



## FAQ

You may have some questions about whistleblower laws and what it means to be a whistleblower. The following are some frequently asked questions about whistleblower laws, being a whistleblower, and litigation options.

### i. What is a Whistleblower?

A whistleblower is a person who exposes wrongdoing to those in positions of authority or to the public. Whistleblowers tend to be conscientious, outspoken, upstanding citizens who care about stopping fraud – corporate fraud, fraud against the government, fraud against financial markets, and fraud within organizations. Under federal and state law, there are several ways that whistleblowers can report fraud and receive a portion of the money that the government is able to recover.

In some instances, you might see the word “relator” being used to describe a whistleblower. This formal term is typically used to describe the whistleblower in a specific type of whistleblower lawsuit called a *qui tam* lawsuit..

### ii. Who Can Be a Whistleblower?

Anyone who has evidence of corporate fraud can become a whistleblower. Although whistleblowers are often employees, a whistleblower does not need to be directly employed by the company who has committed the fraud.

There are several different laws that govern whistleblower claims, and the rules of each whistleblower program are complicated. Experienced whistleblower counsel can help you navigate the whistleblower laws, present your whistleblower claim in a compelling manner, and seek to maximize the chances of an award.

### iii. What Types of Fraud Do Whistleblower Laws Cover?

There are many, many types of fraud covered by whistleblower laws.

Fraud can take on many different forms in virtually any industry. Common whistleblower cases include:

### iv. Health Care Fraud

- **Kickbacks for Referrals** – Paying or receiving anything of value in exchange for government healthcare program business. The payment can take many different forms and includes money, credits, medical equipment, office space, waivers of copays and many other things of value
- **Off-Label Marketing** – This fraud occurs when a drug or medical device company markets or promotes a drug or device to physicians for uses that are not approved by the FDA.

- **Billing for Medically Unnecessary Services or Services Not Rendered** – Billing a government healthcare program for services that were not required based on the particular medical needs of a patient or for services that were never rendered.
- **Upcoding** – billing federal healthcare programs for more expensive services than those actually performed by using a billing code with a higher reimbursement.
- **Improper Self-Referrals** (Stark law) – This fraud occurs when a physician improperly refers patients to an entity with which the physician has a financial relationship. Commonly known as a “self-referral.”
- **Genetic Testing Fraud** – Billing the government for genetic screening tests, such as genetic cancer screening (CGX) or pharmacogenomics (PGX) tests, that are not medically necessary and/or not ordered by a beneficiary’s treating physician. This type of fraud often involves kickbacks between laboratories, telemarketing companies and telemedicine companies.
- **Drug Addiction Treatment or Testing Fraud** – Fraud involving treatment or testing of patients for opioid/drug/alcohol addiction by physicians, substance abuse treatment facilities and patient recruiter. Types of fraud include unnecessary drug testing, billing for services not provided, and paying kickbacks for referrals.

## v. Financial Fraud

- **Mortgage Fraud** - Financial institutions may be held liable for various fraud practices involving the origination, underwriting, and sale of mortgages. This can also include the concealment of risks from investors in connection with mortgage-related products
- **Ponzi and Pyramid Schemes** –types of investment fraud that involve the payment of purported returns to investors from funds obtained from new investors
- **Market Manipulation** – Intentional conduct designed to deceive investors by controlling or artificially affecting financial markets
- **Insider Trading** – Insider trading involves the trading of publicly traded stock or securities by individuals with access to nonpublic information.
- **Financial Statement Fraud** – The deliberate misrepresentation of the financial condition of a company, typically involving intentional misstatements or omissions in financial statements. This fraud can take many forms, and includes fictitious revenue, improper valuation of assets, and concealed liabilities.
- **Accounting Fraud** – the manipulation of accounting records in order to make a company’s financial performance or condition seem better than it actually is.
- **Violations of the Foreign Corrupt Practices Act (“FCPA”)** – FCPA violations can be found where a company pays bribes to foreign government officials or fails to implement internal controls to detect and prevent payments and gifts to foreign officials.

## vi. Government Contract Fraud

- **Government Contractor Wage Fraud** - Government contractors and subcontractors on public works projects must pay employees the prevailing wage rate. They can be held liable if they falsify any payroll certifications which verify the appropriate payment for project workers

- **Providing Substandard Products** - Government contracts often contain specific requirements with regard to the type, quality or grade of products to be used under the contract, and may require specific testing or quality assurance measures. This fraud occurs when a government contractor provides defective products to the government, fails to perform quality assurance measures on the products, or substitutes a less expensive or otherwise inferior part or product without the government's consent.
- **Cross-Charging** - This is where a government contractor charges a government contract for costs, labor, and other fees which were actually incurred in performing a different contract.
- **Country of Origin Fraud** – This fraud involves misrepresenting a product's country of origin in violation of contractual requirements. A contractor may commit this fraud to avoid paying custom duties or tariffs to the Government.
- **Accounting Fraud** -The intentional misrepresentation or alteration of accounting records regarding sales, revenues, expenses and other factors for a profit motive such as inflating company stock values, obtaining more favorable financing or avoiding debt obligations.

