

PUBLICATION

Whistling in the Dark: OSHA Releases Final Regulations on CPSIA Employee Whistleblower Protections

August 01, 2012

On July 10, 2012, the Occupational Safety and Health Administration (OSHA) issued its final regulations governing employee whistleblower protections in the Consumer Products Safety Improvements Act of 2008 (CPSIA). The final regulations largely track the interim final rule published on August 31, 2010, with a few important revisions.

First, OSHA revised the section concerning OSHA's investigation into CPSIA whistleblower complaints. This regulation now sets forth a more detailed procedure governing access to information during the course of a CPSIA investigation.

For example, the regulations now grant both the respondent and the complainant an opportunity to submit a written response to the complaint. Likewise, the regulations give the complainant an opportunity to respond to the respondent's submissions to OSHA. The regulations also continue to provide that, if the Assistant Secretary of Labor has reasonable cause to believe that the respondent violated the CPSIA and that preliminary reinstatement is warranted, the Assistant Secretary of Labor must provide the respondent notice of the relevant evidence supporting the complainant's allegations and the opportunity to submit a written response, meet with investigators, present witness statements, and present legal and factual arguments prior to the issuance of a preliminary order. This was a hotly disputed provision and its continued inclusion is an important victory for employers.

Another victory for employers exists in the final regulations, which now grants the Administrative Law Judge (ALJ) broad authority to limit discovery by, for example, limiting the number of interrogatories, requests for production of documents and/or depositions in order to expedite the hearing. The final regulations also clarify that formal rules of evidence will not apply to proceedings before the ALJ. They also permit complainants to withdraw their complaints orally, and eliminate complainants' obligation to provide OSHA with 15 days' notice before filing a complaint in district court.

As of early May 2012, the Department of Labor had already received 17 CPSIA whistleblower complaints. We expect to see those numbers rise. To better familiarize yourself with the final regulations and/or establish more robust preventative measures to ward off potential whistleblowing claims, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.