



Federal Health Care Reform Includes New Whistle Blower Protections

Cole M. Young

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It is not surprising that many people have not read the Patient Protection and Affordable Care Act ("PPACA") in its entirety. Instead, the media and special interest groups have focused on only a handful of hot-button issues. Unfortunately, some very expansive legislation that is contained in the Act is receiving very little attention. One provision in particular, could have devastating consequences on employers.

Section 1558 of PPACA amends the Fair Labor Standards Act by prohibiting discrimination against an employee who provided, caused to be provided, or is about to provide to the employer, federal government or state attorney general, information relating to any violation of Title I of the Act. PPACA further prohibits discrimination against employees who object to or refuse to participate in a violation of Title I. Title I is exceptionally broad and contains, among other things, prohibitions on lifetime or annual limits, protections against discrimination based on preexisting conditions and several reporting requirements. Thus, PPACA Section 1558 essentially protects employees who attempt to report such violations, or who refuse to be involved in such violations.

The procedures, notifications, burdens of proof, remedies and statutes of limitation are all governed by the Consumer Product Safety Improvement Act. Under those standards, a complainant employee can prevail by merely proving a preponderance of the evidence that his or her protected activity was a contributing factor in an unfavorable employment action. Once that burden is met, the employer must show, by clear and convincing evidence, that it would have taken the same action in the absence of the employee's protected activity. Like cases brought under the Consumer Product Safety Improvement Act, this threshold for employers tends to be a massive hurdle to overcome.

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