

PUBLICATION

OSHA Increases its Whistleblowing Regulating Powers, Extending its Reach to Financial Institutions

May 04, 2014

While the Occupational Safety and Health Administration agency ("OSHA") may be more known for its worker safety programs, the agency also enforces the whistleblower provisions of the OSHA Act and twenty-one other statutes. Recently OSHA's rulemaking has focused on the whistleblower provisions of statutes like the Consumer Product Safety Improvement Act and the FDA Food Safety Modernization Act. On April 3, 2014, OSHA continued this trend by issuing an interim final rule establishing procedures and time frames for handling retaliation claims brought under the Consumer Financial Protection Act of 2010 ("CFPA").

The CFPA protects workers involved in offering or providing consumer financial products or services. Specifically, whistleblower protections cover workers who report violations of financial consumer protection laws. OSHA is responsible for processing the retaliation complaints made by those employees who are disciplined or terminated for reporting these violations.

Under the interim rule, complaints alleging whistleblower retaliation under the CFPA must be filed within 180 days of when the alleged violation occurred. Complaints may be made in writing or orally. OSHA then determines if retaliation has occurred. Following the completion of the investigation, OSHA will issue written findings regarding whether there is reasonable cause to believe that the complaint has merit. This finding must be made within 60 days of the filing of a complaint. The agency's finding can be reviewed by the chief administrative law judge for the U.S. Department of Labor within 30 days of receipt of the findings. Additional appeals are permitted.

The rule is not finalized. Individuals may submit comments electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Comments must be submitted by June 2, 2014.

Due to the nature of their business, financial institutions generally do not have experience with OSHA. However, OSHA's recent concentration on whistleblower statutes indicates that this is an area where it intends to increase its exposure. Of course, unlike an OSHA Act violation, the whistleblower statutes require that a complaining party allege retaliation before the agency can conduct an investigation. However, where such a complaint is made, it is likely that OSHA will fully engage in this new process, assuming that the interim rule becomes a final rule following the comment period.

If you would like to discuss ways to protect your financial institution if a CFPA retaliation claim is made, please feel free to contact your Baker Donelson OSHA attorneys.