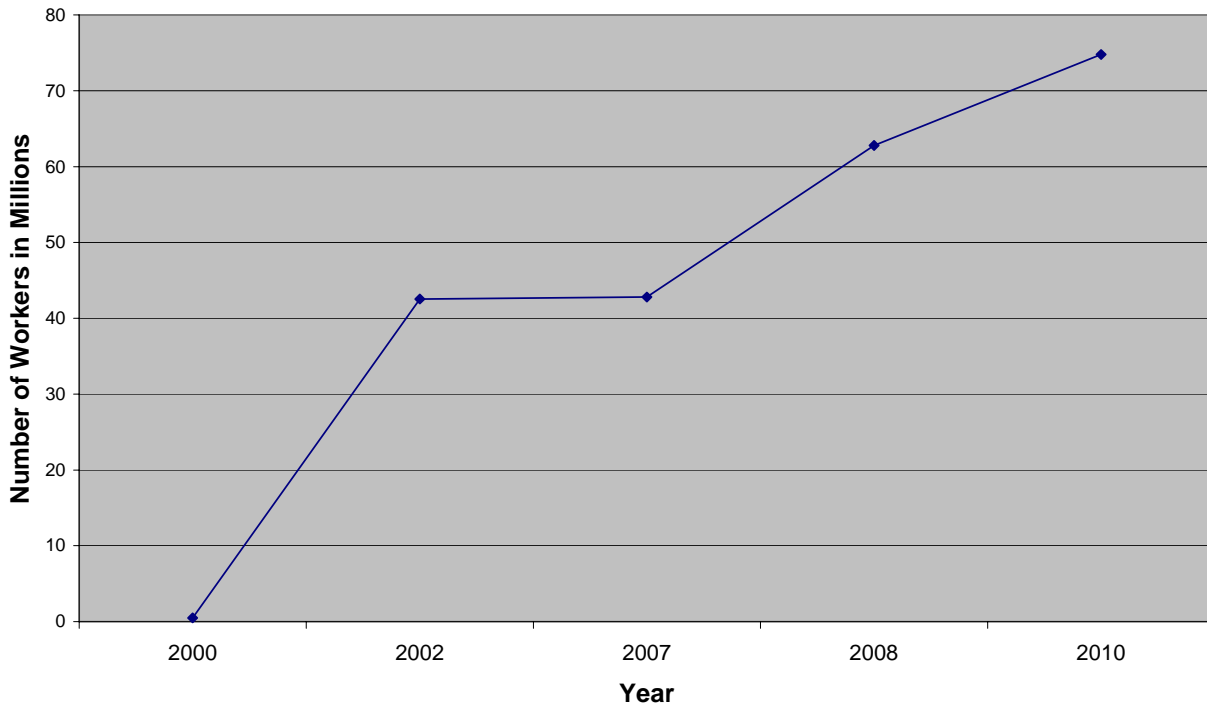


Number of Additional Workers Covered by OSHA-Administered Whistleblower Protection Provisions Since 2000



Number of Workers Covered by OSHA-Administered Whistleblower Provisions (Excluding the whistleblower provision in the Occupational Safety & Health Act of 1970)

Year	Act	Number of Workers Added	Total Number of Workers Covered
2010	Patient Protection and Affordable Care Act	12,000,000	114,786,610
2008	Consumer Protection Safety Improvement Act	20,000,000	102,786,610
2007	National Transit Systems Security Act	251,000	88,786,610
2002	Sarbanes-Oxley Act	42,000,000	88,535,610
2002	Pipeline Safety Improvement Act	40,000	46,535,610
2000	Wendell Ford Aviation Investment and Reform Act for the 21 st Century	495,610	46,495,610
Pre-2000	11 Relevant Statutes	46,000,000	46,000,000

