

Predictable and Predicted: Whistleblower Suit Filed Under FSMA

Article By:

Paul E. Benson

In April 2016, the U.S. Occupational Safety and Health Administration (OSHA) published a final rule establishing "[Procedures for Handling Retaliation Complaints Under Section 402 of the Food Safety Modernization Act \(FSMA\)](#)." This rule provided new whistleblower protections for food industry employees.

Roughly 10 months later, on February 9, 2017, one of the first whistleblower suits invoking the new FSMA rule was filed in federal court in the Northern District of Illinois by an employee of Mead Johnson Nutrition Company. The complaint was brought by a former global product compliance director for Mead Johnson who claims she was marginalized and ultimately fired after raising concerns about "serious safety issues" in the manufacturing of the company's ready-to-use infant formula. After speaking up, she asserts she was retaliated against by being excluded from meetings, withheld from information, and eventually terminated through a reduction-in-force. Her claim was originally filed with OSHA, who, according to the plaintiff, did not issue a final decision in a timely manner.

Under FSMA, employers cannot retaliate against any employee who refuses to engage in actions the employee reasonably believes violate FSMA. The reasonable belief standard has been described as a "good faith belief and/or an objectively reasonable belief" that an employer's conduct violated the applicable law. This standard is very fact-dependent and can be difficult for employers to defend against because it is based upon the employee's belief. The employer is often put in the position of having to prove the belief was unreasonable. It is likely that more FSMA-based retaliation suits will be brought in the future by food industry employees who are terminated from their employment. Whether or not these suits will ultimately be successful remains to be seen.

©2025 MICHAEL BEST & FRIEDRICH LLP

National Law Review, Volume VII, Number 45

Source URL: <https://natlawreview.com/article/predictable-and-predicted-whistleblower-suit-filed-under-fsma>