

Presented at the  
**29<sup>TH</sup> ANNUAL LABOR AND  
EMPLOYMENT LAW CONFERENCE**

May 6, 2022

# Whistleblowers

Drew L. Harris & Austin Kaplan

*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.*

1

## Big Whistleblower Lawsuit Recoveries

- **\$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 argued February 16, 2022)
- **\$564 million to SEC whistleblowers**
  - Given to 108 individuals in FY 2021.
- **\$200 million award to CFTC whistleblower**
  - Given to anonymous Deutsche Bank employee

2

## Roadmap

- 2022 Whistleblower updates
- Basic overview of federal & state whistleblower laws
- National Defense Authorization Act
- Texas Whistleblower Act
- Discuss ethical issues related to attorney whistleblowers



3

## Fifth Circuit Update: Who can be a Sarbanes-Oxley whistleblower?

- In *Moody v. American National Insurance Co.*, No. 20-cv-40462 (5th Cir. Jan. 29, 2021), the Fifth Circuit affirmed a dismissal of a case where a whistleblower worked for a contractor of the Defendant
- Plaintiff was the president of an insurance group who Defendant retaliated against following the Plaintiff filing a shareholder derivative suit
- Fifth Circuit said that SOX only covers “actions an employer takes against its own employees” and, therefore, “the whistleblower entitled to protection must be an employee of the retaliator”

4

## False Claims Act (FCA) Update

- Does the FCA prohibit post-employment retaliation?
  - 10<sup>th</sup> Cir: NO
    - *Potts v. Center for Excellence in Higher Education, Inc.*, 908 F.3d 610 (10th Cir. 2018).
  - 6<sup>th</sup> Cir: YES
    - *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428 (6th Cir. 2021).
  - SCOTUS?
    - Cert Denied. *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428 (6th Cir. 2021), cert. denied, No. 21-443 (U.S. Jan. 24, 2022).
  - 5<sup>th</sup> Circuit: No word

5

## DOL Coronavirus Texas Update

- July 15, 2021
  - DOL sues North Texas dental practice, owners for retaliation against employees who reported coronavirus concerns
- October 13, 2021
  - DOL sues Austin luxury car dealer that retaliated against employee who raised concerns of coronavirus hazards
- November 17, 2021
  - DOL sues a global truck manufacturer who fired worker concerned about coronavirus safety at Texas facility

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Whistleblowers

Also available as part of the eCourse

[2022 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the 29<sup>th</sup> Annual Labor and Employment Law Conference session "Whistleblowers"