

# New Food Safety Law Protects Whistleblowers

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STEVE KARNOWSKI, Associated Press

MINNEAPOLIS (AP) - Food industry workers who become whistleblowers gained protection against retaliation from their employers with a little-noticed provision in the sweeping food safety law President Barack Obama signed last month.

The Food Safety and Modernization Act is best known for sections that aim to prevent foodborne illnesses, allow the Food and Drug Administration to order recalls and make it easier to trace contaminated food to its source. But the law also protects workers at food companies regulated by the FDA from being fired, demoted or denied promotions or raises if they speak up about what they think are violations.

Protections mean little if the workers covered by them don't know they exist, so the Government Accountability Project, a non-profit whistleblowing organization that supported the new safeguards, was sponsoring a conference Friday in Washington to raise awareness. Lawyers, activists and government officials were expected to attend.

"Whistleblowers are the informational lifeline to warn the public when government-approved food might be a public health hazard," said Tom Devine, the group's legal director. "It occurs frequently because the regulatory system can't hope to catch all the violations through spot checks."

Among those speaking will be Kenneth Kendrick who spoke out in 2009 about unsanitary conditions at a Peanut Corp. of America plant in Texas. His claims drew attention after a Peanut Corp. plant in Georgia was blamed for a 2008-09 salmonella outbreak that killed nine people and sickened hundreds more.

Kendrick, the Texas plant's assistant manager for part of 2006, said he sent state regulators anonymous e-mails about a rat infestation at the plant and bird droppings getting into products, but his complaints were ignored. He was working for a different FDA-regulated company when he spoke publicly about the problems, and he believes that's why he was fired from his new job and why he's had trouble finding work since.

"Me coming forward has pretty much ruined my life, and had this stuff been in place ahead of time, maybe it would not have," the Lubbock, Texas, man said. "I've had a difficult time finding a job that pays more than nine bucks an hour."

The new law protects workers against retaliation for telling their employers or governmental officials about anything they reasonably believe violates the food safety act and for objecting to performing work they reasonably believe is illegal. The Department of Labor and federal courts can reinstate fired employees and award back pay, interest, attorneys' fees and other damages.

The burden of proof favors workers. All workers need to do initially is show their participation in protected activity may have contributed to repercussions. Employers face a heavier burden because they must then show with clear and convincing evidence that the company would have taken the same action even if the worker hadn't been a whistleblower.

One of the law's leading congressional champions was Sen. Tom Harkin, D-Iowa, chairman of the Health, Education, Labor and Pensions Committee.

"Workers on the front lines should never have to hesitate to sound the alarm when they discover practices that could compromise public safety," Harkin said in a written statement. "Unless workers are free to speak out without fear of retaliation, we might never learn about threats to public safety until it's too late."

The law only covers food businesses regulated by the FDA. Workers in the meatpacking and poultry industries, which are regulated by the U.S. Department of Agriculture, remain unprotected. Devine said sponsors told him they wanted to avoid sending the bill through more committees, where it could have attracted opposition, but his group will push for similar protection for workers at USDA-regulated operations.

Lawyers who represent food and agribusiness companies said the law is likely to have a widespread effect because it covers so many workers. They said companies need know they have to make it safe for employees to report problems, and they're advising clients to make sure managers know how to respond appropriately when workers come forward.

While whistleblower laws cover workers in some other areas, the food safety act protects a much wider range of activities than most of the other statutes, said Kathy Noecker, an attorney with the Minneapolis law firm Faegre & Benson. That raises the risk that workers could abuse the law with frivolous claims to shield themselves from legitimate discipline, she said.

While some workers may be "professional complainers," it's a worthwhile trade-off if it means exposing practices that put people at risk, said Mary Pivec, an attorney with the Washington law firm Keller and Heckman.

Ideally, the protections will help workers feel safe in reporting problems to managers and encourage companies respond quickly before they become public health issues, said Allen Roberts, chairman of the whistleblowing and compliance group at the New York law firm EpsteinBeckerGreen.

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Online:

Government Accountability Project: <http://www.whistleblower.org> [1]

Food Integrity Campaign: <http://foodwhistleblower.org> [2]

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### Links:

[1] <http://www.whistleblower.org>

[2] <http://foodwhistleblower.org>