



*seq.*, and that she was terminated from her employment with the District in violation of her Fifth Amendment due process rights. *See id.*

The District filed a motion to dismiss plaintiff's claims. *See* Doc. 31, The District's Motion to Dismiss. The Court granted-in-part and denied-in-part the District's motion to dismiss. In addition, the Court asked for additional briefing on the question of the appropriate statute of limitations for plaintiff's FCA retaliation claim. *See* Doc. 62, Memorandum Opinion of May 13, 2010.

## **FACTS**

The plaintiff alleges that she was discharged from her position with the D.C. Chief Financial Office ("CFO") on July 25, 2000 in retaliation for reporting numerous deficiencies in contract procurement and violations in the process for approval and payment of contractors. *See* Doc. 18, Motion for Leave to Amend Complaint, Exhibit A, Amended Complaint, paragraphs 14 and 26. In particular, the plaintiff specifically alleges that while she was Acting Chief Financial Officer at the Office of the Chief Technology Officer ("OCTO"), (1) the District was under pressure from the U.S. Department of Treasury and the U.S. Government Accounting Office because financial statements could not be produced from more than \$70 million in federal funding given to that agency. *See id.* at paragraph 13. Plaintiff further alleges that, (2) she forwarded a memorandum to the Chief Technology Officer recommending disallowance of more than \$13 million against a claim submitted by IBM which was made without appropriate budget authority; and (3) that she directed letters to the Office of the Chief Financial Officer's General Counsel requesting clarification of authority of consultants and contractor employees of the District to obligate the city to pay for work contracted in

violation of procedure. *See id.* at paragraphs 32 and 47. As a result of the purportedly protected disclosures, the plaintiff claims that she was discharged from her position with the CFO on July 25, 2000. *See id.* at paragraphs 14 and 26.

## **ARGUMENT**

### **Plaintiff's Federal False Claims Act Retaliation Claim Is Barred By The One-Year Statute of Limitations Applicable To D.C. Whistleblower Protection Act Claims.**

The plaintiff brings her Federal False Claims Act ("FCA") retaliation claim under 31 U.S.C. § 3730(h). The FCA provides a private cause of action to an individual who has been retaliated against by her employer for assisting in a false claims act investigation or proceeding. 31 U.S.C. § 3730(h). The express, six-year statute of limitations for civil actions brought pursuant to 31 U.S.C. § 3730 does not govern § 3730(h) retaliation actions. *Graham County Soil & Water Conservation Dist. v. United States ex. Rel. Wilson*, 545 U.S. 409, 417 (2005). Rather, the most closely analogous state limitations period governs § 3730(h) retaliation actions. *See id.* at 418. In determining the most closely analogous state limitations period, the Court must ask (1) which state law cause of action is most closely analogous to § 3730(h) and (2) whether the limitations period applicable to that cause of action comports with the policies underlying the federal law. *North Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995).

Here, the most closely analogous state law cause of action is one brought under the District of Columbia Whistleblower Protection Act ("WPA"). At the time plaintiff's cause of action accrued, the WPA limitations period was one year.<sup>1</sup> *See* D.C. Official Code § 1-615.54(a) (a "civil action shall be filed within one year after a violation occurs or within one year after the employee first becomes aware of the violation.") Application

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<sup>1</sup> Since the time of the plaintiff's allegations, and the plaintiff filing this action, the WPA has been revised to provide a longer, three year statute of limitations.

of the one year limitations period contained within the original WPA to the instant matter would be consistent with the policies underlying the FCA's retaliation provision.

Therefore, the Court should apply the WPA's one year statute of limitations to the instant matter.

**A. The WPA Is The Most Closely Analogous State Law Cause of Action To An FCA Retaliation Claim.**

The FCA confers a private cause of action on an individual who has been retaliated against by her employer for assisting in an FCA investigation or proceeding.

31 U.S.C. § 3730(h). Specifically, section 3730(h) provides that:

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee...in furtherance of an action under this section, including investigation of, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole.

31 U.S.C. § 3730(h).

Similarly, the WPA provides that a District government supervisor shall not take a prohibited personnel action against an employee because of an employee's protected disclosure or because of an employee's refusal to comply with an illegal order.

