False Claims Act

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The False Claims Act (FCA) is a federal law that allows private individuals with first-hand, previously undisclosed knowledge of fraud committed against the federal government to sue on behalf of the government to recover losses. The government may join the suit, but if the government chooses not to participate in the action, the individual may still proceed with the suit against the contractor or entity that defrauded the government.

Rewards for reporting fraud against the government

Individuals suing for fraud on behalf of the government are called qui tam relators or, more commonly, "whistleblowers." To encourage individuals to report and expose fraud against the government, the FCA authorizes awards to whistleblowers ranging from 15 percent to 30 percent of the government's recovery.

Examples of FCA violations

The FCA prohibits the following activities:

- Knowingly presenting a false or fraudulent claim for payment or approval by the government
- Knowingly making or using a false record or statement to get a false or fraudulent claim paid or approved by the government
- Conspiring to defraud the government by getting false or fraudulent claims approved or paid by the government
- Falsely certifying the receipt of property used by the government
- Knowingly buying or receiving an obligation or debt from the government illegally
- Knowingly making or using a false record or statement to conceal, avoid, or decrease an obligation to pay the federal government.

Procedure for reporting fraud against the government

The whistleblower alleging fraud must file a qui tam action in federal district court within six years of the FCA violation. A copy of the complaint must also be provided to the U.S. Attorney General and U.S. Attorney for the district where the complaint was initiated. Whistleblowers must be represented by an attorney. The complaint is filed under seal (ie, is not publicly available), and the government investigates the allegations and determines whether to intervene.

Potential obstacles to receiving recovery under the FCA

A court may dismiss a qui tam action for any of the following reasons:

- The action is based on the same facts as a previously filed qui tam action
- The government has already initiated an action against the same defendant
- The suit's allegations or transactions are based on publicly available information, such as audits or prior court filings
- The complaint fails to provide sufficient specificity

Therefore, it's important for a whistleblower with knowledge of fraud against the government to seek skilled counsel capable of promptly filing a qui tam action against an alleged violator.

Whistleblower retaliation protection under the FCA

Under the FCA, an employer may not retaliate against an employee who reports fraud against the government or engages in other whistleblowing activities. Prohibited retaliation includes termination, suspension, demotion, harassment, and any other act that would dissuade someone from reporting FCA violations. Employees are protected when they investigate a potential FCA action, initiate an FCA action, testify in an FCA action, and assist in an FCA action.

Burden of proof for plaintiff in FCA retaliation cases

To prevail in an FCA retaliation case, employees must prove that they engaged in protected activity and that their employers knew that the employees engaged in protected activity.

Prevailing employees will be made whole, which includes reinstatement, double back pay, litigation costs, and reasonable attorney fees.

Selecting a lawyer

Due to the complex nature of FCA claims, employees who are aware of fraud against the government should seek experienced counsel capable of handling these complicated cases.