

# PROTECTION TO "INFINITY AND BEYOND": WHY FORMER EMPLOYEES ARE NOT PROTECTED BY THE ANTI-RETALIATION SAFEGUARD OF THE FALSE CLAIMS ACT

53 Rutgers L. Rec. 219 (2026) | [WestLaw](#) | [LexisNexis](#) | [PDF](#) 0. ABSTRACT

The False Claims Act (FCA) is a significant piece of federal legislation enacted to prevent individuals or companies from engaging in fraudulent activities to fleece government programs. Whistleblowers play a critical role in reporting these fraudulent actions. Unfortunately, whistleblowers often become targets of retaliatory actions either during or after their employment. The FCA's 1986 amendments provided protections to whistleblowers, who are identified as "employees." The Sixth and Tenth Circuits have disagreed on who is considered an "employee." The Sixth Circuit has agreed to extend whistleblower protection to former employees whereas the Tenth Circuit has refused to do so.

Part I of this note introduces the FCA, including the unique qui tam provision and relevant statistics of the Act. Part II explains the history and background of the Act and provides detailed reasonings why the circuit courts disagree as to the scope of the term "employee." Part III provides justifications why the Sixth Circuit's extension of protection to former employees is problematic. This includes expounding upon how the Sixth Circuit mistakenly determined the anti-retaliation provision was ambiguous, overly relied on overtly broader precedent and ignored legislative intent,

and failed to use statutory canons to guide its analysis. Part IV addresses counter arguments to extending protection, including the reasons that it would reduce reporting fraud and how most whistleblower protection provisions in other federal statutes are frequently broadly examined by courts. Finally, Part V attempts to provide a new approach to interpreting the word "employee," including using the economic reality test, which would verify an "employee" as a person who is economically beholden to another.

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