

PUBLICATION

Senate Passes Antitrust Whistleblower Anti-Retaliation Legislation

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On November 15, the Senate passed the "Criminal Antitrust Anti-Retaliation Act of 2017," S. 807. legislation by unanimous consent. The legislation, introduced in April of 2017 by co-sponsors Senator Chuck Grassley (R-IA) and Patrick Leahy (D-VT), makes it unlawful for an employer to "discharge, demote, suspend, threaten, harass, or in any other matter discriminate against" an employee who reports any potential criminal antitrust activity by his or her employer to the federal government. The legislation also provides that an aggrieved employee may file a complaint with the Secretary of Labor or, if the Secretary does not take action, bring an action against his or her employer in federal court for compensatory damages (including reinstatement and back pay, with interest) and attorneys' fees.

When introduced back in April, Senator Grassley explained that the legislation "encourages private sector employees to disclose criminal violations by protecting them from retaliation in the workplace" and that these protections were specifically recommended in a 2011 Government Accounting Office Report (GAO-11-619) entitled "Criminal Cartel Enforcement: Stakeholder Views on Impact of 2004 Antitrust Reform are Mixed, But Support Whistleblower Protections." At the same time, Senator Leahy stated that "Whistleblowers play an essential role in alerting the public, Congress, and law enforcement agencies to wrongdoing that directly harms consumers."

Notably, similar legislation has been passed in the Senate in prior years, but was never taken up by the House. Whether the legislation will gain further traction in the House this Congress is currently unclear but, unlike many other bills, this Congress has bipartisan support. The bill is currently being "held at the desk" in the House, which means that it will not be referred to any House Committee and can be acted upon at any time. Stay tuned.