



Man Bites Dog – OSHA Style

Insights

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OSHA enforces more whistleblower laws than any other agency and has made whistleblower protection one of its principal goals. So it grabs your attention when you read “*Whistleblower Wins \$820,000 Settlement Against OSHA.*”

OSHA’s foremost official overseeing injury record keeping for 25 years claimed that OSHA retaliated against him because he repeatedly spoke out internally and externally, and before Congress and the media about his belief that employers significantly underreported workplace injuries, and OSHA was not doing much about it.

Many employers and safety professionals would argue that this gentleman was wrong about massive employers underreporting, but that’s not the issue. Was he retaliated against because he spoke out ... even intemperately?

The U.S. 4th Circuit Court of Appeals found evidence that D.C. OSHA leadership:

- plotted to “get” the employee for embarrassing the agency;
- conducted a trumped-up investigation to justify his removal; and
- discharged him for participating in a loud dispute with a co-worker for similar actions.

Read the [Settlement Agreement](#) and 4th Circuit decision.

Lessons?

The employee may have got it wrong about underreporting – his claims may have been inaccurate. And any employer can understand the agency’s leadership fuming about an employee publicly embarrassing the organization. Unfortunately, neither an inaccurate safety complaint or publicly embarrassing the organization justifies adverse action.

This former OSHA employee’s burningly passionate belief that employers intentionally under record and report workplace injuries is shared by others in OSHA, unions and even safety groups. Never doubt OSHA’s “continuing” commitment to address what it sees as recordkeeping violations and related adverse action against employees who report recordable injuries.

Notwithstanding being bitten by their own system, OSHA’s leadership and the DOL generally remain determined to promote whistleblower claims. Just this week, OSHA took up possibly allowing

determined to promote whistleblower claims. Just this week, OSHA teed up possibly allowing electronic filing of whistleblower claims. Based on my time at the NLRB and 30 years of observations, that's a bad idea. Complainants need to deal with an officer of the day or similar person to describe their complaints. The official can better pull out the salient facts, or discourage frivolous claims.

If indeed OSHA leadership harassed and terminated an employee because he embarrassed the Agency, this occurrence will increase any distrust of the current leadership's respect for procedure and process. Observers have already commented on OSHA's use of directives and interpretations to change things that should be addressed by rule making and legislation . . . or by the Agency's often harsh "regulation by shame." Traditionally, regardless of the administration, OSHA has enjoyed a reputation for professionalism, and that reputation is essential to its mission.

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