

OSHA Orders Company to Reinstate Whistleblowers and Orders Payment of Over \$800k for Purported Sox Violations

October 7, 2022

On October 7, 2022, OSHA [announced](#) that it had ordered ExxonMobil Corp. to immediately rehire two computational scientists who alleged that they were fired in retaliation for leaking to the media their concerns about improper conduct by the company. In addition to reinstatement, the former employees were also awarded over \$800,000 in back-pay, interest and compensatory damages.

Background

In April 2019, Complainants raised concerns with the company's Human Resources department about a financial disclosure filed with the SEC, which they purportedly believed contained overinflated production estimates and valuations concerning certain oil and gas wells.

On August 27, 2020, the Wall Street Journal ("WSJ") contacted the company for comment in connection with an article it intended to publish which would mention the concerns raised by Complainants about the allegedly misleading statements. On September 13, 2020, the WSJ published an article titled "[Exxon Used to Be America's Most Valuable Company. What Happened?](#)" The WSJ noted in the article that it had interviewed over 20 current and former employees, but did not identify either of the Complainants as sources.

According to OSHA, after conducting an investigation, the company determined that Complainants had access to the data that was shared with the WSJ and might have given the information to the publication. The company subsequently fired them.

In February 2021, Complainants filed a complaint with OSHA claiming they were terminated in violation of SOX's whistleblower retaliation protection provision.

OSHA's Order

OSHA interpreted SOX to protect employee communications with the media that could result in the exposure of employer wrongdoing. According to Assistant Secretary for Occupational Safety and Health Doug Parker: “[w]histleblower protection is integral to ensuring that financial disclosure laws work.” Parker further explained that “[a]s was the case in this instance, OSHA will aggressively protect the rights of employees who raise concerns related to financial.”

Implications

This order shows that OSHA is taking an aggressive approach to enforcing SOX’s whistleblower retaliation provision. And we expect a debate to ensue as to whether complaints to the media constitute protected activity under SOX.

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