

# TABLE OF CONTENTS

## CHAPTER 1

### False Claims Act: *Qui Tam* and Retaliation Claims

§ 1.01	Introduction . . . . .	1-2
	[1] Overview of the False Claims Act . . . . .	1-2
	[2] History and Amendments . . . . .	1-3
§ 1.02	False Claims Act Liability and <i>Qui Tam</i> Suits . . . . .	1-6
	[1] Elements and Examples of False Claims Act Claims . . . . .	1-6
	[a] Statutory Liability Provisions . . . . .	1-6
	[b] “Person” Defined . . . . .	1-6
	[c] Knowing Submission . . . . .	1-7
	[d] Materiality . . . . .	1-8
	[e] False and Fraudulent Claims . . . . .	1-9
	[i] Fraudulent Billing in Healthcare . . . . .	1-11
	[ii] Off-Label Drug Marketing in the Pharmaceutical Industry . . . . .	1-14
	[iii] Fraudulent Billing in National Defense and Homeland Security Contracts . . . . .	1-15
	[iv] Mortgage-Related Fraud . . . . .	1-16
	[v] Troubled Asset Relief Program Fraud . . . . .	1-16
	[vi] Coronavirus Aid, Relief, and Economic Security Act . . . . .	1-17
	[2] Statutory Bars to <i>Qui Tam</i> Actions . . . . .	1-18
	[a] Public Disclosure Bar . . . . .	1-18
	[b] Original Source Exception to Public Disclosure Bar . . . . .	1-21

**WHISTLEBLOWER LAW**

	[c]	First-to-File Bar . . . . .	1-22
	[3]	Filing a <i>Qui Tam</i> Claim—The Litigation Process . . . . .	1-24
	[a]	Jurisdiction and Limitations Period . . .	1-24
	[b]	Filing the Complaint and Disclosure Statement . . . . .	1-25
	[c]	Government Investigation During the Seal Period . . . . .	1-26
	[d]	Intervention Decision . . . . .	1-27
	[e]	Pleading Standard . . . . .	1-28
	[4]	Damages and Penalties . . . . .	1-30
	[a]	Treble Damages . . . . .	1-30
	[b]	Calculation of Actual Damages . . . . .	1-30
	[c]	Penalties . . . . .	1-33
	[5]	Relator’s Share in a Successful <i>Qui Tam</i> . . .	1-34
	[a]	Factors That May Increase a Relator’s Share . . . . .	1-34
	[b]	Factors That May Decrease a Relator’s Share . . . . .	1-35
	[6]	Settlement/Release of <i>Qui Tam</i> Claims . . .	1-36
§ 1.03		FCA Retaliation Claims . . . . .	1-38
	[1]	Prohibited Retaliation and Amendments . . .	1-38
	[2]	<i>Prima Facie</i> Case . . . . .	1-40
	[a]	Protected Activity . . . . .	1-41
	[b]	Employer Knowledge . . . . .	1-42
	[c]	Causation . . . . .	1-44
	[d]	Burden of Proof . . . . .	1-45
	[3]	Limitations Period for FCA Retaliation Claims and Procedural Issues Related to Filing . . . . .	1-46
	[4]	Pleading Standard . . . . .	1-47
	[5]	Remedies . . . . .	1-48
	[6]	Settlement/Release of Section 3730(h) Claims . . . . .	1-48

**CHAPTER 2**

**Sarbanes-Oxley Act of 2002**

§ 2.01		Overview . . . . .	2-2
	[1]	Whistleblower Provision: Section 806 . . . . .	2-3
	[2]	Dodd-Frank Amendments to SOX . . . . .	2-4

## TABLE OF CONTENTS

xix

§ 2.02	Covered Employer . . . . .	2-6
	[1] Publicly Traded Companies . . . . .	2-6
	[2] Consolidated Subsidiaries . . . . .	2-7
	[3] Contractors, Subcontractors, and Agents . . . . .	2-7
	[a] Retaliation Against Contractors’ Employees . . . . .	2-8
	[b] Retaliation Against Employees of Publicly Traded Companies . . . . .	2-11
	[4] Individual Liability . . . . .	2-11
§ 2.03	Covered Employee . . . . .	2-13
	[1] Classification as Employee or Independent Contractor . . . . .	2-13
	[2] Extraterritorial Application of Employee Protections . . . . .	2-14
	[3] Enforceability of Pre-Dispute Arbitration Agreements with Respect to Covered Employees . . . . .	2-18
§ 2.04	<i>Prima Facie</i> Case . . . . .	2-21
	[1] Protected Activity . . . . .	2-21
	[a] Reasonable Belief . . . . .	2-21
	[b] Existing Violation <i>versus</i> Imminent Violation . . . . .	2-26
	[c] Fraud on Shareholders <i>versus</i> Violation of an Enumerated Category . . . . .	2-27
	[d] Materiality . . . . .	2-29
	[e] To Whom an Employee Must Report . . . . .	2-30
	[2] Adverse Action . . . . .	2-31
	[3] Causation . . . . .	2-33
§ 2.05	Litigation Process . . . . .	2-35
	[1] Filing and Investigation of Complaint . . . . .	2-35
	[a] Commencement of Limitations Period . . . . .	2-35
	[b] Tolling of Limitations Period . . . . .	2-36
	[c] Form of Complaint . . . . .	2-38
	[d] Pleading Standard . . . . .	2-38
	[e] Burdens of Proof . . . . .	2-38
	[2] Determination and Review . . . . .	2-40
	[3] Kick-Out Provision . . . . .	2-40
	[4] Review of DOL Final Order by Federal Courts of Appeal . . . . .	2-42
	[5] Jury Trial . . . . .	2-42
§ 2.06	Available Remedies . . . . .	2-42.1
	[1] Reinstatement . . . . .	2-43