D.C. Code § 1-615.53 (2001). The Act defines a "protected disclosure" as follows:

any disclosure of information, not specifically prohibited by statute, by an employee to a supervisor or public body that the employee reasonably believes evidences:

- (A) Gross mismanagement;
- (B) Gross misuse or waste of public resources or funds;
- (C) Abuse of authority in connection with the administration of a public program or the execution of a public contract;
- (D) A violation of a federal, state or local law, rule or regulation . . . which is not merely of a technical or minimal nature;
- (E) A substantial and specific danger to public health and safety.

D.C. Code § 1-615.52 (a)(6).

Under the WPA, a prohibited personnel action is broadly defined as any retaliatory action taken against an employee “because that employee makes a protected disclosure or refuses to comply with an illegal order.” D.C. Code § 1-615.52 (a)(5).

Here, plaintiff’s allegations fall squarely under subsections (B) and (C) of the WPA. She specifically alleges that she was discharged for reporting deficiencies in public contract procurement and violations in the approval and payment of contractors. *See* Doc. 18, Motion for Leave to Amend Complaint, Exhibit A, Amended Complaint, paragraphs 14 and 26. The plaintiff’s claim would fall under the WPA and the WPA is perfectly analogous to the FCA’s prohibition on retaliation for assistance in FCA investigations. Therefore, the limitations period applicable to plaintiff’s claim is the limitation period applicable to WPA claims. *See Graham County Soil & Water Conservation Dist.*, 545 U.S. at 418 (2005).

The plaintiff filed this action on September 11, 2002. *See* Doc. 1, Complaint. She was discharged on July 25, 2000, more than one year earlier. Hence, she could not have brought these claims under the WPA. During the relevant time period, the WPA provided a one year statute of limitations. *See* D.C. Code § 1-615.54(a)(“A civil action shall be filed within one year after a violation occurs or within one year after the employee first becomes aware of the violation.”)

The plaintiff may not circumvent the WPA’s statute of limitations by bringing her claim under the FCA. The plaintiff failed to file her Complaint within one year of the retaliation alleged. Her FCA claim is barred by the WPA’s one year statute of limitations.

**B. The WPA’s One Year Limitations Period Supports The Purpose of The FCA.**

Applying the WPA’s one year limitations period comports with the policies

underlying the FCA. The most closely analogous state law limitations period controls unless that limitations period would “frustrate or interfere with the implementation of national policies” or would “be at odds with the purpose or operation of federal substantive law.” *North Star Steel Co. v. Thomas*, 515 U.S. at 34 (1995). Here, the WPA is in no way at odds with the purpose of the FCA.

The WPA and section 3730(h) of the FCA serve the same purpose. The legislative history of section 3730(h) establishes a two-fold policy: (1) protecting whistleblowers against discrimination by their employers and (2) promoting anti-fraud enforcement efforts. *United States ex. rel. Smith v. Yale University*, 415 F.Supp.2d 58, 102 (D. Conn. 2006)(quoting *United States ex. rel. Ackley v. International Business Machines Corp.*, 110 F.Supp.2d 395, 405 (D. Md. 2000)). Here, as demonstrated above, the WPA is perfectly analogous to the FCA’s anti-retaliation provision and also, obviously, serves to protect whistleblowers. Moreover, the WPA’s one year period of limitations would in no way frustrate or interfere with the purpose of the FCA. Indeed, many Courts have applied a one year or shorter period of limitations to claims brought under section 3730(h) of the FCA. *See United States ex. rel. Hinden v. UNC/Lear Services, Inc.*, 362 F.Supp.2d 1203, 1209 (D. Haw. 2005)(applying Hawaii’s 90 day Whistleblowers’ Act statute of limitations to FCA 3730(h) cause of action); *see also United States ex. rel. Lujan v. Hughes Aircraft Co.*, 162 F.3d 1027, 1035 (9<sup>th</sup> Cir. 1998)(applying California’s one-year statute of limitations applicable to wrongful termination to FCA 3730(h) cause of action). In sum, the WPA and section 3730(h) of the FCA both serve to protect whistleblowers and application of a one year limitations period to claims brought under 3730(h) would in no way frustrate or be at odds with that purpose.

**CONCLUSION**

For the foregoing reasons, the District respectfully requests that the Court grant its motion and dismiss plaintiff's Federal False Claims Act retaliation claim with prejudice.

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Respectfully submitted,

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