

PROPOSED NATIONAL WHISTLEBLOWER PROTECTION ACT

- Whereas:** *The majority of Americans who advance the public interest by providing information about violations of federal law or threats to the public safety to appropriate authorities currently lack adequate whistleblower protections.*
- Whereas:** *An overwhelming majority of Americans support increased whistleblower protections for those courageous employees whose disclosures are necessary to ensure effective government oversight and accountability.*
- Whereas:** *It is now well established that whistleblowers are essential for uncovering corporate and government fraud and are responsible every year for the taxpayer's recovering billions of dollars from companies which have illegally obtained government grants and contracts.*
- Whereas:** *Meaningful whistleblower protections are essential to ensure the enforcement of the laws of the United States, the protection of public safety and to stop fraud against the United States taxpayers.*
- Whereas:** *President Obama committed during his election campaign to support a National Whistleblower Protection Act which would provide coverage to all American workers.*
- Whereas:** *Whistleblowers need to be protected and rewarded in a manner consistent with the protections afforded under other employment discrimination laws, such as Title VII of the Civil Rights Act of 1964 and the recently enacted Consumer Product Safety Improvement Act of 2007.*

BE IT RESOLVED:

That Congress Enact the National Whistleblower Protection Act.

NATIONAL WHISTLEBLOWER PROTECTION ACT

(a) IN GENERAL. It shall be an unlawful employment practice for an employer to discriminate or retaliate against any employee or applicant for employment because the employee made a protected disclosure or because the employee has opposed any practice made an unlawful employment practice by this amendment, or because the employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this provision or other provision of federal law.

(b) PROTECTED DISCLOSURE. A protected disclosure shall mean any lawful disclosure of information, including a lawful disclosure of information performed in the course of an employee's workplace duties, which the employee reasonably believes evidences fraud, an abuse of authority, a misuse of taxpayer money, a

violation of a federal law, rule or regulation, the mismanagement or waste of any federal monies or a danger to the public health or safety or the environment. A protected disclosure includes any action by an employee, whether at the employee's initiative or in the ordinary course of the employee's duties, to --

- (1) provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a protected disclosure when the information or assistance is provided to or the investigation is conducted by –
 - (A) a Federal or State regulatory or law enforcement agency;
 - (B) any Member of Congress or any committee of Congress;
 - (C) an Inspector General or the Office of Special Counsel; or
 - (D) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (2) commence, caused to be commenced, or is about to commence a proceeding, or assist or participate in or is about to assist or participate in any manner in such a proceeding or in any other action designed to enforce the laws of the United States or the provisions of this section; or
- (3) testify, or is about to testify, in any federal, state, judicial, administrative or legislative proceeding; or
- (4) refuse to violate or assist in the violation of a federal law, rule, or regulation or engage in any conduct which the employee reasonably believes constitutes a violation of any law, or which the employee reasonably believes constitutes a threat to the public health or safety or the environment.

(c) BURDENS OF PROOF -- A violation of subsection (a) has occurred only if the employee demonstrates that any behavior described in paragraphs (1) through (4) of subsection (b) was a contributing factor in the unfavorable personnel action or adverse action alleged in the complaint. Relief may not be ordered for an employee if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action or adverse action in the absence of that behavior. An employee may rebut the employer's evidence by showing that the employer's reasons for taking the unfavorable personnel action or adverse action is a pretext for discrimination.

(d) PROCEDURES – A person who believes that he or she has been discharged or otherwise discriminated against by any person or employer in violation of subsection (a) may, not later than one year after the date on which such violation occurs, bring a civil action in law or equity in the appropriate district court of the United States with jurisdiction over such action without regard to the amount in controversy, and which action shall, at the request of either party, be tried by the court with a jury. In the alternative, an employee may elect to file a complaint with the Secretary of

Labor in accordance with the procedures set forth in the Consumer Product Safety Act. Any such complaint must also be filed within one year of the adverse action. A copy of the complaint shall also be served on the Attorney General of the United States. With the consent of the employee, the Attorney General may intervene in a case on behalf of the employee, provide assistance to the employee or may file an amicus brief on behalf of the employee.

(e) At the request of the complainant, the Attorney General shall investigate the allegations of misconduct or illegal activities raised by in the complaint. In making such a request the employee shall serve upon the Attorney General a copy of evidence or other supporting materials. This disclosure shall not be the subject of any civil discovery without the consent of the employee. However, the Attorney General may use the information without identifying the source of the information. The Attorney General shall reasonably inform the complainant of the progress of its investigation and the findings of the Attorney General.

(f) DISMISSAL OR SETTLEMENT – Any settlement of a claim under this chapter must be approved by the appropriate court or administrative agency and no settlement may be entered without the voluntary consent of the employee and employer. No employee or employer may waive or modify any procedural or substantive right set forth in this Amendment through a collective bargaining agreement or a pre-employment arbitration agreement, a private contract or as a condition of employment or as a condition of obtaining any benefit.

(g) REMEDIES – Any employee who prevails in an action under this Amendment shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, back pay, compensatory damages, prejudgment interest, compensation for any special damages sustained as a result of the discrimination, litigation costs, expert witness fees and reasonable attorneys' fees. Punitive damages may be awarded if the employer conduct was willful or wanton.

(h) NON-PREEMPTION – Nothing in this Amendment shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.

(i) WHISTLEBLOWER REWARD – Any employee who files a complaint under this amendment, and whose protected disclosures led to a recovery of monies to the United States of America (including, but not limited to, the payment of a civil or criminal fine or penalty), shall be entitled to the recovery defined in 31 U.S.C. § 3730(d)(1). The United States Department of Justice shall make a determination as to whether the employee's protected disclosure led to the recovery of monies to the United States. The decision of the Department of Justice is reviewable *de novo* in Federal Court. The Department of Justice shall publish regulations implementing this provision, and the procedures related to the implementation of subsection (d), within 90 days of the effective date of this amendment. This provision may be

enforced as part of the claim filed by the employee in federal court under this provision, or through a writ of mandamus. The Department of Justice shall be responsible to pay an employee's reasonable attorney fees and costs (including expert witness fees) if the Department improperly denies any claim under this provision.

(j) DEFINITION OF EMPLOYEE AND EMPLOYER -

- (1) Employer shall mean any employer covered under the Civil Rights Act of 1964, *as amended*, or as set forth in sections 2000e(b) and 2000e-16, of Title 42, United States Code;
- (2) Employee shall include any employee, contractor, subcontractor, agent or representative of any employer.

(k) EFFECTIVE DATE -- This Amendment shall be applicable to any claim pending on or filed after the date in which this provision was signed into law.

For More Information Please Contact: National Whistleblowers Center/3238 P Street, NW/Washington, D.C. 20007 202.342.1903/lmw@whistleblowers.org