

Current Contractor Whistleblower Protections and Proposed Legislative Changes

| | Current Law for Contractor Whistleblowers (41 USC 4705) | Current Law for DOE / National Nuclear Security Administration Contractor Whistleblowers | Current Law for DOD Contractor Whistleblowers (2008 NDAA CMC Amendment) | Current Law for Stimulus Contractors | Proposed Law – CMC Legislation (S. 241) (Similar to ARRA but applies to all non-federal employees) | H.R. 3289 – Whistleblower Protection Enhancement Act proposed law (2 yr pilot program) |
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| Who is protected? | All federal government contractor employees. | A contractor employee working at a DOE owned or leased site. | DOD contractor employees. | Any employee of non-federal employer receiving covered funds (including contractors and subcontractors). | Any employee of non-federal employer receiving covered funds (including contractors and subcontractors). | All federal government contractor employees. |
| What disclosures are protected? | Protects against reprisals for disclosing a substantial violation of law related to the contract. | Information that employee reasonably believe is: a substantial violation of a law, rule, or regulation; a substantial and specific danger to employees or to public health or safety; and fraud, gross mismanagement, gross waste of funds, or abuse of authority. Or while participating in a Congressional or administrative proceeding or for refusing to participate in an activity, policy, or practice if they believe participation would constitute a violation of a federal health or safety law; or cause them to have a reasonable fear of serious injury to themselves, other employees, or members of the public. | Information that the employee reasonably believes is evidence of: gross mismanagement of a DOD contract, a gross waste of DOD funds, a substantial deadline and specific danger to public health or safety, or a violation of law related to a DOD contract. | Protects against reprisals for disclosing information that employee reasonably believes is evidence of: gross mismanagement; gross waste of funds; substantial and specific danger to public health or safety; violation of a law, rule, or regulation. | Protects against reprisals for disclosing information that employee reasonably believes is evidence of: gross mismanagement; gross waste of funds; substantial and specific danger to public health or safety; violation of a law, rule, or regulation. | Protects against reprisals for disclosing information that employee reasonably believes is evidence of: gross mismanagement; gross waste of funds; substantial and specific danger to public health or safety; violation of a law. |
| Who to disclose to in order for protection to apply? | A Member of Congress, authorized official of executive agency or the DOJ. | A Member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, employer, or any higher tier contractor. | A Member of Congress, a representative of a committee of Congress, DOD IG, the GAO, a DOD employee responsible for contract oversight or management. | A Member of Congress, a representative of a committee of Congress, an Inspector General, the GAO, State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, the head of a federal agency or their representatives. | A Member of Congress, a representative of a committee of Congress, an Inspector General, the GAO, State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, the head of a federal agency or their representatives. | A Member of Congress, a representative of a committee of Congress, an Inspector General, the GAO, agency employee responsible for contract oversight, authorized official of executive agency, or the DOJ. |
| Remedies | Individual may submit complaint to IG, who must investigate unless frivolous. Agency head may order contractor to: abate reprisal; reinstate position; pay for expenses of employee. | If the employee worked at DOE headquarters or at a field site the complaint must be submitted to the EC Director. If contractor employer worked at a DOE field facility then the complaint must be submitted to head of the DOE field element. The complaint must be filed within 90 days of the retaliation. The remedies that may be issued at the initial, intermediate, or final stage of review include reinstatement, transfer preference, back pay, and reimbursement of expenses. | Submits complaint to IG, who must investigate unless frivolous. 180 day deadline for determination. No later than 30 days after IG report, agency head shall make determination and may order contractor to abate reprisal, reinstate position, and/or pay expenses. If not enforced within 210 days, then employee may seek de novo action before district court. Right to jury trial. | Submits complaint to IG, who must investigate unless frivolous. 180 day deadline for determination. No later than 30 days after IG report, agency head shall make determination and may order contractor to abate reprisal, reinstate position, and/or pay expenses. If not enforced within 210 days, then employee may seek de novo action before district court. Right to jury trial. | Submits complaint to IG, who must investigate unless frivolous. 180 day deadline for determination. No later than 30 days after IG report, agency head shall make determination and may order contractor to abate reprisal, reinstate position, and/or pay expenses. If not enforced within 210 days, then employee may seek de novo action before district court. Right to jury trial. | Submits complaint to IG, who must investigate unless frivolous. 180 day deadline for determination. No later than 30 days after IG report, agency head shall make determination and may order contractor to abate reprisal, reinstate position, and/or pay expenses. If not enforcement within 210 days, then employee may seek de novo action before district court – bench trial. |
| Additional Protections | If contractor does not comply then agency head shall file enforcement order in US district court. 60 day review of order. | If informal resolution fails, then employee can refer the complaint to the Office of Hearings and Appeals (OHA) for a hearing or an investigation followed by a hearing. The employee can appeal an OHA decision, which must issue a decision within 60 days. That decision may be appealed to the Secretary of Energy, who will issue a final decision within 90 days. | Admissible evidence for de novo bench trial includes IG determination. Contractor (or person adversely affected by enforcement) may seek review within 60 days of order in a US court of appeals. | Admissible evidence for de novo jury trial includes IG investigative file. Contractor (or person adversely affected by enforcement) may seek review within 60 days in a US court of appeals. 360 day exhaustion of remedies time limit for employee. Nondisclosure agreements, waivers, and arbitration agreements are unenforceable. Burden of Proof requirement same as the WPA. | Admissible evidence for de novo jury trial includes IG investigative file. Contractor (or person adversely affected by enforcement) may seek review within 60 days in a US court of appeals. 360 day exhaustion of remedies time limit for employee. Nondisclosure agreements, waivers, and arbitration agreements are unenforceable. Burden of Proof requirement same as the WPA. | Admissible evidence for de novo bench trial includes IG determination. Contractor (or person adversely affected by enforcement) may seek review within 60 days in a US court of appeals. |

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