

DC Whistleblower Protection Act

Article By:

Tycko & Zavareei Whistleblower Practice Group

Employees in Washington, DC are protected from retaliation when they refuse to comply with illegal or unethical directives. The DC Whistleblower Protection Act enshrines the right and requirement to make protected disclosures when employees become aware about violations, fraud, or misuse of public resources.

Not all employers will comply with the law however. Some may attempt to fire, demote, or even verbally or physically harass an employee who exercises their right to speak up. When this is the case, a DC whistleblower protection lawyer can help.

Washington, DC Whistleblower Law

Washington, DC offers several powerful whistleblower protection laws, including the Whistleblower Protection Act as well as a District of Columbia False Claims Act. The Whistleblower Protection Act further enshrines the constitutional right to assembly and free speech on all public matters, even those connected with the purview of their employment.

Under this DC law, public employees have the right and responsibility to disclose dishonesty, incompetence, fraud, and administrative failures. The law makes it illegal to retaliate against a public employee because of their protected disclosure or refusal to participate in a wrongful, unnecessarily wasteful, or fraudulent directive.

When Was the Whistleblower Protection Act Passed?

The DC Whistleblower Protection Act was first passed in 1998. However, prior iterations of the act insisted that [DC public employees submit a notice of claim to the relevant government agency](#), under D.C. Code Ann. § 12-309 (2001 ed.), in order to seek unliquidated damages. The law was amended in 2011 by the DC Council to redefine its procedural components in order to become more favorable to whistleblowers. The Section 12-309 notice of claim requirement was repealed, among other burdensome disclosure elements. Today, the DC Whistleblower Protection Act is notable for its broad scope of liability, protection against “duty speech” loopholes, and generally favorable terms for

government employee whistleblowers.

What Does the Whistleblower Protection Act Cover?

Washington, DC whistleblowers are protected against retaliation when they make any of the following types of “protected disclosures,” i.e. speak publicly or privately about any of the following concerning a public program, works administration, or government contract:

- Corruption
- Dishonesty
- Incompetence
- Waste or misuse of public funds
- Violation of the law or procedural rules
- Abuse of authority
- Administrative failures
- Gross mismanagement
- Procedural or contractual issues that go beyond simple technical concerns
- Substantial and specific danger to health and public safety

The [Whistleblower Protection Act](#) covers all public employees, including:

- Government agency employees
- Subordinate and independent agencies that fall under the DC government umbrella
- Teachers and administrators in DC Public Schools
- The Board of Trustees of the University of the District of Columbia
- Employees of the District of Columbia Housing Authority

The Act prevents employers from [taking adverse actions](#) like termination or demotion against whistleblowers. However, should a supervisor fail to act upon specific protected disclosure, they may be terminated or experience other disciplinary action like suspension or fines.

DC whistleblowers who qualify for protection can file a civil action within three years after an employer retaliates against them in any way, or within one year that they become aware of the adverse action taken against them. They may be able to recover the following remedies and damages:

- Reinstatement to the same position
- Reinstatement of seniority rights
- Restoration of lost benefits
- Back pay including interest
- Compensatory damages
- Reasonable costs
- Attorneys fees

How Does the DC Whistleblower Protection Act Compare With Other Relevant Laws?

The DC whistleblower law is not the only statute geared towards whistleblower protection in the United States. The federal False Claims Act also protects employees from retaliation by their employers when they speak up to report fraud and false claims resulting in government funds. Additionally, the False Claims Act is broader in scope than the DC Whistleblower Protection Act, as it

applies not only to public employees but also employees of private companies and contractors, like hospitals, schools, health care facilities and infrastructure and defense contractors, when they report fraud involving federal funds. Under the False Claims Act, a whistleblower who suspects a person, entity, or organization of fraud (or other false action) may file a qui tam action on behalf of the government. If the government chooses to pursue action and succeeds, the whistleblower (known as a “relator”) may receive up to 30% of all recovered funds.

In addition to the DC Whistleblower Protection Act, DC also offers its own localized version of the FCA. [As of January 2021](#), this statute can be used to prosecute not only fraud but also tax evasion. Whistleblowers under DC’s version of the FCA can report unpaid taxes for a possible reward in cases involving over \$350,000 in loss to the District, when individuals have a taxable income of at least \$1 million. It can also be used to prosecute fraud and false claims originating in health care, education, and other areas of public spending.

