

PUBLICATION

Antitrust "Whistleblower" Protection Legislation Reintroduced in the Senate

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On April 4, Senator Chuck Grassley (R-IA) introduced S. 807, the "Criminal Antitrust Anti-Retaliation Act of 2017." The legislation, co-sponsored by Senator Patrick Leahy (D-VT), would prohibit employers from retaliating against an employee who provides information to the DOJ Antitrust Division regarding conduct that violates the federal antitrust laws. Senators Grassley and Leahy introduced similar legislation in both the 114th and 113th Congress as well, and while the legislation was unanimously passed by the Senate each time, on both occasions the House never took up the bill.

In introducing the bill, Senator Grassley stated that "This legislation encourages private sector employees to disclose criminal violations by protecting them from retaliation in the workplace for coming forward with information." Senator Grassley also noted that anti-retaliation protections for those that report antitrust violations were specifically recommended in a 2011 Government Accountability Office Report (GAO-11-619, entitled "Criminal Cartel Enforcement: Stakeholder Views on Impact of 2004 Antitrust Reform are Mixed, But Support Whistleblower Protection").

Senator Leahy echoed his strong support for the legislation, stating that "Whistleblowers play an essential role in alerting the public, Congress, and law enforcement agencies to wrongdoing that directly harms consumers. These individuals take significant risks in making disclosures and deserve protections. I am proud to partner again with Senator Grassley [on this legislation], and I hope this year Congress will finally enact our bipartisan bill."

Specifically, S. 807 would make it unlawful for any employer to "discharge, demote, suspend, threaten, harass, or in any manner discriminate against" an employee for providing information relating to "any violation of, or any act or omission the [employee] reasonably believes to be a violation of the antitrust laws." An aggrieved employee would have the ability to file a complaint against the employer, either with the assistance of the Secretary of Labor or on the employee's own, seeking compensatory damages, including back pay and reasonable attorneys' fees.

S. 807 has been referred to the Senate Judiciary Committee for further action. Given the unanimous support the legislation has received in the past, it is likely to once again pass in the Senate. Whether the House will take up the legislation this Congress remains, at least for now, uncertain. However, given the possibility that this legislation could be enacted into law, every employer, big or small, will want to assess whether their antitrust training programs are sufficient to ensure that their employees understand the antitrust laws and their obligations to follow the law.