Learn more about the [different types of fraud](#). Experienced whistleblower counsel can advise you on the best way to bring your information to authorities and maximize the opportunity for a reward.

## vii. How Are Whistleblowers Protected From Retaliation?

Whistleblowers are frequently concerned about potential retaliation. Experienced counsel should advise you on your rights and how to protect yourself from illegal retaliation. Anti-retaliation provisions are a critical part of the False Claims Act, the Dodd-Frank Act and Sarbanes-Oxley. These laws make it illegal for an employer to retaliate against someone who has reported fraud.

For instance, an employer cannot fire, demote, or otherwise treat employees adversely because they have filed a whistleblower complaint involving the company. If an employer does wrongfully retaliate against a whistleblower, the whistleblower may be entitled to sue for damages; these monetary damages can be quite substantial under federal and state laws. Employees who have been retaliated against may also have whistleblower rights under OSHA and other similar administrative mechanisms.

Experienced counsel can also assist in maintaining your anonymity. Both the SEC and CFTC whistleblower programs allow whistleblowers to file their complaints anonymously, so long as they use an attorney to represent them. Under the False Claims Act, complaints are initially filed under seal, meaning that the public and even the defendants are unaware of the qui tam suit. Counsel should advise you on how best to protect your identity.

## viii. What Information Do I Need To File a Whistleblower Case?

The stronger the evidence of fraud, the more likely a whistleblower claim will be successful. For example, it is always beneficial if the whistleblower can provide documentary evidence of fraud, such as emails, internal memos, or other documents that demonstrate how a fraud is being perpetrated. In most circumstances, a mere "hunch" or suspicion will not be enough to support an investigation.

The selection of an experienced whistleblower attorney can be very important in preparing a submission to government authorities. Consider whether the attorney has significant experience in the government – this insight into how the government works can be a powerful tool in making a compelling presentation to government authorities.

## **ix. I Keep Hearing the Phrase “Qui Tam.” What does “Qui Tam” Mean?**

In a qui tam lawsuit, a private citizen is permitted to sue on behalf of the government, entitling the person to recover a portion of the money that the government recoups through the lawsuit. Qui tam lawsuits are authorized under federal and state False Claims Acts and, on behalf of the government, allege that the government has been defrauded.

While False Claims Act cases commonly allege health care fraud, pharmaceutical company fraud, and illegal kickbacks, there are many types of fraud against government programs that can be brought as a qui tam lawsuit.

Qui tam litigation is a powerful mechanism to help the government recover taxpayer dollars lost due to fraud against the government. In fact, qui tam lawsuits filed through the False Claims Act are one of the major mechanisms that the government employs in order to combat and prevent fraud, with billions of dollars recovered each year.

## **x. How is a Whistleblower Compensated?**

A whistleblower whose case is successful may be entitled to an award, which is determined as a percentage of the money recovered by the government. Generally speaking, the whistleblower may recover anywhere from 10-30% of what the government recovers in the case. This is intended to compensate the whistleblower for the efforts and risks involved in bringing forth the case, and to incentivize whistleblowers to report fraud.

## **xi. What is the Timeline for Reporting a Whistleblower Claim, and How Long Does a Case Take?**

Because there are time limits and other procedural hurdles within whistleblower laws, it is important for potential whistleblowers to not delay in reporting a whistleblower claim after learning of the fraud. For example, whistleblower cases under the False Claims Act generally must be filed within six years of the alleged violation. This means that if the violation occurred more than six years before the whistleblower files the claim, the whistleblower generally cannot recover compensation for reporting the fraud. In addition, the False Claims Act only allows the first whistleblower who brings a case against a particular defendant for a particular fraud to recover compensation. Thus, potential whistleblowers who are aware of fraud should contact an experienced attorney about filing a whistleblower claim as soon as possible.

The length of a whistleblower case varies from case to case depending on the facts of the case, the scope of the fraud, and the length of the government’s investigation. Whistleblower cases usually take several years to resolve, although some cases may be resolved more quickly.

## **xii. What Advantages can KTMC Whistleblower Attorneys Provide to Clients?**

KTMC’s whistleblower practice is dedicated to representing whistleblowers in the fight against fraud. Our whistleblower team is comprised of attorneys who have dedicated their careers to representing whistleblowers. They have worked as federal and state prosecutors; they have prosecuted securities and financial fraud cases against the biggest companies in the world; they have worked in the health care industry and as compliance officials.

This real-world experience equips our team with the valuable insights and approaches that whistleblowers need. Our clients are provided access to a full range of resources, including the network of subject-matter expertise from one of the country’s biggest plaintiffs firms and our in-house investigative services division. We also welcome [partnerships and collaboration](#) with other attorneys, and have staked an important role in litigating declined cases.

If you would like to speak to a member of our whistleblower group about a potential whistleblower matter, please contact us to schedule a case evaluation. All case evaluations are confidential and free