**WHISTLEBLOWER LAW**

[2]	Front Pay in Lieu of Reinstatement . . . . .	2-44
[3]	Back Pay. . . . .	2-45
[4]	Attorneys' Fees . . . . .	2-46
[5]	Non-Economic and Compensatory Damages . . . . .	2-47
[6]	Punitive Damages . . . . .	2-48

**CHAPTER 3****The Dodd-Frank Wall Street Reform and  
Consumer Protection Act**

§ 3.01	Overview . . . . .	3-2
§ 3.02	Amendments to the Sarbanes-Oxley Act of 2002. . . . .	3-4
§ 3.03	Securities and Exchange Commission Whistleblower Program . . . . .	3-6
§ 3.04	Securities and Exchange Commission Anti-Retaliation Provision . . . . .	3-7
[1]	Scope of Protection . . . . .	3-7
[a]	Whistleblower Status . . . . .	3-7
[i]	Reasonable-Belief Standard . . . . .	3-8
[ii]	Possible Securities Law Violation Standard. . . . .	3-9
[iii]	Manner of Reporting . . . . .	3-9
[b]	Extraterritorial Application . . . . .	3-11
[2]	<i>Prima Facie</i> Case . . . . .	3-12
[a]	Protected Activity. . . . .	3-13
[b]	Adverse Action. . . . .	3-13
[c]	Causation . . . . .	3-14
[3]	Procedural Requirements. . . . .	3-14
[a]	Enforcement: Private Right of Action and SEC Enforcement . . . . .	3-14
[b]	Jury Trials. . . . .	3-15
[c]	Statute of Limitations . . . . .	3-16
[d]	Arbitration . . . . .	3-16
[4]	Available Remedies . . . . .	3-17
§ 3.05	Commodity Futures Trading Commission Whistleblower Program . . . . .	3-18
§ 3.06	Commodity Futures Trading Commission Anti-Retaliation Provision . . . . .	3-20
§ 3.07	Consumer Financial Protection Act Anti-Retaliation Provision . . . . .	3-22
§ 3.08	Amendments to the False Claims Act. . . . .	3-23

CHAPTER 4

**Consumer and Investor Whistleblower Statutes**

§ 4.01	Overview . . . . .	4-2
§ 4.02	Consumer Product Safety Act and Consumer Product Safety Improvement Act of 2008. . . . .	4-4
	[1] CPSIA Anti-Retaliation Provision. . . . .	4-4
	[a] Covered Employers and Employees . . . . .	4-5
	[b] Protected Activity. . . . .	4-5
	[i] Consumer Product Safety Act. . . . .	4-7
	[ii] Children’s Gasoline Burn Prevention Act. . . . .	4-7
	[iii] Federal Hazardous Substances Act . . . . .	4-8
	[iv] Flammable Fabrics Act . . . . .	4-8
	[v] Poison Prevention Packaging Act of 1970 . . . . .	4-9
	[vi] Refrigerator Safety Act . . . . .	4-9
	[vii] Virginia Graeme Baker Pool and Spa Safety Act . . . . .	4-10
	[2] CPSIA Anti-Retaliation Provision Procedures. . . . .	4-10
	[a] Statute of Limitations . . . . .	4-10
	[b] Burdens of Proof . . . . .	4-11
	[c] Reasonable Cause Finding and Preliminary Orders. . . . .	4-11
	[d] Review and Removal . . . . .	4-12
§ 4.03	Patient Protection and Affordable Care Act . . . . .	4-13
	[1] ACA Anti-Retaliation Provision . . . . .	4-13
	[a] Covered Employers and Employees. . . . .	4-13
	[b] Protected Activity. . . . .	4-14
	[i] Receipt of Credits or Subsidies . . . . .	4-15
	[ii] Title I Protected Disclosures . . . . .	4-16
	[2] ACA Anti-Retaliation Provision Procedures. . . . .	4-17
	[a] Statute of Limitations . . . . .	4-17
	[b] Burdens of Proof . . . . .	4-18
	[c] Reasonable Cause Finding and Preliminary Orders. . . . .	4-19
	[d] Review and Removal . . . . .	4-19
§ 4.04	Consumer Financial Protection Act of 2010 . . . . .	4-20

**WHISTLEBLOWER LAW**

	[1]	CFPA Anti-Retaliation Provision . . . . .	4-20
		[a] Covered Employers and Employees . . . . .	4-21
		[b] Protected Activity . . . . .	4-22
	[2]	CFPA Anti-Retaliation Provision Procedures . . . . .	4-24
		[a] Statute of Limitations . . . . .	4-24
		[b] Burdens of Proof . . . . .	4-25
		[c] Reasonable Cause Finding and Preliminary Orders . . . . .	4-26
		[d] Review and Removal . . . . .	4-26
§ 4.05		FDA Food Safety Modernization Act . . . . .	4-27
	[1]	FSMA Anti-Retaliation Provision . . . . .	4-27
		[a] Covered Employers and Employees . . . . .	4-28
		[b] Protected Activity . . . . .	4-28
	[2]	FSMA Anti-Retaliation Provision Procedures . . . . .	4-29
		[a] Statute of Limitations . . . . .	4-29
		[b] Burdens of Proof . . . . .	4-30
		[c] Reasonable Cause Finding and Preliminary Orders . . . . .	4-30
		[d] Review and Removal . . . . .	4-31

