



WHAT IS A SOX WHISTLEBLOWER?

JUSTICE

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The Sarbanes-Oxley Act (“SOX”) provides protections for whistleblowers who report corporate fraudulent activities or violations and prohibits employer retaliation. This article examines the various aspects of SOX whistleblower claims, including who qualifies, what constitutes protected activity, and the procedural steps for filing a SOX whistleblower claim.

Who Qualifies as a SOX Whistleblower?

Under SOX, a whistleblower is generally any employee of a publicly traded company or certain private contractors who reports information they reasonably believe demonstrates fraud or securities violations.¹ SOX’s protections apply broadly across organizational roles, ensuring that employees at all levels can report misconduct without fear of reprisal. Notably, whistleblowers are not required to prove that an actual violation occurred; their belief in the misconduct must only be reasonable.²

¹ See 18 U.S.C. § 1514A(a).

² See 18 U.S.C. § 1514A(a)(1) (stating that employees are protected when they “provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation” of specified federal laws and regulations).



What Counts as Protected Activity Under SOX?

“Protected activity” under SOX encompasses lawful actions by employees in reporting, investigating, or assisting in investigations of suspected fraud or securities law violations.³ Disclosing fraud or other violations of securities regulations to a federal agency, supervisor, or other authorized individuals within your organization can also qualify as protected activity. SOX protects employees who report in good faith to foster an environment of accountability and adherence to federal regulations surrounding financial transactions.

What Are the Requirements for Proving Retaliation?

To establish a SOX retaliation claim, a whistleblower must demonstrate four elements:

1. Engagement in Protected Activity: The employee’s actions must qualify under SOX’s definitions of protected activities.
2. Employer Knowledge: The employer must be aware, or should reasonably be aware, of the employee’s whistleblowing activity.

³ See *id.*



3. Adverse Employment Action: The employee must experience significant changes in their employment conditions, such as termination, demotion, or salary reduction, following their report.
4. Causal Connection: A link between the adverse action and the employee's report must be shown, often requiring evidence of a shift in the employee's treatment post-report.

What Steps Are Involved in Filing a SOX Whistleblower Claim?

To initiate a claim, whistleblowers must file a complaint with the Occupational Safety and Health Administration (OSHA) within 180 days of the alleged retaliatory act.⁴ It is generally advisable to do so with the advice and assistance of an attorney familiar with SOX whistleblowing rules. After filing the complaint, OSHA may open an investigation that leads to recommendations for reinstatement, compensation, or other remedies. If OSHA's outcome is unsatisfactory, or if the Department of Labor has not issued a final decision within the specified timeframe, the whistleblower can advance their claim to federal court.⁵

⁴ See 29 C.F.R. § 1980.103 (outlining the OSHA complaint procedure and 180-day filing deadline for SOX claims).

⁵ See OSHA's Whistleblower Protections Program, US Dep't of Labor, OSHA Publication No. 3638 (Aug. 2022), <https://www.osha.gov/sites/default/files/publications/OSHA3638.pdf>.



Securing legal counsel early in a SOX whistleblower claim is essential, as whistleblowers may face challenges in gathering evidence, documenting events, and navigating procedural steps effectively. To schedule a consultation and protect your rights, contact Athan Law at (509) 215-4679.

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