides the SEC with authority to bar security professionals from practice and defines conditions under which a person can be barred from practicing as a broker, advisor, or dealer.
- **Title VII**-- requires studies to be performed by the Comptroller General and the SEC and the findings reported. Specifically, Title VII calls for further investigation into whether investment banks were complicit in the Enron (or other) scandal.
- **Title VIII**-- also referred to as the "Corporate and Criminal Fraud Accountability Act of 2002," Title VII provides criminal penalties for destroying, manipulating, or altering corporate financial records. Conversely, Title VIII provides protection for whistleblowers who come forward with information about the criminal activities of a corporation.
- **Title IX**–also known as the "White Collar Crime Penalty Enhancement Act of 2002," Title IX increases the penalties for certain white collar crimes and specifically makes "failure to certify corporate financial reports" a criminal offense.
- **Title X**– calls for the Chief Executive Officer (CEO) to sign company tax return.
- **Title XI**– separately known as the "Corporate Fraud Accountability Act of 2002" it makes corporate fraud and record tampering criminal offenses and

provides penalties for same. It also gives the SEC the authority to temporarily freeze large and/or unusual financial transactions.

WHISTLEBLOWERS AND SOX

It is abundantly clear, years after the fact, that had just one credible



whistleblower come forward from Enron or Worldcom it could have saved billions of investor dollars and years of litigation. Understandably though, it is often the case that people in a position to blow the whistle have the most to lose in doing so and are, therefore, reluctant to come forward. With that in

mind, substantial whistleblower protection was included in SOX, including criminal penalties for retaliation.

Specifically, Section 1107 of the SOX 18 U.S.C. § 1513(e) states:

“Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any federal offense, shall be fined under this title, imprisoned not more than 10 years, or both.”

Moreover, the whistleblower protections found in the Sarbanes-Oxley Act were at the time it was enacted, and remain today, some of the most extensive and aggressive ever created. Along with criminalizing retaliation against whistleblowers, SOX also requires protects whistleblowers in the following ways:

- SOX requires all publicly traded corporations to establish procedures for employees to file internal whistleblower complaints as well as create procedures which would protect the confidentiality of employees who file allegations with the audit committee.
- Attorneys, under certain circumstances, are required to become whistleblowers if a client's conduct violates the provisions of SOX.
- SOX criminalized retaliation against whistleblowers who provide "truthful information" to a "law enforcement officer" about the "commission or possible commission of any Federal offense." Most importantly, this provision applies to **all** companies, not just publically traded corporations.
- SOX gave the SEC the power and authority to enforce all aspects of the Act, including the whistleblower provisions.
- SOX provides for the possibility of civil monetary damages for a whistleblower who has been retaliated against.

If you are concerned that your employer is violating any of the numerous provisions of the Sarbanes-Oxley Act it is imperative that you speak to an experienced employment law attorney right away to discuss your rights and obligations should you decide to become a “whistleblower.”



Soxlaw, [The Sarbanes-Oxley Act](#)

Forbes, [The Costs and Benefits of Sarbanes-Oxley](#)

Sox-Online.com, [Sarbanes-Oxley Essential Information](#)

Library of Congress, [Sarbanes-Oxley Act of 2002](#)

National Investor Relations Institute, [The Whistleblower Provisions of the Sarbanes-Oxley Act of 2002](#)

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.

Richard Celler Legal, P.A.
7450 Griffin Road, Suite 230
Davie, FL 33314
Phone: 866-344-9243
Email: richard@floridaovertimelawyer.com
Website: floridaovertimelawyer.com