

May 13, 2010

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## Health Care Reform Creates New Whistleblower Protections

The recently enacted Patient Protection and Affordable Health Care Act (Act), expands the scope of discrimination and whistleblower protection for employees. Specifically, the Act, which amends the Fair Labor Standards Act (FLSA), prohibits an employer from discriminating “against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment” because the employee, among other things:

- provided information to the employer, federal government, or state attorney general concerning a violation, act, or omission that the employee reasonably believes to be a violation relating to Title I of the Act;
- actually did or is about to assist, participate, or testify in a proceeding about such violation; or
- objected to or refused to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of Title I of the Act.

Title I covers the rules and requirements regarding health care coverage. Entitled “Quality, Affordable Health Care for All Americans,” it imposes certain mandates on employers and eliminates certain restrictions in health coverage, such as pre-existing condition exclusions, lifetime and annual dollar limitations in coverage, and discontinuing coverage for children under their parent’s policy before the age of 26.

An employee who believes he or she has been discharged or discriminated against in violation of the new provision in the FLSA is entitled to seek relief using the same procedures provided in the Consumer Product Safety Improvement Act (CPSIA). These procedures include filing a complaint with the Department of Labor (DOL), going through an administrative process to determine whether the employee’s conduct is protected, and authorizing the employee to file a complaint in federal court after exhaustion of the administrative process. It is anticipated that the DOL will assign this whistleblower provision to the Occupational Safety and Health Administration (OSHA). OSHA staffs a whistleblower investigation unit, which currently investigates whistleblower claims filed under seventeen federal statutes, including the CPSIA.

As employers scramble to comply with the Act, they need to be aware of the new employee protections. To help employers understand and comply with the recent FLSA changes, the Labor and Employment Department will be hosting a free webinar on June 8, 2010. If you would like to sign up for this webinar, or would like to receive further information regarding our labor and employment law services, please feel free to contact a member of our labor and employment department.