**CHAPTER 5****Nuclear and Environmental Whistleblower Statutes**

§ 5.01		OSHA-Administered Nuclear Whistleblower Protections . . . . .	5-2
	[1]	Overview . . . . .	5-2
		[a] The Nuclear Power Industry . . . . .	5-2
		[b] Atomic Energy Act of 1954 . . . . .	5-4
		[c] Energy Reorganization Act of 1974 . . . . .	5-4
	[2]	Covered Employers and Employees . . . . .	5-6
	[3]	Burden of Proof . . . . .	5-7
		[a] Protected Activity . . . . .	5-8
		[b] Adverse Actions . . . . .	5-9
		[c] Contributing-Factor Standard . . . . .	5-9
	[4]	Respondent's Affirmative Defense . . . . .	5-10
	[5]	ERA Procedures . . . . .	5-13
		[a] Filing a Complaint . . . . .	5-13
		[b] Investigation . . . . .	5-13
		[c] Findings and Orders . . . . .	5-14
		[d] Review and Removal . . . . .	5-14

## TABLE OF CONTENTS

xxiii

	[6]	NRC Investigation of Whistleblower Complaints . . . . .	5-15
	[7]	OSHA-Issued Statistics on ERA Complaint Determinations . . . . .	5-16
§ 5.02		OSHA-Administered Environmental Whistleblower Statutes . . . . .	5-18
	[1]	Overview . . . . .	5-18
	[2]	Burden of Proof . . . . .	5-19
		[a] Protected Activity . . . . .	5-19
		[b] Adverse Actions . . . . .	5-19
		[c] Motivating-Factor Standard . . . . .	5-19
		[d] Respondent’s Affirmative Defense . . . . .	5-20
	[3]	Procedures . . . . .	5-20
		[a] Filing a Complaint . . . . .	5-20
		[b] Investigation . . . . .	5-20
		[c] Findings and Orders . . . . .	5-21
		[d] Review and Removal . . . . .	5-21
	[4]	Clean Air Act . . . . .	5-22
	[5]	Comprehensive Environmental Response, Compensation and Liability Act of 1980 . . . . .	5-25
	[6]	Federal Water Pollution Control Act/Clean Water Act . . . . .	5-26
	[7]	Safe Drinking Water Act of 1974 . . . . .	5-28
	[8]	Solid Waste Disposal Act . . . . .	5-29
	[9]	Toxic Substances Control Act . . . . .	5-31
	[10]	Asbestos Hazard Emergency Response Act of 1986 . . . . .	5-32
	[11]	Section 11(c) of the Occupational Safety and Health Act of 1970 . . . . .	5-33

## CHAPTER 6

### Transportation Industry Whistleblower Protection

§ 6.01		Overview . . . . .	6-3
§ 6.02		Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“AIR21”) . . . . .	6-5
	[1]	Overview . . . . .	6-5
	[2]	Covered Employers and Employees . . . . .	6-5
	[3]	Protected Activity . . . . .	6-7
	[4]	Adverse Actions . . . . .	6-9
	[5]	AIR21 Procedures . . . . .	6-10
		[a] Filing a Complaint . . . . .	6-10

**WHISTLEBLOWER LAW**

	[b]	Deadline for Filing an AIR21 Complaint . . . . .	6-11
	[c]	Burdens of Proof . . . . .	6-11
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-12
	[e]	Review and Removal . . . . .	6-12
§ 6.03		The Federal Railroad Safety Act of 1970 ("FRSA") . . . . .	6-14
	[1]	Overview . . . . .	6-14
	[2]	Covered Employers and Employees . . . . .	6-14
	[3]	Protected Activity . . . . .	6-15
	[4]	Adverse Actions . . . . .	6-16
	[5]	Relation to Other Laws and Remedies . . . . .	6-17
	[6]	FRSA Procedures . . . . .	6-17
	[a]	Filing a Complaint . . . . .	6-17
	[b]	Deadline for Filing an FRSA Complaint . . . . .	6-17
	[c]	Burdens of Proof . . . . .	6-18
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-19
	[e]	Review and Removal . . . . .	6-20
§ 6.04		The Surface Transportation Assistance Act of 1982 ("STAA") . . . . .	6-21
	[1]	Overview . . . . .	6-21
	[2]	Covered Employers and Employees . . . . .	6-21
	[3]	Protected Activity . . . . .	6-22
	[4]	Adverse Actions . . . . .	6-23
	[5]	Relation to Other Laws and Remedies . . . . .	6-24
	[6]	STAA Procedures . . . . .	6-24
	[a]	Filing a Complaint . . . . .	6-24
	[b]	Deadline for Filing an STAA Complaint . . . . .	6-24
	[c]	Burdens of Proof . . . . .	6-25
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-26
	[e]	Review and Removal . . . . .	6-26
§ 6.05		The National Transit Systems Security Act of 2007 ("NTSSA") . . . . .	6-28
	[1]	Overview . . . . .	6-28
	[2]	Covered Employers and Employees . . . . .	6-28
	[3]	Protected Activity . . . . .	6-28
	[4]	Adverse Actions . . . . .	6-29
	[5]	Relation to Other Laws and Remedies . . . . .	6-30
	[6]	NTSSA Procedures . . . . .	6-31
	[a]	Filing a Complaint . . . . .	6-31



