

Beware retaliation against whistleblowers

Federal, state and local laws afford great protection to employees who report dangerous working conditions or illegal employer activities to the authorities. Almost all so-called whistleblower laws make it unlawful to retaliate against an employee who makes such a report.

Think twice before disciplining or otherwise punishing an employee who has reported workplace wrongdoing. Whistleblower protection remains in force regardless of the merits of the employee's allegations.

Recent OSHA action: Kinder Morgan is an energy company based in Houston. A Kinder Morgan employee told a contractor working with the company that Kinder Morgan was attempting to avoid complying with a provision of the Pipeline Safety Improvement Act. The PSIA requires pipeline construction companies to minimize the risk of spills. The law has a whistleblower provision that protects those who report alleged safety problems from retaliation.

After the employee voiced his concerns, the company asked him to retract his claim. He didn't and Kinder Morgan fired him, according to investigators from the Occupational Safety and Health Administration.

OSHA concluded that the employee was a PSIA whistleblower and had been retaliated against. It ordered Kinder Morgan to pay more than \$160,000, including \$113,000 in back pay, \$30,000 in compensatory damages and another \$20,552 in attorneys' fees.

Another recent case: Karen worked as general counsel for the Houston Housing Authority, one of the nation's largest public housing agencies. She reported directly to the president and CEO until he terminated her for alleged tardiness and other workplace problems.

Karen sued, alleging she had really been fired to punish her for reporting alleged fraud involving housing vouchers. She had alleged and brought to the attention of federal authorities and the housing authority board that an employee was selling housing vouchers meant for homeless veterans. Her boss allegedly told her that it didn't matter because there were more vouchers than veterans.

The case went to a jury, which awarded Karen \$751,000 in back pay, \$600,000 in front pay and another \$500,000 in past and future mental anguish. The court did reduce the front pay and emotional damages, which left Karen with \$1,185,000. (*Miniex v. Houston Housing Authority*, SD TX, 2019)

Final note: More than 20 federal laws protect various whistleblowers under OSHA's jurisdiction. Whistleblower protections cover workers in food safety, health care, nuclear energy, worker safety and many other potentially dangerous environments. Federal employees have their own protection for reporting wrongdoing under the Whistleblower Protection Act of 1989. In addition, states and some municipalities have their own whistleblower protection laws.

Advice: Consult your attorney before disciplining anyone who has reported alleged wrongdoing.