

OSHA enforces the whistleblower provisions of 16 statutes protecting employees who report violations of various laws, including trucking, pipelines, rail and workplace safety and health.

OSHA issues order in whistleblower case

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The U.S. Department of Labor's Occupational Safety and Health Administration announced on March 3, 2010, that after an investigation it had issued an order under the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002, requiring e-Smart Technologies Inc. to pay back wages with interest and approximately \$600,000 in compensatory damages to a former employee in California who had been discharged after he raised concerns about "misinformation contained in a draft public filing."

The OSHA order also required the company to reinstate the former employee to his former position, fairly compensate him upon reinstatement, expunge his personnel file of any reference to his exercise of rights under Sarbanes-Oxley, and post a notice to employees regarding whistleblower protections.

According to the OSHA press release, its investigation revealed that the complaining former employee's job duties had been systematically removed and his paychecks delayed and ultimately stopped after he had questioned the accuracy of several statements made in the company's filings with the U.S. Securities and Exchange Commission.

The company had 30 days to file an appeal to a Department of Labor administrative law judge who would then conduct a hearing on the matter.

OSHA also enforces the whistleblower provisions of 16 other statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, workplace safety and health regulations; and consumer product safety laws.

Under these laws, companies are prohibited from

retaliating against employees who raise various protected concerns or provide protected information to the employer or to the government.

Employees who believe that they may have a claim can file a complaint with the Secretary of Labor.

For more information, see the fact sheets and detailed information on employee whistleblower rights online at: <http://www.osha.gov/dep/oia/whistleblower/index.html>. ▲

State inspectors last year cited 578 Ky. employers and fined them \$2.8 million

An analysis conducted by Kentucky OSHA Journal of the citations and fines issued in 2009 by state OSHA inspectors found that they issued citations to 578 Kentucky employers. Of those employers cited, 67 received a citation but no fine; the other 511 were fined \$2,812,153.

So last year, if you, an employer, received a visit by an OSHA inspector who cited you for a violation, there was an 88.4 percent probability that you were fined, and the average fine was \$5,503.

The size of the average fine is somewhat skewed, however, by one employer, TSP Inc. of Lexington, doing work in Vine Grove. The company was fined a whopping \$420,000 for 10 willful violations, all related to scaffolding and fall protection. See *Kentucky OSHA Journal, December 2009*. Minus this anomaly, the average fine statewide in 2009 would have been \$4,681.

However, there were two other fines that also skew the average, but to a lesser degree: The Louisville-Jefferson County Metro Sewer District last July was fined \$102,125 for two "repeat serious" violations related to excavation and cave-in protection; and a Bardstown firm, American Fuji Seal, was fined \$90,000 in September for a "repeat serious" violation for improperly guarded printing presses.