

AntitrustConnect Blog

Federal Legislation Introduced to Protect Antitrust Whistleblowers

Jeffrey May (Wolters Kluwer) · Thursday, August 2nd, 2012

Earlier this week, bi-partisan legislation was introduced in the U.S. Senate to protect from employment discrimination employees, contractors, sub-contractors, or agents who report antitrust violations to the federal government. The proposed “Criminal Antitrust Anti-Retaliation Act” (S. 3462) was introduced by Senator Patrick Leahy (Vermont) and Chuck Grassley (Iowa), chairman and ranking member of the Senate Judiciary Committee, on July 31.

The legislation would amend the “Antitrust Criminal Penalty Enhancement and Reform Act of 2004” to prohibit discrimination against a whistleblower in the terms and conditions of employment. It would allow an employee who believes that retaliation has occurred to file a complaint with the Secretary of Labor. The whistleblower could be entitled to compensation, including reinstatement, back pay, and litigation costs, expert witness fees, and reasonable attorney’s fees.

The proposed protections for antitrust whistleblowers are modeled on existing whistleblower statutes, including the protections Senators Leahy and Grassley authored as part of the Sarbanes-Oxley Act in 2002. A [2011 report and recommendation from the Government Accountability Office](#) found widespread support for anti-retaliatory protection in criminal antitrust cases, according to the bill’s sponsors.

The GAO report noted, however, that senior Antitrust Division officials neither supported nor opposed the idea of whistleblower protections for antitrust violations. The Antitrust Division currently has a leniency program that allows individuals and companies to obtain immunity for antitrust violations if they are the first to self-report the wrongdoing and meet other specified conditions.

By encouraging individuals to report possible antitrust violations to the government, the antitrust-specific whistleblower legislation could hamper Antitrust Division efforts to obtain cooperation from corporations interested in participating in the Antitrust Division’s corporate leniency program. Once an employee has reported the anticompetitive conduct to the Antitrust Division, the corporation would have a difficult time meeting the qualifications for leniency.

Limits on Protection

Antitrust law violations would be limited to violations of Sec. 1 or 3 of the Sherman Act or similar

state laws, under the proposed legislation. Thus, reports of monopolistic conduct would not come within the scope of the protections. Moreover, whistleblowers who planned and initiated the antitrust or other law violations or attempted to obstruct a Department of Justice antitrust investigation would not be covered by the measure.

“Whistleblowers are instrumental in alerting the public, Congress, and law enforcement to wrongdoing,” said Leahy. “Congress must encourage employees with reasonable beliefs about criminal activity to report it by offering meaningful protection to those who blow the whistle rather than leaving them vulnerable to reprisals.”

Grassley said “Chairman Leahy and I worked together ten years ago to establish whistleblower protections for private sector employees as part of the Sarbanes-Oxley reform effort. We updated those provisions three years ago, and today’s initiative is a further extension of our efforts. The legislation recognizes the value of whistleblowers that are willing to come forward with information about criminal antitrust violations in the private sector. Their courage will help make certain antitrust laws are enforced, and they deserve protection and recognition for their actions.”

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