

Whistleblower / False Claims Act

COVID-19 and Whistleblower Actions: Frequently Asked Questions

Cohen Milstein has a dedicated practice group that represents individuals reporting fraud in actions under the Federal and State False Claims Acts and other fraud reporting programs including the whistleblower programs of the SEC, IRS, and CFTC. If you have information regarding potential fraud on the government or violations of federal securities, tax, or commodities laws, you can reach out to us via email at whistleblower@cohenmilstein.com to speak with a lawyer on a confidential basis.

Q: I work at a healthcare provider that has been using COVID-19 as an excuse to bill Medicare and Medicaid for unrelated and unnecessary services. Can I speak with a lawyer about being a whistleblower and reporting this fraud to the government?

A: Yes. The False Claims Act makes it illegal for any individual or business to defraud the government out of money or property, and this includes fraud against Medicare or Medicaid. The Department of Justice has brought countless cases against healthcare providers who bill for unnecessary services, and we expect that these types of cases will remain prevalent during the COVID-19 pandemic. Individuals that bring lawsuits under the False Claims Act may be eligible to receive an award of 15-25% of the money recovered if the government takes enforcement action based on the information provided by the whistleblower.

Q: I work at a hospital where physicians have been billing for complicated telehealth services when they just have short phone calls with patients. Is this legal?

A: The COVID-19 pandemic has rapidly accelerated the use of telehealth services, but there are still important requirements that must be followed to bill these services to Medicare or Medicaid. If physicians are misrepresenting the services they are providing by phone, this could violate the False Claims Act. An individual that brings a False Claims Act lawsuit alerting the government to this type of fraud may be eligible for an award if the government ultimately recovers money as a result.

Q: I learned that a competitor company has entered into a contract with the federal government and sold it faulty and substandard equipment. What can I do to alert the government?

A: The False Claims Act provides monetary awards to individuals because the government wants to incentivize people to come forward with information about fraud on the government. It is not a requirement to being a whistleblower that the fraud occur at your place of business – if you have information that any company is defrauding the government, whether a competitor or a company in another industry, you may be eligible to be a False Claims Act whistleblower.

Q: I am aware of a company that hoarded critical healthcare supplies and then sold them to the government at extremely high prices. Can I take action against this conduct?

A: Yes. The Department of Justice has announced the creation of a COVID-19 Hoarding and Price Gouging Task Force to aggressively go after those who acquire a larger volume of important healthcare supplies than they need and who intend to sell those supplies at higher than market prices. These supplies include N95 masks, respirators, ventilators, personal protective equipment (PPE), clinical disinfectants, and certain other related items. Individuals with information about hoarding or price gouging of these critical supplies can contact a whistleblower lawyer immediately.

Q: I am concerned that my company lied on its application to obtain loans under the Paycheck Protection Program. It has more than 500 U.S. employees and is not using the loan proceeds to pay its workers. What can I do?

A: Knowingly misrepresenting important facts on an application for federal funds can violate the False Claims Act. Businesses must comply with all applicable program requirements to obtain money under the PPP. If your company violated important requirements, the federal government may be able to recover three times the amount of money that it was defrauded, plus additional monetary penalties, and you may be entitled to a share of that recovery as an award.

Q: I work at a bank that has been making loans under the Paycheck Protection Program. We are given information from potential borrowers that clearly demonstrates they are not eligible to obtain these loans, but the bank makes them anyway. Could this be a violation of the False Claims Act?

A: Yes. The rules regarding the administration of the PPP are complex and changing, but if a bank knowingly violates these requirements it may well be subject to an enforcement action under the False Claims Act.

Q: My company has been hit hard by this pandemic as demand for its goods has plummeted and its senior executives know that its ability to obtain financing to continue

operations is in serious doubt. Yet they continue to hide these facts from investors to protect the stock price. Is there anything I can do to stop this?

A: The Securities and Exchange Commission has a Whistleblower Program and is focused on COVID-related securities fraud. It has recently issued guidance explaining that “disclosure requirements can apply to a broad range of evolving business risks even in the absence of a specific line item requirement that names the particular risk presented.” Individuals can report violations of the federal securities laws to the SEC and may be eligible for a reward of 10-30% of any recovery the SEC ultimately obtains due to their whistleblowing. Like with claims under the False Claims Act, it is not a requirement that the violations of the securities laws were committed by your company – if you have information of violations by any company, you may qualify as an SEC whistleblower.