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The Consumer Product Safety Improvement Act provides whistleblower protections to the employees of manufacturers and retailers of consumer products.

Consumer Product Safety Improvement Act of 2008

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On August 14, 2008, President Bush signed into law the Consumer Product Safety Improvement Act of 2008 (CPSIA or "Act"). Prompted by several well-publicized recalls of children's toys, this legislation dramatically expands the authority of the Consumer Product Safety Commission ("Commission") and introduces new responsibilities for the manufacturers and retailers of consumer products. Of particular interest to employers, Section 219 of the CPSIA affords new whistleblower protections to the employees of manufacturers, labelers, distributors, and retailers of consumer products. "Consumer Products" include any article, or component part thereof, intended for use, consumption, or enjoyment by a consumer in the home or school or in recreation. "Consumer Products" do not include those items regulated by governmental agencies other than the Commission, such as tobacco, motor vehicles, pesticides, aircrafts, boats, drugs, cosmetics, and food (15 U.S.C. § 2052). Employees of covered employers will now have a private right of action and be able to collect back pay and other compensatory damages should their employer take adverse action against them because of their whistleblowing.

The CPSIA prohibits discrimination against employees who report safety violations or participate in any proceeding related to alleged safety violations. The Act also protects workers who refuse to participate in an activity, policy or practice, or who refuse to perform a certain task, because they believe their actions would violate a law or regulation enforced by the Commission. To be protected by the law, an employee need only have a *reasonable* belief that the conduct at issue would violate consumer protection laws. This means that the employee's belief does not necessarily have to be a true or accurate understanding of the law.

Enforcement

An employee who thinks he or she has been terminated or otherwise discriminated against based on activity protected by the Act can file a complaint with the Secretary of Labor ("Secretary"). The complaint must be filed no later than 180 days after the date of the alleged violation.

Once an employee has filed a complaint, the Secretary will notify the employer that a complaint has been filed and inform the employer of the specific allegations and evidence supporting them. The employer will then have an opportunity to submit a written response to the complaint and to meet with a representative from the Secretary's office in order to provide witness statements. At that point, the Secretary, through the Occupational Safety & Health Administration (OSHA) may conduct an investigation. The Secretary will not conduct an investigation and will dismiss the complaint if: (1) the complainant has not shown that the protected activity contributed to the adverse action taken by the employer; or (2) the employer shows, by clear and convincing evidence, that it would have taken the same adverse action even if the protected activity had not occurred.

If the Secretary conducts an investigation, she will provide both parties with her written findings. If she finds reasonable cause to believe that the employer has violated the Act, the Secretary will attach to her findings a preliminary order granting relief. Either party may object within thirty days to this proposed relief and request a hearing, but the order becomes final if no one objects. It is important to note that filing a notice of objections to the order will not stay any reinstatement remedy that appears in the order. In the event that a party requests a hearing, the Secretary will issue a final order following the hearing either dismissing the complaint or providing relief to the complainant. Either party can appeal the final order to the appropriate U.S. Court of Appeals.

Available Remedies

If the Secretary determines that an employer has violated the Act, she will order the employer to: (1) take affirmative action to abate the violation; (2) reinstate the complainant to his or her former position; (3) provide back pay to the complainant; and (4) pay any other compensatory damages to the complainant. If the Secretary fails to issue a final decision within 210 days after the complaint is filed or within 90 days of receiving a written determination, the complainant can bring an action, subject to *de novo* review, in an appropriate U.S. District Court. That court can grant all of the previously mentioned relief as well as attorney's fees and costs.

Prevention is the Best Medicine

To avoid liability for whistleblower claims under Section 219 of the CPSIA, employers should revise their retaliation and whistleblower policies to provide expressly that adverse action will not be taken because of whistleblowing regarding safety of consumer products. Employers should also strongly consider training supervisors and employees about the new safety regulations. Furthermore, employers should establish and follow procedures for handling internal complaints of safety violations. It is particularly important that employers be responsive to such complaints and document them thoroughly and accurately.

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