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# Connecticut Court: Dodd-Frank "Whistleblower" Protection Extends to Informal SEC Complaints

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A federal district court in Connecticut this week held that the federal Dodd-Frank Act protects a larger class of "whistleblowers" than many previously thought. In allowing the claimant's "whistleblower" retaliation claim to survive a motion to dismiss, the judge ruled that Dodd-Frank's definition of "whistleblower" was broad enough to protect not only those who file official complaints with the Security and Exchange Commission (SEC), but also those who provide the SEC with informal letters complaining of unlawful practices. The judge rejected concerns that such an interpretation would allow Dodd-Frank's anti-retaliation provision — with its longer statute of limitations and double-pay awards – to effectively swallow the corresponding provisions of the (less claimant-friendly) Sarbanes-Oxley Act: "the Dodd-Frank Act appears to have been intended to expand upon the protections of Sarbanes-Oxley," the judge noted, "and thus the claimed problem is no problem at all."

The case, *Kramer v. Trans-Lux Corp.*, No. 3:11cv1424 (D. Conn. September 25, 2012), involved a Vice President of Human Resource's complaints of improper pension practices by the company's CFO and CEO. Specifically, the VP complained that the CFO and CEO had implemented a decision to freeze salaries without first presenting the proposal to the company's board of directors or filing with the SEC. When the VP's initial internal complaints were ignored, he sent a letter to the SEC notifying it of the improper actions. Shortly thereafter, the VP was terminated. He subsequently filed a Dodd-Frank "whistleblower" claim against his employer, alleging that his termination was in retaliation for the letter that he sent to the SEC. The company filed a motion to dismiss, arguing that the Act's definition of "whistleblower" is limited to employees who contact the SEC "in a manner established, by rule or regulation, by the Commission." Because the VP had provided information via an informal letter rather than in a manner required by the SEC, the employer argued, he was not a "whistleblower" under Dodd-Frank.

In deciding the case, Judge Underhill of the District of Connecticut was required to decide whether Dodd-Frank's general definition "whistleblower," with its "manner established by rule or regulation" requirement, also applies to the Act's anti-retaliation provisions, which appeared to more broadly include informal complaints of the type "protected under [Sarbanes-Oxley]." The Judge ruled that Congress intended for the anti-retaliation provision to provide broader protections than the general definition would allow: "[the general definition's] requirement that

the information at hand have been provided ‘in a manner established, by rule or regulation, to the Commission’, does not apply to [the retaliation provision].” The judge relied upon the SEC’s own rule interpreting the whistleblower provision, and concluded simply that “[d]isclosures that are protected under Sarbanes-Oxley’s whistle-blower provisions are also protected under the Dodd-Frank Act’s whistle-blower provisions.”

If adopted by other courts, this ruling effectively allows plaintiffs to simultaneously enjoy the most claimant-friendly provisions of both Dodd-Frank and Sarbanes-Oxley: Dodd-Frank’s longer limitations period and larger awards, and Sarbanes-Oxley’s broader protections including informal complaints. Notably, however, this decision is in conflict with a June 2012 ruling by Texas district court, which held the opposite: that a whistle-blower’s internal complaints did not qualify him for protection from retaliation under Dodd-Frank. This issue will almost certainly be sorted out by the federal Courts of Appeals; in the interim, employers should be aware that Dodd-Frank “whistleblower” claims are looking attractive for plaintiffs and plaintiffs’ counsel.

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