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Staff Matters: Employee Rights and the Whistleblower's Protection Act

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Employee Rights and the Whistleblower's Protection Act



By Jodi Schafer, SPHR, SHRM-SCP

Question: I recently implemented a 401(k) plan for my staff. I used an inexperienced agent and found out later that the plan was missing some

important components required by law. Before I could have it corrected, one of my staff contacted the Department of Labor and filed a complaint. I was extremely angry at her. She essentially ruined it for the entire staff. I was going to fire her but decided not to. Instead, I wrote her a disciplinary action. Well, now she has filed a whistleblower's claim against me. I had never heard of this law. What did I do wrong and how could I have avoided it?

Answer: I'm glad you didn't fire her, because then you really would be in a pickle! Michigan enacted the Whistleblower's Protection Act in 1980 to "provide protection to employees who report a violation or suspected violation of a state, local, or federal law." Essentially, this law protects employees who make claims to a public regulatory agency regarding the violation of a public act or regulation. When you disciplined her for exercising her rights under this law, you threatened her employment status and therefore allegedly violated the act.

The law states: "A person who alleges a violation of this Act may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence." Since there is a short window of time that this individual had to make a claim, I would look at the date you rolled out the 401(k) plan and count how many days later she filed her claim.

This law also has a posting requirement that states: "An employer shall post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this Act." If you purchase your employee notification posters from a third-party vendor, this language is most likely included. You should, however, make sure.

If you want to know what you did wrong, I'll start with using an inexperienced agent who should have made

sure that the 401(k) plan was compliant. But this type of claim can occur with any number of potential violations — some known, and many unknown. As long as the claim addresses a public law, statute, or regulation it could be covered by the Whistleblower's Act. For example, if you make an error on payroll and inadvertently violate wage and hour laws, an employee can go to the Michigan Wage and Hour Division, file a claim, and he or she would be protected under the act, whether you fix the error or not.

This can happen at a local level too. For example, an employee might report a violation of your local recycling policy to the township supervisor. She would be protected because the township offices would be considered the public regulatory agency for that ordinance. Oh, and by the way, it is the reporting that is protected, not the legitimacy of the claim. If the claim is completely bogus, the employee is still protected under the law. But while this law is far reaching, it only has a 90-day time limit for reporting the claim.

As to what can you do about it, start by asking yourself, "What reason did this employee have for dealing with the situation in this manner?" Was she in fear of her job and thought this could buy her some time? Did she try to tell you about her concerns with the 401(k) plan and felt like you didn't listen? What was to be gained by taking this drastic action? If you can find out what the impetus was for the action, you may be able to address it from a coaching perspective. However, tread lightly, as she is still protected under Whistleblower's.

While you cannot control the occasional rogue employee, you can try to make sure the majority of your staff is supportive of the success of your practice. Create an environment where they feel free to come to you with these types of concerns before turning to outside public agencies. ●

Download Jodi Schafer's e-book, [Most-Asked Human Resources Questions](#), free at michigandental.org (MDA Store). Or purchase a hard copy for only \$19 — it's a great resource for you or your office manager!