**TABLE OF CONTENTS**

	[b]	Deadline for Filing an NTSSA Complaint . . . . .	6-31
	[c]	Burdens of Proof . . . . .	6-31
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-32
	[e]	Review and Removal . . . . .	6-33
§ 6.06		The Pipeline Safety Improvement Act of 2002 ("PSIA") . . . . .	6-34
	[1]	Overview . . . . .	6-34
	[2]	Covered Employers and Employees . . . . .	6-34
	[3]	Protected Activity . . . . .	6-35
	[4]	Adverse Actions . . . . .	6-36
	[5]	The PSIA Procedures . . . . .	6-37
	[a]	Filing a Complaint . . . . .	6-37
	[b]	Deadline for Filing PSIA Complaint . . . . .	6-37
	[c]	Burdens of Proof . . . . .	6-37
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-38
	[e]	Review and Removal . . . . .	6-38
§ 6.07		The Seaman's Protection Act ("SPA") . . . . .	6-39
	[1]	Overview . . . . .	6-39
	[2]	Covered Employers and Employees . . . . .	6-40
	[3]	Protected Activity . . . . .	6-40
	[4]	Adverse Actions . . . . .	6-41
	[5]	The SPA Procedures . . . . .	6-41
	[a]	Filing a Complaint . . . . .	6-41
	[b]	Deadline for Filing an SPA Complaint . . . . .	6-41
	[c]	Burdens of Proof . . . . .	6-42
	[d]	Reasonable Cause Finding and Preliminary Orders . . . . .	6-42
	[e]	Review and Removal . . . . .	6-43
§ 6.08		The International Safe Container Act ("ISCA") . . . . .	6-44
	[1]	Overview . . . . .	6-44
	[2]	Covered Employers and Employees . . . . .	6-44
	[3]	Protected Activity . . . . .	6-44
	[4]	Adverse Actions . . . . .	6-44
	[5]	The ISCA Procedures . . . . .	6-44
§ 6.09		The Moving Ahead for Progress in the 21st Century Act ("MAP-21") . . . . .	6-46
	[1]	Overview . . . . .	6-46
	[2]	Covered Employers and Employees . . . . .	6-46
	[3]	Protected Activity . . . . .	6-46
	[4]	Adverse Actions . . . . .	6-46

**WHISTLEBLOWER LAW**

[5]	MAP-21 Procedures . . . . .	6-47
	[a] Filing a Complaint . . . . .	6-47
	[b] Deadline for Filing a MAP-21 Complaint . . . . .	6-47
	[c] Burdens of Proof . . . . .	6-47
	[d] Reasonable Cause Finding and Preliminary Orders . . . . .	6-47
	[e] Review and Removal . . . . .	6-48

**CHAPTER 7****Other Federal Whistleblower Protection Statutes**

§ 7.01	Overview . . . . .	7-3
§ 7.02	Whistleblower Protection Act of 1989 . . . . .	7-5
	[1] Overview . . . . .	7-5
	[2] Covered Employers and Employees . . . . .	7-6
	[3] Protected Disclosures . . . . .	7-8
	[4] Covered Personnel Action . . . . .	7-11
	[5] WPA Procedures . . . . .	7-12
	[a] Direct Appeal to the MSPB . . . . .	7-13
	[b] Office of Special Counsel . . . . .	7-13
	[c] Individual Right of Action . . . . .	7-15
	[d] Burdens of Proof . . . . .	7-16
	[e] Corrective Action . . . . .	7-17
	[f] Review and Removal . . . . .	7-18
§ 7.03	Defense Contractor Whistleblower Protection Act . . . . .	7-19
	[1] Overview . . . . .	7-19
	[2] Covered Employers and Employees . . . . .	7-19
	[3] Protected Activity . . . . .	7-20
	[4] Adverse Actions . . . . .	7-21
	[5] Relation to Other Laws and Remedies . . . . .	7-21
	[6] Procedures . . . . .	7-21
	[a] Filing a Complaint . . . . .	7-21
	[b] Deadline for Filing a Complaint . . . . .	7-22
	[c] Investigation and Remedies . . . . .	7-22
	[d] Burdens of Proof . . . . .	7-23
	[e] Review and Removal . . . . .	7-23
§ 7.04	Government Contractor and Subcontractor Protections . . . . .	7-25
	[1] Overview . . . . .	7-25
	[2] Covered Employers and Employees . . . . .	7-25
	[3] Protected Activity . . . . .	7-25

**TABLE OF CONTENTS**

xxvii

	[4] Adverse Actions . . . . .	7-26
	[5] Relation to Other Laws and Remedies . . . . .	7-26
	[6] NDAA Procedures . . . . .	7-27
	[a] Filing a Complaint . . . . .	7-27
	[b] Deadline for Filing a Complaint . . . . .	7-27
	[c] Investigation and Remedies . . . . .	7-27
	[d] Burdens of Proof . . . . .	7-28
	[e] Review and Removal . . . . .	7-29
§ 7.05	American Recovery and Reinvestment Act of 2009 . . . . .	7-30
	[1] Overview . . . . .	7-30
	[2] Covered Employers and Employees . . . . .	7-30
	[3] Protected Activity . . . . .	7-30
	[4] Adverse Actions . . . . .	7-31
	[5] Relation to Other Laws and Remedies . . . . .	7-32
	[6] ARRA Procedures . . . . .	7-32
	[a] Filing a Complaint . . . . .	7-32
	[b] Deadline for Filing a Complaint . . . . .	7-32
	[c] Investigation and Remedies . . . . .	7-33
	[d] Burdens of Proof . . . . .	7-34
	[e] Review and Removal . . . . .	7-34
§ 7.06	Additional Whistleblower Protections for Federal Government Employees and Contractors . . . . .	7-36
	[1] Overview . . . . .	7-36
	[2] FBI Whistleblower Protections . . . . .	7-36
	[3] Department of Energy Whistleblower Protections . . . . .	7-38
	[4] Intelligence Community Whistleblower Protection Act of 1998 . . . . .	7-39
	[5] Major Fraud Act of 1988 . . . . .	7-41
	[6] Other Statutes . . . . .	7-42
§ 7.07	Whistleblower Protections for Military Service Members and Employees . . . . .	7-44
	[1] Military Whistleblower Protection Act of 1988 . . . . .	7-44
	[2] Nonappropriated Fund Instrumentality Employees of the Armed Forces . . . . .	7-46
§ 7.08	Whistleblower Protections in the Financial Sector . . . . .	7-48
	[1] Federal Credit Union Act . . . . .	7-48
	[2] Financial Institutions Reform, Recovery, and Enforcement Act of 1989 . . . . .	7-49
	[3] Annunzio-Wylie Anti-Money Laundering Act . . . . .	7-51

