

# Protecting Your Rights as a Whistleblower



A HAAS & CASTILLO EBOOK

By Marcus Castillo, B.C.S.

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## Introduction

All of us read and hear about whistleblowers in the news.

What exactly is a “whistleblower” and what makes them so special?

Generally speaking, a whistleblower has observed illegal conduct and reported it. In an employment law whistleblower case, the party aware of the illegal conduct has been retaliated against in some way by his employer for blowing or threatening to blow the whistle on that conduct. In a qui tam case, the whistleblower privately reports suspected fraud against the government to the appropriate authority, and in some instances has the right to share in the proceeds recovered from the wrongdoer.

**In this short guide, we will review the special legal status of whistleblowers, including protections afforded to them and the typical types of whistleblowing cases brought in Florida.**

Let’s look at four specific areas where these two types of whistleblowing activities play out: the Florida Private Sector Whistleblower Act, the Florida Whistleblower’s Act, which protects public employees, whistleblower protections available through the multitude of acts administered by OSHA and the qui tam rights arising out of the Federal False Claims Act.

## Florida Private Sector Whistleblower Act

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This Act gives a private sector employee (in a business that employs ten or more people) the right to sue for damages if he has been retaliated against for...

- Disclosing or threatening to disclose a violation of law, rule or regulation.
- Participating in some way in an agency investigation into such illegal conduct.
- Opposing or refusing to participate in such illegal activity.

The “violation of law, rule or regulation” requirement in this type of case can be a tricky point. Courts have interpreted this phrase to mean that the legal violation must be a

specific violation of a law or regulation passed by Congress, the Florida Legislature, or an administrative agency of the federal or state government. In other words, it’s not enough that the employer engaged in unethical or improper conduct that doesn’t rise to the level of a violation of a statute or an administrative rule or regulation. Another issue that often arises is whether the whistleblower has to prove the employer actually violated a law, rule or regulation or simply has to have a good faith belief that a violation occurred (whether or not it actually did). There is a split of opinion between courts in Florida whether an “actual violation” showing is required. The answer therefore depends on where the case is brought.

## Protecting Your Rights as a Whistleblower

This Act has procedural requirements one must pay attention to. For instance, if one is proceeding on the theory that she is a whistleblower because she disclosed or threatened to disclose illegal activity, she first

must notify her employer and give it the right to correct the violation before proceeding to court. There are also statutes of limitation and other requirements that must be kept in mind.

## Florida Public Sector Whistleblower's Act

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In simple terms, the definition of whistleblowing in a public sector case includes, but in some ways is broader than, the definition in a private sector case. Blowing the whistle on a violation of a rule, law or regulation is actionable if such violation substantially threatens public health, safety or welfare. Protections also apply to those blowing the whistle on governmental malfeasance, misfeasance, mismanagement, waste of public funds, gross neglect of duty, or Medicaid

fraud. Note that this Act applies not only to governmental employees but to government contractors as well.

Unlike the Private Sector Whistleblower Act, public employees must first pursue the case through an administrative process with very short deadlines. These cases are often heard by administrative law judges.

## Whistleblower Statutes Administered by OSHA

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There are over 20 federal laws containing whistleblower protections administered by OSHA including...

- Asbestos Hazard Emergency Response Act
- Clean Air Act
- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Consumer Financial Protection Act of 2010
- Consumer Product Safety Improvement Act
- Energy Reorganization Act
- Federal Railroad Safety Act
- Federal Water Pollution Control Act
- International Safe Container Act
- Moving Ahead for Progress in the 21st Century Act
- National Transit Systems Security Act
- Occupational Safety and Health Act
- Pipeline Safety Improvement Act
- Safe Drinking Water Act
- Sarbanes-Oxley Act
- Seaman's Protection Act
- Section 402 of the FDA Food Safety Modernization Act
- Section 1558 of the Affordable Care Act
- Solid Waste Disposal Act
- Surface Transportation Assistance Act
- Toxic Substances Control Act
- Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

The deadlines to file papers for protection under any of these Acts is very short. For more information on the OSHA-administered programs, download their overview paper at <https://www.osha.gov/Publications/OSHA3638.pdf>.

## Qui Tam Protections

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The False Claims Act is the federal basis for bringing a legal action to report fraud against the government. These actions allow eligible whistleblowers (known as “relators”) to claim a portion of any funds recovered by the federal government. These cases are civil cases but have procedural requirements unlike any other civil

case. For instance, qui tam lawsuits must be filed under seal. Evidence in a qui tam case must be presented in a disclosure statement. The evidence upon which a potential qui tam case must be based must be non-public information. Potential relators must act quickly because a “first to act” rule generally applies.

### CASE STUDY

**When a store manager reported child labor law violations to her superiors she was soon terminated after a decades-long career. A prior attorney obtained only a nominal offer, but after our firm appeared we were ultimately able to recover nearly \$700,000 in a Florida Private Sector Whistleblower Act case.**

### CASE STUDY

**Our firm was retained by an airline pilot after he was terminated for reporting flight safety issues. This case later became a landmark whistleblower decision: Pohl v. Southeast Airlines.**

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## Afterword

We hope you found this eBook to be a helpful introduction to whistleblower law. Hopefully, it has convinced you that pursuing a whistleblower case is not an easy do-it-yourself project. Many of these laws require first going through a complicated administrative process before filing suit. Also keep in mind that many of the whistleblower statutes have established very short statutes of limitations to challenge a retaliatory firing or demotion. If you have a potential whistleblower case, you are going to need to contact witnesses and gather evidence quickly. You should consider contacting an experienced attorney who can help you preserve that evidence and protect your rights.

### ABOUT THE AUTHOR



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### Marcus Castillo, B.C.S.

Marcus is Board Certified in Labor and Employment Law by The Florida Bar, one of the first lawyers in the state to achieve that distinction. His practice areas include:

- AD&D and Life Insurance Claims**
- Criminal Attacks and Sexual Abuse**
- Employment Litigation**
- Premises Liability**
- Whistleblower Claims**



Marcus is also co-founder of **TrialFocus, LLC**, which employs focus groups to test the strengths and weaknesses of civil litigation cases.

## **Haas & Castillo, PLLC is a law firm built on reputation and referrals, not advertising.**

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We are a law firm of specialists certified as experts in business litigation and labor and employment law by The Florida Bar and have worked in Tampa Bay for over 35 years.

Our business and construction litigation practice, led by Lee Haas, includes these types of disputes: contracts, collections, construction, real estate, corporate, trade secrets, noncompetition contracts, and landlord/tenant, as well as appeals of these cases.

Our labor and employment law practice, led by Marcus Castillo, includes the following types of matters: ERISA and non-ERISA claims for AD&D and life insurance; harassment, discrimination, and whistleblower claims; and management representation to maximize avoidance of potential claims. He has long achieved successful results for persons injured due to premises liability. These cases include negligent security, fall-down, water hazard and building defect cases. Marcus also handles the related field of civil liability for criminal attacks and sexual abuse.



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