How to File a Claim Under the DC Whistleblower Protection Act

The Washington, DC whistleblower law can help a public employee who has lost their job, been demoted, seen their pay cut, or faced other adverse actions due to speaking up about fraud seek relief. By filing a claim, a whistleblower may be able to recover their prior standing at their job as well as receive compensatory damages and back pay with interest, among other benefits. Individuals who believe they may qualify for filing a claim should contact a qui tam attorney in order to gather evidence and information under professional advisement. From there, a whistleblower lawyer can help you file your claim as well as illustrate how the retaliatory action against you was linked to your protected disclosure.

Under the Whistleblower Protection Act in DC, you have one year from the date of the the adverse action (or from your knowledge of it) to a file a claim, but you should move quickly. Filing swiftly can help ensure that evidence is not tampered with or destroyed, memories do not fade, and that other employees who may be contacted to help support your case do not change jobs or fall out of contact.

Common Challenges in DC Whistleblower Cases

Some common challenges that whistleblowers can face include:

- Failing to illustrate causation due to preponderance of the evidence, i.e. being unable to prove that the reason they were fired was due to their disclosure
- Bona fide occupational qualification (BFOQ) defense, or insisting that an employer was acting genuinely and not in relation to the disclosure when they fired or failed to promote an employee
- “After acquired evidence”, or illustrating that an employee lied on their resume, acted inappropriately with another employee, or took some action that would have led to them being fired regardless of their protected disclosure
- Attempts from employers to conceal incriminating memos, emails, text messages, or interdepartmental communications
- Countersuits alleging that employees acted inappropriately when gathering evidence to support their claim

DC Whistleblower Protection Act: FAQs

The following are some frequently asked questions by DC whistleblowers about the protections, rewards, and qualifications applicable to them:

Who Qualifies for Protection Under the DC Whistleblower Protection Act?

Public employees, such as DC Housing Authority employees, DC public school and university employees, as well as government agency workers, all qualify for protection under the DC Whistleblower Protection Act.

How Is the DC Whistleblower Protection Act Different From Applicable Laws in Other States?

The DC Whistleblower Protection Act is more powerful than many other similar state laws. Several crucial loopholes were closed in the 2009 amendments to the Act. For one, the DC Whistleblower Protection Act does not require a notice of claim to be submitted prior to filing for restitution. The DC Whistleblower Protection Act also does not contain an original source disclosure provision. Prior to the 2009 amendments, whistleblowers were not protected against retaliation if their information was already known to supervisors, making it nearly impossible to reliably report fraud. The DC law also protects “duty speech,” one of the most common state whistleblower protection loopholes. Today, DC employees have the right not only to speak about fraud even when it pertains to their own job duties, but also to refuse to act unethically.

Is There a Time Limit for Filing a Whistleblower Claim in DC?

The statute of limitations for whistleblower claims in DC is one to three years. A whistleblower may request a jury trial within three years of the adverse action, or within one year of learning about it. This additional year protects employees who learn later on the reasoning behind why they were retaliated against. Cases must be filed prior to the limit to be considered eligible for restitution.

Do Whistleblowers Get Paid?

Whistleblower rewards range from 10% to 30% of the total settlement under the False Claims Act. The DC Whistleblower Protection Act may also offer a whistleblower reward in the amount of anywhere from [\\$5,000 to \\$50,000](#) if the public disclosure results in the recovery or loss prevention of more than \$100,000 to the District. Whistleblower reward money is not guaranteed under the DC WPA; it must be recommended by the Inspector General, the D.C. Auditor, or other law enforcement authority.

Should I Collect Evidence or Call a DC Whistleblower Attorney?

The most important first step you can take as a whistleblower is to seek out the services of a reputable DC whistleblower attorney. There are certain kinds of information that are prohibited under District and federal law for collection, such as recording phone calls without consent of at least one party. However, anti-fraud statutes can authorize the disclosure of other kinds of confidential material when it is related to reporting a crime. The only way to protect yourself when collecting evidence is to do so in consultation with a qualified whistleblower lawyer.

National Law Review, Volume XIV, Number 365

Source URL: <https://natlawreview.com/article/dc-whistleblower-protection-act>