**WHISTLEBLOWER LAW**

§ 7.09	Criminal Antitrust Anti-Retaliation Act of 2019 . . . . .	7-53
§ 7.10	Industry-Specific Whistleblower Protections . . . . .	7-54
	[1] Overview . . . . .	7-54
	[2] Migrant and Seasonal Agricultural Worker Protection Act . . . . .	7-54
	[3] Federal Mine Safety and Health Act of 1977 . . . . .	7-55
	[4] Surface Mining Control and Reclamation Act of 1977 . . . . .	7-57
	[5] Emergency Medical Treatment and Active Labor Act . . . . .	7-57
	[6] Other Statutes . . . . .	7-58

**CHAPTER 8****Survey of State Whistleblower Statutes**

§ 8.01	Overview . . . . .	8-4
§ 8.02	Alabama . . . . .	8-6
	[1] Statutory Whistleblower Protections . . . . .	8-6
	[2] Wrongful Termination . . . . .	8-6
§ 8.03	Alaska . . . . .	8-7
	[1] Statutory Whistleblower Protections . . . . .	8-7
	[2] Wrongful Termination . . . . .	8-7
§ 8.04	Arizona . . . . .	8-8
	[1] Statutory Whistleblower Protections . . . . .	8-8
	[2] Wrongful Termination . . . . .	8-9
§ 8.05	Arkansas . . . . .	8-10
	[1] Statutory Whistleblower Protections . . . . .	8-10
	[2] Wrongful Termination . . . . .	8-10
§ 8.06	California . . . . .	8-12
	[1] Statutory Whistleblower Protections . . . . .	8-12
	[2] Wrongful Termination . . . . .	8-13
§ 8.07	Colorado . . . . .	8-14.1
	[1] Statutory Whistleblower Protections . . . . .	8-14.1
	[2] Wrongful Termination . . . . .	8-14.1
§ 8.08	Connecticut . . . . .	8-15
	[1] Statutory Whistleblower Protections . . . . .	8-15
	[2] Wrongful Termination . . . . .	8-15
§ 8.09	Delaware . . . . .	8-17
	[1] Statutory Whistleblower Protections . . . . .	8-17
	[2] Wrongful Termination . . . . .	8-17
§ 8.10	District of Columbia . . . . .	8-19
	[1] Statutory Whistleblower Protections . . . . .	8-19

## TABLE OF CONTENTS

xxix

	[2]	Wrongful Termination . . . . .	8-20
§ 8.11		Florida . . . . .	8-21
	[1]	Statutory Whistleblower Protections . . . . .	8-21
	[2]	Wrongful Termination . . . . .	8-21
§ 8.12		Georgia . . . . .	8-22
	[1]	Statutory Whistleblower Protections . . . . .	8-22
	[2]	Wrongful Termination . . . . .	8-22
§ 8.13		Hawaii . . . . .	8-23
	[1]	Statutory Whistleblower Protections . . . . .	8-23
	[2]	Wrongful Termination . . . . .	8-23
§ 8.14		Idaho . . . . .	8-25
	[1]	Statutory Whistleblower Protections . . . . .	8-25
	[2]	Wrongful Termination . . . . .	8-25
§ 8.15		Illinois . . . . .	8-27
	[1]	Statutory Whistleblower Protections . . . . .	8-27
	[2]	Wrongful Termination . . . . .	8-27
§ 8.16		Indiana . . . . .	8-29
	[1]	Statutory Whistleblower Protections . . . . .	8-29
	[2]	Wrongful Termination . . . . .	8-29
§ 8.17		Iowa . . . . .	8-31
	[1]	Statutory Whistleblower Protections . . . . .	8-31
	[2]	Wrongful Termination . . . . .	8-31
§ 8.18		Kansas . . . . .	8-33
	[1]	Statutory Whistleblower Protections . . . . .	8-33
	[2]	Wrongful Termination . . . . .	8-33
§ 8.19		Kentucky . . . . .	8-35
	[1]	Statutory Whistleblower Protections . . . . .	8-35
	[2]	Wrongful Termination . . . . .	8-35
§ 8.20		Louisiana . . . . .	8-36
	[1]	Statutory Whistleblower Protections . . . . .	8-36
	[2]	Wrongful Termination . . . . .	8-36
§ 8.21		Maine . . . . .	8-37
	[1]	Statutory Whistleblower Protections . . . . .	8-37
	[2]	Wrongful Termination . . . . .	8-37
§ 8.22		Maryland . . . . .	8-38
	[1]	Statutory Whistleblower Protections . . . . .	8-38
	[2]	Wrongful Termination . . . . .	8-39
§ 8.23		Massachusetts . . . . .	8-41
	[1]	Statutory Whistleblower Protections . . . . .	8-41
	[2]	Wrongful Termination . . . . .	8-42
§ 8.24		Michigan . . . . .	8-43
	[1]	Statutory Whistleblower Protections . . . . .	8-43
	[2]	Wrongful Termination . . . . .	8-44
§ 8.25		Minnesota . . . . .	8-45
	[1]	Statutory Whistleblower Protections . . . . .	8-45

