

Public Law 116–257
116th Congress

An Act

To provide anti-retaliation protections for antitrust whistleblowers.

Dec. 23, 2020

[S. 2258]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Criminal Antitrust Anti-Retaliation Act of 2019”.

Criminal
Antitrust
Anti-Retaliation
Act of 2019.
15 USC 1 note.

SEC. 2. AMENDMENT TO ACPERA.

The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended by inserting after section 215 the following:

“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLEBLOWERS.

15 USC 7a–3.

“(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

“(1) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

“(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to—

“(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

“(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

“(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

“(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

“(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation

of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

“(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any covered individual if—

“(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

“(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

“(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

“(3) DEFINITIONS.—In this section:

“(A) ANTITRUST LAWS.—The term ‘antitrust laws’ means section 1 or 3 of the Sherman Act (15 U.S.C. 1 and 3).

“(B) COVERED INDIVIDUAL.—The term ‘covered individual’ means an employee, contractor, subcontractor, or agent of an employer.

“(C) EMPLOYER.—The term ‘employer’ means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

“(D) FEDERAL GOVERNMENT.—The term ‘Federal Government’ means—

“(i) a Federal regulatory or law enforcement agency; or

“(ii) any Member of Congress or committee of Congress.

“(E) PERSON.—The term ‘person’ has the same meaning as in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

“(4) RULE OF CONSTRUCTION.—The term ‘violation’, with respect to the antitrust laws, shall not be construed to include a civil violation of any law that is not also a criminal violation.

“(b) ENFORCEMENT ACTION.—

“(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (a) may seek relief under subsection (c) by—

“(A) filing a complaint with the Secretary of Labor;

or

“(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

“(2) PROCEDURE.—

“(A) IN GENERAL.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

Deadline.

“(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to any individual named in the complaint and to the employer.

“(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

“(D) STATUTE OF LIMITATIONS.—A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation occurs. Deadline.

“(E) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, United States Code, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

“(c) REMEDIES.—

“(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

“(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

“(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

“(B) the amount of back pay, with interest; and

“(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney’s fees.

“(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement.”.

Approved December 23, 2020.

LEGISLATIVE HISTORY—S. 2258:

CONGRESSIONAL RECORD:

Vol. 165 (2019): Oct. 17, considered and passed Senate.

Vol. 166 (2020): Dec. 8, considered and passed House.