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# Whistleblowers

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*This presentation is presented by the authors in their personal capacities, and the views expressed are not necessarily reflect the official position of their employers.*

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## Big Whistleblower Lawsuit Recoveries

- **\$3.5 million jury award against defense contractor**
  - *Cejka v. Vectrus Systems*, 2019 WL 8198090 (D. Colo. Feb. 21, 2019)
- **\$2.5 million jury award against City of Abilene**
  - *Carter v. City of Abilene* (December 2019)
- **\$3.9 million jury award against City of Denton**
  - *Grim and Maynard v. City of Denton* (February 2020, appeal pending)
- **\$11 million jury award to a whistleblowing lawyer**
  - *Wadler v. Bio-Rad Labs*, 754 F. App'x 661 (9th Cir. 2019) (upholding \$8 million award to former general counsel)
- **\$4.6 million jury verdict against shopping center mgmt company**
  - *Salerno v. Mpi Mgmt.*, No. 19-0145-CV-W-BP, 2020 U.S. Dist. LEXIS 146217 (W.D. Mo. 2020)

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## Roadmap

- New federal whistleblower statutes
- National Defense Authorization Act
- Texas health care whistleblowers
- Texas Whistleblower Act
- Discuss ethical issues related to attorney whistleblowers



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## Select Federal Whistleblower Statutes

Statute	Year	Codified
False Claims Act	1863	31 U.S.C. § 3730(h)
Whistleblower Protection Act	1989	5 U.S.C. § 2302
National Defense Authorization Act of 2013	2013	41 U.S.C. § 4712
Sarbanes-Oxley Act	2002	18 U.S.C. § 1514A
Dodd-Frank Act	2010	15 U.S.C. § 78u-6(i)
Federal Water Pollution Control Act	1972	33 U.S.C. § 1367
Federal Mine Safety and Health Act	1977	30 U.S.C. § 815(c)
Seaman's Protection Act	1984	46 U.S.C. § 2114
Federal Railroad Safety Act	2007	49 U.S.C. § 20109
Commercial Motor Vehicle Safety Act	1994	49 U.S.C. § 31105
Food Safety Modernization Act	2011	21 U.S.C. § 399d

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## “New” Whistleblower Statute: Taxpayer First Act

- Enacted July 1, 2019 (codified at 26 U.S.C. § 7623(d))
- **Prohibits:** employer retaliation against employee reporting tax fraud or underpayment of taxes
- **Statute of Limitations:** 180 days to file with Dept. of Labor
- **Causation standard:** “contributing factor”
- **Remedies:** double back pay, reinstatement, uncapped compensatory damages, attorneys' fees and costs

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## Brand New Whistleblower Statutes: CAARA and AMLA

- **CAARA** - Criminal Antitrust Anti-Retaliation Act, 15 U.S.C. § 7a-3
  - **Protected activity:** internal reporting to supervisor, or reporting criminal antitrust violations to ER, govt, participating in investigations or proceedings
- **AMLA** - U.S. Anti-Money Laundering Act 2020 (within 2021 NDAA), 31 U.S.C. § 5323(g)&(j)
  - **Protected activity:** internal reporting, or external reporting of money laundering or BSA violations
  - **Reward system** for tips related to money laundering financial crimes:
    - Prior law: Bank Secrecy Act (BSA) Whistleblower rewards capped at \$150,000
    - AMLA § 6314 removes award cap, awards up to 30% of penalties on any action that exceeds \$1m in penalties (like FCA, but no minimum %)
    - According to ABA, \$1bn in criminal penalties assessed in past 5 years
- AIR21 default rules apply for now -<https://www.osha.gov/sites/default/files/AIR21DeskAid.pdf>:
  - **Causation standard:** “contributing factor”
  - **Remedies:** back pay, reinstatement, uncapped compensatory damages, fees and costs.
  - **Added:** Kickouts and jury trial for both after 180 days, 2x back wages damages for AMLA, arbitration **not** enforceable for AMLA (§ 5323(j)).

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