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Anatomy of a Whistleblower Complaint

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1. What is a Whistleblower?

ANSWER: One who reveals wrongdoing within an organization to the public or to those in positions of authority. www.thefreedictionary.com.

An employee who reports employer wrongdoing to a governmental or law-enforcement agency. Black's Law Dictionary, Eighth Edition.

2. What laws protect whistleblowers from disciplinary action by an employer?

ANSWER: The Texas Whistleblower Act may be found in Section 554.001 of the Texas Government Code. It protects public employees from retaliatory disciplinary actions or reporting wrongdoing within their agency. It does not protect whistleblowers employed by private employers.

Various Texas Labor Code provisions protect employee for reporting unlawful discrimination (Tex. Lab. Code Ann. § 21.055), health and safety violations (Tex. Lab. Code Ann. § 411.082), and the Hazard Communication Act (Chapter 502 of the Texas Health & Safety Code) violations.

Whistleblower protections exist to protect workers in the healthcare industry.

A complete list of Texas statutory protections for whistleblowers is found at <http://www.workplacefairness.org/whistleblower-retaliation-claim-TX>.

The Texas Supreme Court has created a single public policy exception to the at-will employment rule –the *Sabine Pilot* wrongful discharge claim. Under that judicially created claim, an employee has a cause of action against an employer if the employee is terminated solely for refusing to perform an illegal act. This doctrine may come into play when a whistleblower claims that the employer requested the employee to perform an illegal act.

In addition to the Texas statutes, federal statutes also protect whistleblowers under certain circumstances.

The Sarbanes-Oxley Act provides limited remedies for whistleblowers who complain of violations of federal securities and tax laws. The employee has 90 days to report the violations after discovery.

Various federal statutes protect employees for reporting employee safety concerns.

While not directly applicable to nonprofit organizations, some nonprofit organizations violate securities laws inadvertently. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") creates a new whistleblower program with potentially lucrative cash rewards for whistleblowers that voluntarily provide evidence of securities law violations to the U.S. Securities and Exchange Commission ("SEC").

Whistleblower Laws Enforced by OSHA

Each law requires that complaints be filed within a certain number of days after the alleged retaliation. Not all of these laws apply to every nonprofit organization.

You may file complaints by telephone or in writing under the:

- Occupational Safety and Health Act (30 days)
- Surface Transportation Assistance Act (180 days)
- Asbestos Hazard Emergency Response Act (90 days)
- International Safe Container Act (60 days)
- Federal Rail Safety Act (180 days)
- National Transit Systems Security Act (180 days)

Under the following laws, complaints must be filed in writing:

- Clean Air Act (30 days)
- Comprehensive Environmental Response, Compensation and Liability Act (30 days)
- Energy Reorganization Act (180 days)
- Federal Water Pollution Control Act (30 days)
- Pipeline Safety Improvement Act (180 days)
- Safe Drinking Water Act (30 days)
- Solid Waste Disposal Act (30 days)
- Toxic Substances Control Act (30 days)
- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (90 days)

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