



## One Minute Memo®

# OSHA Steps Up Enforcement of Sarbanes-Oxley Whistleblower Claims

In March 2010, the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) issued awards in two Sarbanes-Oxley Act (SOX) whistleblower cases totaling over \$1.6 million and including reinstatement.

In the first case, on or about March 3, 2010, OSHA ordered e-Smart Technologies to pay over \$600,000 and reinstate the employee. The employee claimed he was discharged after raising concerns about alleged misinformation contained in a draft public filing. In the second case, on or about March 18, 2010, OSHA ordered Tennessee Commerce Bank to pay over \$1,000,000 and reinstate a chief financial officer. The employee claimed he was placed on administrative leave and then discharged after raising concerns about internal controls, employee accounts, and insider trading.

These employers may appeal OSHA's orders by filing objections and/or requesting a hearing before the DOL's Office of Administrative Law Judges within 30 days of the order.

This trend of rigorous government enforcement compels employers covered by SOX to take steps to minimize the risk of claims alleging retaliation for protected whistleblowing. In particular, covered employers should promulgate appropriate ethics and anti-retaliation policies, train supervisors to comply with those policies, and implement hotlines and other methods by which complaints can be fielded and appropriately resolved without actual or perceived retaliation.

*If you have any questions about SOX whistleblower claims, please contact the Seyfarth Shaw attorney with whom you work, or any Labor and Employment attorney on our website ([www.seyfarth.com/laborandemployment](http://www.seyfarth.com/laborandemployment)).*