

False Claims Act

By Daniel W. Park

Federal, state, and local governments comprise an enormous percentage of the U.S. economy. Sooner or later most companies will do business with one of these governmental entities. When that happens, it is important to be aware of the False Claims Act. Here are the top ten things businesses need to know about the False Claims Act.

1. What is it? The False Claims Act (FCA) was first signed into law by Abraham Lincoln to combat fraud against the federal government during the Civil War. The FCA imposes criminal and civil penalties for claims for payment that are false and that are knowingly presented. Claims can be false for many reasons. If a bill or invoice to the government is not 100 percent correct, there is a potential for an FCA lawsuit.

2. Federal, state, and local governments have it. The federal government has an FCA and so do many states and local governments. Therefore, anyone who does business with any governmental entity needs to be aware of the FCA.

3. Recklessness and deliberate ignorance are enough. The FCA is an anti-fraud statute, but a business cannot ignore it simply because it is not trying to cheat the government.

Under the FCA, a business can be held liable for a false claim even if it did not actually know the claim was false. Because it is often difficult to differentiate between innocent mistakes and "recklessness," an FCA allegation is easy to make and difficult to disprove.

4. Almost anyone can sue. The FCA authorizes whistle-blowers to file lawsuits for alleged violations of the FCA. As a reward, the whistle-blowers get a percentage of anything a business pays in settlement or as the result of a judgment. Aside from a few specific limitations, virtually anyone can accuse a business of violating the FCA, including disgruntled employees, former employees, and business competitors. Because of the large reward and the large number of potential plaintiffs, the risk of an FCA lawsuit is very high.

5. You can be double-teamed. If a whistleblower files an FCA lawsuit, the government entity has the option of also joining the lawsuit. If it does join, then a business faces two plaintiffs instead of

one. This complicates the lawsuit and increases the cost of defense.

6. The FCA has teeth. The FCA's penalties are draconian. A business found liable must pay three times the government's actual damages. There also is a penalty of up to \$10,000 for each false claim submitted. Between treble damages and penalties, the potential cost of losing an FCA case can be enormous.

7. High stakes, serious litigation. The FCA has become a profit center for government entities. In the last 15 years, the Department of Justice has recovered over \$5.2 billion in settlements and judgments. Because the potential rewards under the FCA are so great, both governments and whistle-blowers are ready, willing, and able to vigorously litigate FCA cases.

8. Take precautions. In some circumstances, even a violation of a highly technical and complex regulation can be enough to be sued under the FCA. Regular internal reviews for compliance with all applicable rules are essential to minimize the risk of being sued. Experienced legal counsel can help a business develop appropriate precautions.

9. Ask questions. If there is any doubt about the meaning of a rule or regulation, asking questions helps. Questions show that a business is operating in good faith and trying to do the right thing. A practice of asking questions greatly reduces the risk of being accused of trying to cheat the government.

10. Get help. The FCA is a complicated statute. Because the penalties for a misstep are so great, it pays to consult attorneys as a routine practice for monitoring general compliance with government regulations. At the first sign of trouble, it is imperative to seek out experienced legal counsel.

When it comes to the FCA, a stitch in time saves much more than nine. It can save your entire business. By recognizing the FCA as a potential problem area, businesses can react more quickly and effectively if trouble ever comes knocking. □

Editor's Note: Daniel Park is a litigator with the Government Contracts & Regulated Industries Practice Group at Sheppard, Mullin, Richter & Hampton LLP, Los Angeles, CA, and specializes in commercial disputes, public and private contracts, unfair competition, and misappropriation of intellectual property. He has extensive experience with federal and state False Claims Acts, the Uniform Trade Secrets Act, and California's Unfair Competition Law.



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