## WHISTLEBLOWER LAW

	[2] Wrongful Termination . . . . .	8-45
§ 8.26	Mississippi . . . . .	8-47
	[1] Statutory Whistleblower Protections . . . . .	8-47
	[2] Wrongful Termination . . . . .	8-47
§ 8.27	Missouri . . . . .	8-48
	[1] Statutory Whistleblower Protections . . . . .	8-48
	[2] Wrongful Termination . . . . .	8-49
§ 8.28	Montana . . . . .	8-50
	[1] Statutory Whistleblower Protections . . . . .	8-50
	[2] Wrongful Termination . . . . .	8-51
§ 8.29	Nebraska . . . . .	8-52
	[1] Statutory Whistleblower Protections . . . . .	8-52
	[2] Wrongful Termination . . . . .	8-52
§ 8.30	Nevada . . . . .	8-54
	[1] Statutory Whistleblower Protections . . . . .	8-54
	[2] Wrongful Termination . . . . .	8-55
§ 8.31	New Hampshire . . . . .	8-56
	[1] Statutory Whistleblower Protections . . . . .	8-56
	[2] Wrongful Termination . . . . .	8-56
§ 8.32	New Jersey . . . . .	8-58
	[1] Statutory Whistleblower Protections . . . . .	8-58
	[2] Wrongful Termination . . . . .	8-59
§ 8.33	New Mexico . . . . .	8-61
	[1] Statutory Whistleblower Protections . . . . .	8-61
	[2] Wrongful Termination . . . . .	8-61
§ 8.34	New York . . . . .	8-63
	[1] Statutory Whistleblower Protections . . . . .	8-63
	[2] Wrongful Termination . . . . .	8-64
§ 8.35	North Carolina . . . . .	8-65
	[1] Statutory Whistleblower Protections . . . . .	8-65
	[2] Wrongful Termination . . . . .	8-65
§ 8.36	North Dakota . . . . .	8-67
	[1] Statutory Whistleblower Protections . . . . .	8-67
	[2] Wrongful Termination . . . . .	8-67
§ 8.37	Ohio . . . . .	8-69
	[1] Statutory Whistleblower Protections . . . . .	8-69
	[2] Wrongful Termination . . . . .	8-70
§ 8.38	Oklahoma . . . . .	8-71
	[1] Statutory Whistleblower Protections . . . . .	8-71
	[2] Wrongful Termination . . . . .	8-72
§ 8.39	Oregon . . . . .	8-73
	[1] Statutory Whistleblower Protections . . . . .	8-73
	[2] Wrongful Termination . . . . .	8-74
§ 8.40	Pennsylvania . . . . .	8-75
	[1] Statutory Whistleblower Protections . . . . .	8-75
	[2] Wrongful Termination . . . . .	8-76

## TABLE OF CONTENTS

xxxii

§ 8.41	Rhode Island . . . . .	8-78
	[1] Statutory Whistleblower Protections . . . . .	8-78
	[2] Wrongful Termination . . . . .	8-79
§ 8.42	South Carolina . . . . .	8-80
	[1] Statutory Whistleblower Protections . . . . .	8-80
	[2] Wrongful Termination . . . . .	8-80
§ 8.43	South Dakota . . . . .	8-81
	[1] Statutory Whistleblower Protections . . . . .	8-81
	[2] Wrongful Termination . . . . .	8-81
§ 8.44	Tennessee . . . . .	8-83
	[1] Statutory Whistleblower Protections . . . . .	8-83
	[2] Wrongful Termination . . . . .	8-84
§ 8.45	Texas . . . . .	8-85
	[1] Statutory Whistleblower Protections . . . . .	8-85
	[2] Wrongful Termination . . . . .	8-85
§ 8.46	Utah . . . . .	8-87
	[1] Statutory Whistleblower Protections . . . . .	8-87
	[2] Wrongful Termination . . . . .	8-87
§ 8.47	Vermont . . . . .	8-89
	[1] Statutory Whistleblower Protections . . . . .	8-89
	[2] Wrongful Termination . . . . .	8-89
§ 8.48	Virginia . . . . .	8-91
	[1] Statutory Whistleblower Protections . . . . .	8-91
	[2] Wrongful Termination . . . . .	8-92
§ 8.49	Washington . . . . .	8-93
	[1] Statutory Whistleblower Protections . . . . .	8-93
	[2] Wrongful Termination . . . . .	8-94
§ 8.50	West Virginia . . . . .	8-95
	[1] Statutory Whistleblower Protections . . . . .	8-95
	[2] Wrongful Termination . . . . .	8-95
§ 8.51	Wisconsin . . . . .	8-97
	[1] Statutory Whistleblower Protections . . . . .	8-97
	[2] Wrongful Termination . . . . .	8-98
§ 8.52	Wyoming . . . . .	8-99
	[1] Statutory Whistleblower Protections . . . . .	8-99
	[2] Wrongful Termination . . . . .	8-99

## CHAPTER 9

### SEC Whistleblower Incentive Program

§ 9.01	Overview . . . . .	9-2
§ 9.02	Whistleblower Status . . . . .	9-6
	[1] Eligible Individual . . . . .	9-6

