

Whistle-Blower Protections

Written by Nick Sanders
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It should not need to be said that you do not retaliate against whistle-blowers.

You do not retaliate against whistle-blowers.

You do not take any action against an employee who calls the company hotline, or who calls the Inspector General, or who files a *qui tam* suit under the False Claims Act against your company.

You just don't.

And now the DOD has made it official, [adopting as a final rule](#) DFARS Case 2013-D010 on February 28, 2014. The final rule adopted, with minor changes, the interim rule adopted at the direction of the 2013 National Defense Authorization Act (Public Law 112-239). The final rule modified DFARS 203.903 to state the following policy of the Department of Defense-

(1) *Prohibition.* [10 U.S.C. 2409](#) prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (2) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(2) *Classified information.* As provided in section 827(h) of the National Defense Authorization Act for Fiscal Year 2013, nothing in this subpart provides any rights to disclose classified information not otherwise provided by law.

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So now it's official.

But that's not all. Did you know that if you are a DOD contractor, you must educate your employees regarding their whistle-blower rights? Did you know you must provide them with their rights-*in writing*? Did you know that requirement is a "mandatory flow-down" to all your subcontractors?

Yeah, you might want to check out DFARS contract clause 252.203-7002 ("Requirement to Inform Employees of Whistleblower Rights," Sept. 2013). That clause states-

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart [203.9](#) of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

So now you know.