

July 20, 2015

Senate Extends Employee Whistleblower Protection to Antitrust Violations

On July 16, 2015, the U.S. Senate Judiciary Committee, which has exclusive jurisdiction over federal antitrust laws, unanimously passed bipartisan legislation to extend federal whistleblower protections to employees who report antitrust violations internally or to federal government agencies.

Under the proposed new law, entitled the Criminal Antitrust Anti-Retaliation Act of 2015, employers, for the first time, are prohibited from retaliating against employees who report violations of antitrust laws or participate in federal investigations related to criminal antitrust violations, such as allegations of price-fixing, market-division or bid rigging. Among various other defined prohibited activities, the proposed law specifically provides that:

(1) No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

(A) to provide or cause to be provided to the employer or the Federal Government information relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

The reach of the protected parties under the new law is broad. It extends beyond traditional employees, to include contractors, subcontractors AND agents as covered individuals.

The proposed law also creates an enforcement mechanism. Whistleblower retaliation claims may be filed with the Department of Labor, as well as federal district courts. If successful on a claim, the employee is entitled to reinstatement, back pay and special damages, including attorney's fees and costs. Employees must file claims within 180 days of the date on which the violation allegedly occurred.

Given this new regime and the introduction of protections for employee reporting of potential antitrust violations, employers are well-advised to seek guidance from counsel and have internal compliance guidelines not only for employee relations but also for the prevention of antitrust violations. Although the legislation needs to be passed by the full Senate and House of Representatives, the Judiciary Committee's unanimous action is broadly expected to be enacted into law.

This document is intended to provide you with general information regarding the Criminal Antitrust Anti-Retaliation Act of 2015. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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