

New Emphasis On Whistleblower Claims Against Auto/Parts Manufacturers and Dealers.

Insights

4.04.14



During this week's discussion about GM's auto recalls, OSHA also released a Fact Sheet and guidance on "[Filing Whistleblower Complaints Under The Moving Ahead For Progress In The 21st Century Act \(MAP21\)](#)." I'm willing to bet that most of you have never heard of this relatively new retaliation law, and when I recently polled a number of my competitors, as well as various OSHA retaliation supervisors, I learned that most of them had not yet seen complaints under this retaliation law.

However, now that OSHA has put out a Fact Sheet on how to file a complaint, it will presumably publicize filing MAP21 claims, as it has aggressively promoted other whistleblower claims.

Like many of the 20+ retaliation laws investigated by OSHA, MAP21 focuses on a particular industry; in this case, "motor vehicle manufacturers, part suppliers, and dealerships." The law prohibits these employers from retaliating against their employees for undertaking any of the following activities:

- Providing information relating to any motor vehicle defect or alleged violations of . . . NHTSA vehicle safety standards and the Federal reporting requirements for auto manufacturers, to:
 - his or her employer (including auto manufacturers, part suppliers and dealerships), or
 - to the U.S. Dept. of Transportation.
- Filing, testifying, assisting or participating in a proceeding concerning any motor vehicle defect or alleged violation of Chapter 301, including NHTSA vehicle safety standards and the Federal reporting requirements for auto manufacturers, or
- Objecting to or refusing to participate in any activity that he or she reasonably believed to be in violation of Chapter 301 or any order, rule, regulation, standard, or ban under Chapter 301.

There have not yet been any reported cases and the last time I checked, OSHA and the Solicitor's Office had not developed internal guidelines. Therefore, your guess is as good as mine as to what conduct that would constitute protected activity under the above definitions. As an example, how broadly will the term "information" provided to your employer be defined?" Information relating to any motor vehicle defect or alleged violation of Chapter 301 or any order, rule, regulation or standard or the Federal reporting requirements for auto manufacturers" or "ban under 301" could encompass most communications in a manufacturing or other setting. Quite vague and broad

Given the ongoing publicity about auto recalls and penalties assessed against auto manufacturers, motor vehicle and parts manufacturers and dealerships should be careful not to take adverse action against an employee who may later argue that they have engaged in protected conduct. Carefully document actions taken to show that any alleged protected actions were not the cause of the adverse action.

IS OSHA Focusing More Heavily On All Aspects of the Auto Industry?

In evaluating this risk, auto and parts manufacturers should recall that **OSHA Region IV has launched an Emphasis Program and is aggressively inspecting auto/parts manufacturers**, and that OSHA has also proposed eliminating Auto Dealerships from their partial exemption from OSHA Injury & Illness recordkeeping obligations. Looks like the full industry may be getting more attention than in the past; at least the largely non-union segments.

Howard

Related People



Howard A. Mavity
Partner
404.240.4204
Email

