

District of NJ: Federal Courts Lack Jurisdiction to Enforce Preliminary Reinstatement Orders Under SOX

Proskauer Whistleblower Defense on July 25, 2023

On April 19, 2023, the U.S. District Court for the District of New Jersey granted the defendant-employer's motion to dismiss a complaint seeking court enforcement of a preliminary reinstatement order after determining that the court lacked jurisdiction to enforce such orders. [Gulden v. Exxon Mobil Corp.](#), No. 22-cv-7418.

Background

As we previously [reported](#), on October 7, 2022, OSHA announced that it had ordered the Company 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 violation of SOX's whistleblower retaliation provision. The Company subsequently filed a timely objection and chose to ignore the reinstatement order while the matter was proceeded through the agency review process. The scientists then filed suit in federal court seeking enforcement of OSHA's preliminary reinstatement order. The Company moved to dismiss.

Ruling

The court granted the Company's motion to dismiss, holding that the plain language of SOX, as well as AIR21, which governs the procedures under SOX, only grants district courts jurisdiction to enforce *final* orders of reinstatement, but not preliminary orders. The court noted that the Second Circuit, which is the only circuit court to have grappled with this issue, held in [Bechtel v. Competitive Technologies, Inc.](#), 448 F. 3d 469 (2d Cir. 2006) that courts lack jurisdiction under these circumstances, and of the few district courts to have considered the question since *Bechtel*, the majority had followed its ruling. Relying on the statutory language of SOX and AIR21, as well as the expeditious nature of the administrative review process, the court agreed that federal courts lack jurisdiction to enforce preliminary reinstatement orders.

Implications

Although OSHA has taken an aggressive approach to enforcing SOX's whistleblower retaliation provision, including through the issuance of preliminary reinstatement orders, this decision demonstrates that such orders may lack sharp teeth, as former employees do not have a mechanism to force compliance. Plaintiffs have appealed, and it remains to be seen whether the Third Circuit will join the Second Circuit or create a circuit split. We will monitor this case and report on future developments.

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