

OSHA Makes it Harder to Settle Whistleblower Claims

Insights

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As you may or may not know, OSHA administers the whistleblower portions of about 22 federal statutes. Similar to the recent information from the SEC about problematic language in settlement agreements, OSHA, in its role as administer of the whistleblower program, has recently announced its [new guidelines](#) for approving settlement agreements for whistleblower actions. The guidance focuses on “gag” provisions that may discourage a complainant from providing information to the government, discourages or restricts protected activity, provisions requiring prior notice to the employer before communicating with the government, provisions requiring the complainant to affirm she has not previously provided information to the government, waivers of the right to receive a monetary award from a government administered whistleblower award program (specifically citing to the SEC), provisions requiring the breaching party to pay liquidated damages, and broad confidentiality and non-disparagement clauses that apply “except as provided by law.” OSHA goes so far as to provide the appropriate language that may be used in settlement agreements. When combined with the agreements amongst various federal agencies to share information and refer potential agency actions, this guidance is likely to provide more “bang” for the government on employers’ “bucks” by potentially creating multiple claims for various agencies from a single set of facts.

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