

ALI-ABA Teleseminar and Audio Webcast  
**Employment Law Update: Spring 2009**

April 29, 2009

**New Whistleblower Protections for Government Contractors and Employees of State  
and Local Governments**

By

Robert B. Fitzpatrick  
Robert B. Fitzpatrick, PLLC  
Washington, District of Columbia



# **New Whistleblower Protections for Government Contractors and Employees of State and Local Governments**

by

Robert B. Fitzpatrick, Esq.  
Robert B. Fitzpatrick, PLLC  
Universal Building South  
1825 Connecticut Avenue, N.W.  
Suite 640  
Washington, D.C. 20009-5728

(202) 588-5300 (telephone)

(202) 588-5023 (fax)

fitzpatrick.law@verizon.net (e-mail)

<http://www.robertbfitzpatrick.com> (website)

## **Introduction**

- **The American Recovery and Reinvestment Act of 2009 (ARRA), P.L. 111-5, 123 Stat 115, recently signed into law by President Obama, provides for nearly \$500 billion in spending to stimulate the economy.**
- **However, those who receive those funds should be aware that §1553 of the ARRA contains new protections for public and private employees who blow the whistle on gross mismanagement or waste of covered funds, danger to public health or safety related to covered funds, abuses of authority relating to the use of the funds, or violation of laws or regulations relating to the grant of the funds.**

## **Substantive Provisions**

- **Broad Definition of Employer**
- **Broad Scope of Subject Matter of Disclosures**
- **Broad Class of Recipients of Protected Disclosures**
- **Broad Scope of Protection**
- **Broad Scope of Prohibited Reprisals**

## **Broad Definition of Employer §1553(g)(4)-(5)**

**New whistleblower protections affect employers receiving covered funds as:**

- **A contractor, subcontractor, grantee or recipient;**
- **A professional membership organization, certification or other professional body, agent or licensee of the federal government, or a person acting in interest of an employer receiving covered funds; or**
- **A state or local government and any contractor or subcontractor thereof receiving covered funds.**

**“Covered Funds”**  
**§1553(g)(2)**

**Any contract, grant or other payment received by any non-Federal employer if:**

- **Federal government provides any portion of money or property that is provided, requested or demanded; and**
- **At least some of the funds are appropriated or otherwise made available by the ARRA.**

**Broad Scope of Subject Matter of Disclosures §1553(a)(1)-(5)**

**Disclosures are protected if they contain information that employee reasonably believes evidences:**

- **Gross mismanagement of an agency contract or grant relating to covered funds;**
- **Gross waste of covered funds;**
- **Substantial and specific danger to public health or safety related to implementation or use of covered funds;**
- **Abuse of authority related to implementation or use of covered funds;**
- **Violation of law, rule or regulation related to an agency contract (including the competition for a contract) or grant, awarded or issued relating to covered funds.**