

OSHA PUBLISHES FINAL RULE ESTABLISHING WHISTLEBLOWER PROTECTIONS UNDER THE AFFORDABLE CARE ACT

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On October 12, 2016, the Occupational Safety and Health Administration (OSHA) published its final rule regarding employer whistleblower protections under §1558 of the Affordable Care Act (ACA) establishing procedures and time frames for handling retaliation complaints under the ACA.

The ACA was enacted in an attempt to help decrease health care costs. Title I of the ACA provides tax credits to families who do not receive health insurance from an employer. The ACA also provides protection for families who are covered through their employer, by reducing what they have to pay for, eliminating dollar limits on essential health benefits, capping out-of-pocket expenses, and requiring preventive care to be fully covered without co-pays or deductibles. Additionally, Title I of the ACA makes it unlawful for insurance companies to deny coverage due to a person's preexisting medical condition.

Section 1558 of Title I also extends protection to employees from retaliation in the course of their employment for "reporting violations of the various reforms found in Title I; and receiving a premium tax credit or a cost sharing reduction for enrolling in a qualified health plan."

OSHA recently published a final rule regarding the protections under Section 1558 preventing employers from retaliation by extending protections to employees who, when purchasing health insurance through the Exchange, receive Marketplace financial assistance and/or employees who raise concerns about potential ACA violations. For purposes of the rule, retaliation refers to many types of actions including but not limited to: termination, reduction of wages or hours, blacklisting, demoting, denying overtime or promotion, disciplining, denying benefits, failing to hire or rehire, intimidating, threatening and reassigning prospects for promotion.

The rule is largely administrative and sets out procedures and time frames for handling such retaliation complaints. Under the new rule, an employee who believes her employer has retaliated against her in violation of Title I of the ACA has 180 days after the alleged retaliation to file a complaint with OSHA. In that complaint, the employee must show that the protected activity was a "contributing factor" to the adverse employment decision.

Upon investigation of the complaint, OSHA will either grant the employee relief or dismiss the complaint. However, if the agency does not issue a final decision within a certain time frame, the employee is permitted to file a complaint in federal court.

INSIGHTS FOR EMPLOYERS

In 2015, over 97,000 Idahoans were enrolled in insurance coverage through the Marketplace. Of those, 84 percent qualified for a Marketplace tax credit.

Employers who do not provide coverage options to their employees or whose employees have chosen to enter into the Marketplace on their own should review their policies relating to employment decisions in order to ensure they are in compliance with the protections afforded under the ACA.

Please contact a Gjording Fouser lawyer at 208.336.9777 if you would like any additional information about this topic or any other employment issues facing your company.