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Whistleblower Protections Afforded by the Patient Protection and Affordable Care Act

The new federal healthcare reform law, the Patient Protection and Affordable Care Act (the "Act"), not only imposes new responsibilities on certain employers to provide health care benefits to their employees, but also prohibits such employers from retaliating against employees who complain about violations of specific requirements of the Act. Section 1558 of the Act, amends the Fair Labor Standards Act (the "FLSA"), adding in pertinent part, Section 18C, "Protections For Employees".

Section 18C(a) prohibits employers from retaliating against any employee because the employee 1) received a premium tax credit or subsidy towards his or her health insurance coverage; 2) provided or considers providing information to the employer or the federal or state government regarding a violation, act, or omission the employee reasonably believes to be a violation of Title I of the Act. (Generally, Title I of the Act sets forth the requirements for establishing and operating the health care Exchange and imposes upon employers other standards regarding their provision of health care coverage.); 3) testifies or considers testifying in a proceeding concerning an alleged violation; 4) assists or participates in a proceeding concerning an alleged violation; or 5) objects to, or refuses to participate in, any activity, policy, or

practice, or assigned task that the employee reasonably believes to be in violation of Title I of the Act.

Further, Section 18C(b) establishes that an employee who believes that he or she has been discharged or otherwise discriminated against by an employer in violation of Section 18C(a) may seek relief by following the complaint procedures and other rules set forth by Consumer Product Safety Improvement Act (CPSIA), 15 U.S.C. Section 2087(b). The employee therefore has 180 days after becoming aware of the adverse action to file a complaint with OSHA. If OSHA does not issue a final order within 210 days of the filing of the complaint, the employee can file a civil lawsuit in federal court. The CPSIA also authorizes relief in the form of reinstatement, back pay, compensatory damages, and attorneys' fees, and front pay may be awarded if reinstatement is not practical.

The protections afforded by the Act cannot be waived by agreement, policy, form, or condition of employment. Moreover, if federal or state law or a collective bargaining agreement affords greater protections than provided by the Act, those protections continue to apply.

Although regulations providing further interpretation of the Act have not

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yet been promulgated, employers are advised to adhere to the plain language of the Act as set forth in this Alert. If you have any questions or need further guidance to ensure your business complies with these legal developments, please contact [Rebecca Fischer](#) at (212) 758-7793.

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