**WHISTLEBLOWER LAW**

	[a]	Definition of Whistleblower . . . . .	9-6
	[b]	Excluded Individuals . . . . .	9-7
		[i] Absolute Exclusions . . . . .	9-7
		[ii] Qualified Exclusions . . . . .	9-8
		[iii] Exceptions to Qualified Exclusions . . . . .	9-9
	[2]	Voluntariness Requirement . . . . .	9-11
	[3]	Original Information . . . . .	9-13
	[4]	Independent Knowledge and Analysis . . . . .	9-14
		[a] Definition . . . . .	9-14
		[b] Excluded Information . . . . .	9-15
		[i] In General . . . . .	9-15
		[ii] Attorney-Client Privilege . . . . .	9-16
		[iii] Illegally Obtained Information . . . . .	9-17
	[5]	Procedure for Submitting Information . . . . .	9-17
	[6]	Confidentiality and Anonymity . . . . .	9-18
§ 9.03		Covered Actions . . . . .	9-21
	[1]	Successful Enforcement Action . . . . .	9-21
	[2]	Calculation of Proceeds . . . . .	9-22
§ 9.04		Award . . . . .	9-25
	[1]	Amount of Award . . . . .	9-25
		[a] Presumption of Maximum Award up to \$5 Million . . . . .	9-25
		[b] Factors that May Increase an Award . . . . .	9-26
		[c] Factors that May Decrease an Award . . . . .	9-27
	[2]	Procedure for Claiming Award . . . . .	9-29
		[a] Initiating a Claim . . . . .	9-29
		[b] Review of Claim for Award . . . . .	9-30
	[3]	Preliminary Determination . . . . .	9-31
	[4]	Reconsideration of Determination . . . . .	9-31
	[5]	Final Order . . . . .	9-32
	[6]	Summary Disposition . . . . .	9-32
§ 9.05		Rules to Support Internal Compliance Programs . . . . .	9-34
§ 9.06		Developments . . . . .	9-37
	[1]	Agency Interpretations and Actions . . . . .	9-37
		[a] Enforcing Anti-Retaliation Provisions . . . . .	9-37
		[b] Deterring Actions that Impede Whistleblowers . . . . .	9-38
	[2]	Claims and Award Statistics . . . . .	9-39



CHAPTER 10

IRS Whistleblower Incentive Program

§ 10.01	Overview . . . . .	10-2
§ 10.02	Whistleblower Status . . . . .	10-5
	[1] Eligible Individual . . . . .	10-5
	[a] Definition of Whistleblower . . . . .	10-5
	[b] Excluded Individuals . . . . .	10-5
	[2] Voluntariness Requirement . . . . .	10-6
	[3] Submitting Specific and Credible Information . . . . .	10-6
	[4] Confidentiality and Anonymity . . . . .	10-7
	[5] Anti-Retaliation Protections . . . . .	10-8
§ 10.03	Covered Administrative or Judicial Action . . . . .	10-10
	[1] Successful Enforcement Action . . . . .	10-10
	[2] Calculation of Proceeds . . . . .	10-11
	[a] Proceeds . . . . .	10-11
	[b] Amount in Dispute . . . . .	10-11
§ 10.04	Award . . . . .	10-13
	[1] Amount of Award . . . . .	10-13
	[a] Awards for Substantial Contribution (Between 15% and 30%) . . . . .	10-13
	[i] Factors that May Increase an Award . . . . .	10-13
	[ii] Factors that May Decrease an Award . . . . .	10-14
	[b] Awards for Less Substantial Contribution (Capped at 10%) . . . . .	10-15
	[c] Reduction of Award . . . . .	10-16
	[d] Denial of Award . . . . .	10-17
	[e] Multiple Whistleblowers . . . . .	10-17
	[f] Joint Whistleblowers . . . . .	10-18
	[2] Procedure for Claiming an Award . . . . .	10-19
	[a] Initiating a Claim . . . . .	10-19
	[b] Whistleblower Administrative Proceedings . . . . .	10-20
	[i] Rejections and Denials . . . . .	10-21
	[ii] Preliminary Award Recommendation . . . . .	10-22
	[3] Determination Letter . . . . .	10-25
	[4] Appeal . . . . .	10-25
	[5] Administrative Timeframes . . . . .	10-26
	[6] Timing of Payment of Award . . . . .	10-26
§ 10.05	Developments . . . . .	10-28

## CHAPTER 11

## CFTC Whistleblower Incentive Program

§ 11.01	Overview . . . . .	11-2
§ 11.02	Whistleblower Status . . . . .	11-5
	[1] Eligible Individual . . . . .	11-5
	[a] Definition of Whistleblower. . . . .	11-5
	[b] Excluded Individuals . . . . .	11-6
	[2] Voluntarily Provided . . . . .	11-7
	[3] Original Information . . . . .	11-7
	[4] Original Source . . . . .	11-8
	[5] Independent Knowledge and Analysis . . . . .	11-9
	[a] Definition . . . . .	11-9
	[b] Excluded Information. . . . .	11-10
	[6] Procedure for Submitting Information . . . . .	11-11
	[7] Confidentiality and Anonymity. . . . .	11-12
§ 11.03	Covered Administrative or Judicial Action . . . . .	11-14
§ 11.04	Award . . . . .	11-16
	[1] Amount of Award . . . . .	11-16
	[a] Factors that May Increase an Award . . . . .	11-17
	[i] Significance of the Information . . . . .	11-17
	[ii] Assistance Provided . . . . .	11-17
	[iii] Law Enforcement Interest . . . . .	11-18
	[iv] Participation in Internal Compliance Systems. . . . .	11-18
	[b] Factors that May Decrease an Award . . . . .	11-19
	[i] Culpability . . . . .	11-19
	[ii] Unreasonable Reporting Delay . . . . .	11-20
	[iii] Interference with Internal Compliance and Reporting Systems . . . . .	11-20
	[c] Multiple Whistleblowers . . . . .	11-21
	[d] Multiple Actions. . . . .	11-21
	[2] Procedure for Claiming an Award . . . . .	11-21
	[a] Initiating a Claim. . . . .	11-21
	[b] Review of Claim for Award . . . . .	11-23
	[3] Preliminary Determination . . . . .	11-24
	[4] Reconsideration of Determination. . . . .	11-24
	[5] Final Order . . . . .	11-25

