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Avoiding timekeeping fraud: Federal contract compliance

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***Part one of this two-part series exploring timekeeping in the private and public sectors was published in the August 2019 issue of* CEP Magazine.**

The issue of time card fraud in the private sector was addressed in part one of this two-part series, with an emphasis on avoiding fraud. Fraud injures a business's reputation and its fiscal health. Fraud also may violate federal and state laws. The emphasis in this article is on the public sector, which is made up of private businesses working for the government. Different statutes make government contractors criminally liable for fraud, in addition to the fiscal harm befalling defrauded businesses.

History of government fraud

The False Claims Act,[1] enacted during the American Civil War, came about to combat the defrauding of government procurement programs. The statute also includes a qui tam provision that allows individuals who are not affiliated with the government, called "relators" under the law, to file actions on behalf of the government. This is informally called "whistleblowing," especially when the relator is employed by the organization accused in the fraud. The government often shares an incentive (up to 25% of the recovery) with whistleblowers as a way to stop fraudulent actions through alerting other potential whistleblowers to disclose wrongdoing. (Floyd Landis, a professional bicyclist and former Tour de France winner, blew the whistle on Lance Armstrong for cheating. The United States Postal Service had financially backed Armstrong with more than $40 million in funding. After Armstrong was stripped of his medals, including eight Tour de France victories, the government subsequently recovered $5 million, and Landis was paid $1.65 million.) In 2017, the government recovered $3.4 billion in monetary penalties, with $3 billion of that sum attributable to qui tam suits. Healthcare constituted 67% of the recovered amounts, with housing and mortgage fraud at 15% and military contracting at 6%.[2]

Whistleblowers

Whistleblowers historically have led to the discovery of fraud, sometimes on a massive scale. Pharmaceutical companies and financial institutions comprise the top five recoveries by the government under the False Claims Act:

- Abbott Labs for $1.5 billion (2012 case for unlawful drug marketing)
- Tenet Healthcare Corporation for $900 million (2006 case for overbilling Medicare and Medicaid)
- Bank of America for $28 billion (knowingly offering Federal Housing Administration-backed mortgages to unqualified borrowers)

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- Pfizer Corporation for $2.3 billion (2009 case for off-label marketing of four drugs)
- GlaxoSmithKline for $3 billion (2012 case for off-label marketing of anti-depressants and diabetes drugs)[3]

There are statutes that protect whistleblowers from retaliation, including being shunned, ridiculed, demoted, failure to receive fair pay increases, or other acts that have a chilling effect on whistleblower activity and supporting the disclosure of observed wrongdoing. In addition to these laws, many companies have adopted policies that demonstrate they have zero tolerance for retaliation when individuals are willing to come forward and report illicit activity.

Whistleblower activity dates back hundreds of years and remains a contributing factor in many fraud cases that are uncovered today. Indeed, qui tam actions were lawsuits in the name of the king in medieval England and have been adapted in the United States as suits in the name of the sovereign state (the federal government). Whistleblowers contribute by drawing attention to illegal acts, thereby placing a spotlight on the wrongful acts of others. Not all whistleblowers succeed in their suits, however, even if deemed meritorious. There are statutory bars to whistleblower suits, including the public disclosure bar (i.e., knowledge of the wrongdoing is already in the public domain) and first-to-file bar (i.e., someone with the same knowledge has already filed a qui tam suit). The public disclosure bar requires that a qui tam action be dismissed if the allegations or facts in the complaint were disclosed publicly in a prior case, a government report, or the news media.

Hanford's CH2M Hill time card fraud case

A number of timekeeping card fraud cases have been identified in recent years. One prominent case involved CH2M Hill, a former contractor for the Department of Energy at the Hanford Nuclear Reservation in eastern Washington State (discussed briefly in part one of this article). The company was implicated with employee time card fraud and paid significant fines under the False Claims Act.

In 2004, the Department of Energy advised CH2M Hill to install time-recording proxy monitors for employees to clock both in and out of the tank farm area of the reservation. According to some of CH2M Hill's upper management, the company didn't have the funding for these monitors, and the labor union fought the decision to install monitors. Irrespective of available funding/budget, and without monitors, time card fraud flourished with workers recording overtime in eight-hour increments but working only a fraction of that time on site. A whistleblower came forward with information stating that time card fraud was rampant. After a long investigation, more than ten managers and supervisors with CH2M Hill admitted through plea agreements to time card fraud. Some workers were indicted criminally with up to 34 counts, including submission of false claims, major fraud against the United States, document alteration, and more. Annette Cary, a reporter for *The Tri-City Herald*, chronicled the fraud story over several years.[4] She ultimately reported in June 2015 that:

> CH2M Hill agreed earlier this month to pay $18.5 million to the federal government to settle civil and criminal allegations of defrauding taxpayers through widespread time card fraud at Hanford. The rationale for paying workers originally was that overtime for radiological control technicians was voluntary. To get the technicians to agree to evening and night overtime work, CH2M Hill offered shifts in eight-hour blocks, even though the work often could be done in less time, according to court documents. However, workers would claim a full eight hours of overtime worked on their time cards. Time card fraud also was committed on regular shifts, according to court documents. A Voluntary Protection Program report warned upper management and direct supervisors

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> that a steady stream of workers began leaving work at 2:30 p.m. on shifts that should have lasted until 4:30 p.m.

CH2M Hill failed to control the time card charging issues and paid a penalty exceeding $18.0 million and, by extension, injury to its reputation.

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