## TABLE OF CONTENTS

xxxv

	[6] Appeal . . . . .	11-25
	[7] Payment of Awards . . . . .	11-25
§ 11.05	Developments . . . . .	11-27

## CHAPTER 12

### Purloined Documents

§ 12.01	Overview . . . . .	12-1
§ 12.02	Document Acquisition and Dissemination as Protected Activity . . . . .	12-3
§ 12.03	Balancing Test in Title VII and Discrimination Claims . . . . .	12-5
§ 12.04	Evidence Gathering as Protected Activity by Whistleblowers . . . . .	12-8
	[1] False Claims Act . . . . .	12-8
	[2] Sarbanes-Oxley Act Retaliation . . . . .	12-10
	[3] Dodd-Frank Whistleblower Protections . . . . .	12-12
	[4] Defend Trade Secrets Act Protections . . . . .	12-13
§ 12.05	Employer Responses to Document Acquisition and Dissemination by Employees . . . . .	12-15
	[1] After-Acquired Evidence . . . . .	12-15
	[2] Breach of Contract . . . . .	12-17
	[3] Breach of Fiduciary Duty . . . . .	12-20
§ 12.06	Retaliatory Counterclaims . . . . .	12-21
§ 12.07	Potential Criminal Liability . . . . .	12-23
§ 12.08	Ethical Issues for Attorneys . . . . .	12-26

## CHAPTER 13

### Attorneys and Compliance Personnel as Whistleblowers

§ 13.01	Overview . . . . .	13-1
§ 13.02	Ethical Obligations of Attorney/Whistleblowers . . . . .	13-3
§ 13.03	Sarbanes-Oxley Act and the Dodd-Frank Act . . . . .	13-5
	[1] Attorney Disclosures . . . . .	13-5
	[2] Retaliation . . . . .	13-8
	[a] Attorneys . . . . .	13-11
	[b] Compliance Personnel . . . . .	13-11
§ 13.04	False Claims Act . . . . .	13-13
§ 13.05	Eligibility for Whistleblower Awards . . . . .	13-15

**WHISTLEBLOWER LAW**

	[1] Attorneys . . . . .	13-15
	[2] Compliance Personnel . . . . .	13-19
§ 13.06	Attorneys as <i>Qui Tam</i> Relators . . . . .	13-21
§ 13.07	Responding to a Claim: Employer Defenses . . . . .	13-23
	[1] Pretrial and Extrajudicial Measures . . . . .	13-23
	[2] Substantive Defenses . . . . .	13-24

**CHAPTER 14****Employer Considerations**

§ 14.01	Overview . . . . .	14-2
	[1] Importance of the Issue . . . . .	14-3
	[2] The “Two-Track” Approach . . . . .	14-5
§ 14.02	Compliance Strategies and Preventative Measures . . . . .	14-7
	[1] Encouraging Internal Whistleblowing . . . . .	14-7
	[a] Management Buy-in . . . . .	14-7
	[b] Employee Assurance . . . . .	14-8
	[c] Robust Investigations . . . . .	14-8
	[2] Effective Complaint Policies and Legal Requirements . . . . .	14-9
	[3] Education and Training . . . . .	14-11
§ 14.03	Internal Investigation of the Complaint . . . . .	14-14
	[1] The Duty to Investigate . . . . .	14-14
	[2] Initiating the Investigation . . . . .	14-15
	[3] Issuing a Document Hold Notice . . . . .	14-18
	[4] Defining the Scope of the Investigation . . . . .	14-20
	[5] Collecting Relevant Documents . . . . .	14-21
	[6] Interviewing Witnesses . . . . .	14-23
	[7] Oversight of the Investigation . . . . .	14-27
	[8] Reporting the Results of the Investigation . . . . .	14-29
§ 14.04	Protecting Privilege . . . . .	14-31
	[1] The Extent of Privilege . . . . .	14-31
	[2] Challenges to Privilege . . . . .	14-35
	[a] Whistleblower Was a Party to Privileged Communications . . . . .	14-35
	[b] Attorneys as Whistleblowers . . . . .	14-38
	[3] Confidentiality Agreements . . . . .	14-39
	[4] Limiting Disclosures to Employees During Internal Investigations . . . . .	14-40.1
§ 14.05	Compelled and Voluntary Disclosure . . . . .	14-41
	[1] Mandatory Disclosure Provisions . . . . .	14-41
	[2] Agency Leniency Programs . . . . .	14-43

**TABLE OF CONTENTS**

xxxvii

§ 14.06	Interactions with the Whistleblower . . . . .	14-45
	[1] Avoiding the Appearance of Retaliation. . . . .	14-45
	[2] Disciplining a Whistleblower for Other Misconduct . . . . .	14-45
§ 14.07	Public Relations Considerations . . . . .	14-47
	[1] Pre-Planning . . . . .	14-47
	[2] Managing the Response . . . . .	14-47
§ 14.08	Settlements . . . . .	14-49
	[1] Assessing the Risk . . . . .	14-49
	[a] Internal Investigation Results . . . . .	14-49
	[b] Whistleblower Involvement in the Alleged Misconduct . . . . .	14-49
	[c] The Truth or Falsity of the Allegation . . . . .	14-50
	[d] Potential Type of Claim . . . . .	14-50
	[e] Forum and Relief Available . . . . .	14-50
	[f] Likelihood of an Adverse Ruling . . . . .	14-51
	[g] Range of Potential Damages and Other Adverse Effects . . . . .	14-51
	[2] Confidentiality of Settlement Agreements . . . . .	14-52
	[3] Labor Department Review of Settlement Agreements . . . . .	14-54
<b>INDEX</b>	. . . . .	I-1