Employees Covered by OSHA-Administered Whistleblower Protection Programs

May 2010

I. Estimates of Employees Covered under 18 Statutes Administered by OSHA's Whistleblower Protection Program

1) The Patient Protection and Affordable Care Act of 2010

a) Language

i) Employer--No employer shall . . . in any manner discriminate against any employee . . . because the employee . . . has—

ii) Protected Activity –

- provided . . . to the employer [or] the Federal Government . . . information relating to any violation of . . . any provision of this title;
- testified [or assisted] . . . in a proceeding concerning such violation; or
- .objected to [any] assigned task that the employee . . . believed to be in violation of any provision of this **title** . . .

b) Covered Employees: 12,000,000

c) Source: CDC/NIOSH website (May 7, 2010)

<http://www.cdc.gov/niosh/topics/healthcare/>

2) The Consumer Product Safety Improvement Act of 2008 (CPSIA)

a) Language

i) Employers: Manufacturers, Private Labelers, Distributors, or Retailers, of Consumer Products; but not including food, drugs, tobacco, boats, aircraft, pesticides, or motor vehicles.

ii) Protected Activities:

- Provide information regarding violations of this act
- Testify or assist in a proceeding concerning such violation
- Refuse to participate in such violation

b) Covered Employees: 20,000,000

c) Source: "Running the Gauntlet: The Campaign for Credible Corporate Whistleblower Rights," Government Accountability Project, p.4. (September 2008)

3) The National Transit Systems Security Act of 2007 (NTSSA)

a) Language

i) Employers: Public transportation agency or contractor thereof.

ii) Protected Activity:

- assist in any investigation regarding any . . . violation of any Federal law . . . relating to public transportation safety or security, or gross fraud, waste, or abuse of Federal . . . funds intended to be used for public transportation safety or security . . .
- to refuse to violate or assist in the violation of any Federal law . . . relating to public transportation safety or security;
- cause to be brought a proceeding related to the enforcement of this part . . . or to testify in that proceeding;
- to cooperate with a safety or security investigation . . .
- to furnish information to . . . any . . . regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with public transportation; or
- reporting . . . a hazardous . . . condition;
- [good faith] refusal to work when confronted by a . . . condition related to the performance of the employee's duties
- [good faith] refusal to authorize the use of any safety-related equipment . . . when the employee believes that the equipment . . . are in a hazardous . . . condition . . .

b) Covered Employees: 252,850

c) Source: DOL Bureau of Labor Statistics Occupational Employment and Wages, May 2008 NAICS 485000 – Transit and Ground Passenger Transportation
http://www.bls.gov/oes/2008/may/naics3_485000.htm

4) The Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes Oxley Act (SOX)

a) Language

i) Employers –Publicly Traded Companies

ii) Protected Activities –

- (1) . . . assist in an investigation regarding any . . . violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by--
 - (A) a Federal regulatory or law enforcement agency;
 - (B) any Member of Congress or any committee of Congress; or
 - (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or
- (2) to file . . . or otherwise assist in a proceeding . . . relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

b) Covered Employees: 42,000,000

c) Source: "Running the Gauntlet: The Campaign for Credible Corporate Whistleblower Rights," Government Accountability Project, p.3.

(September 2008)

5) The Pipeline Safety Improvement Act of 2002 (PSIA)

a) Language

- i) Employers:** Owner or operator of a pipeline facility, or a subcontractor thereof.
- ii) Protected Activity:** (A) provided . . . to the employer or the Federal Government information relating to any . . . violation of . . . any Federal law relating to pipeline safety;
(B) refused to engage in any practice made unlawful by [any] Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;
(C) provided . . . testimony . . . regarding any . . . any . . . Federal law relating to pipeline safety;
(D) commenced . . . a proceeding under [any] Federal law relating to pipeline safety . . . or
(F) assisted . . . [in] carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

b) Covered Employees: 40,000

c) Source: personal conversation, Erica Rosenberg, PEER with David Barnett, Pipeworkers Local 798, May 7, 2010

6) The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) 2000

a) Language –

i) Employers –Air Carriers

ii) Protected Activity –

- “provided . . . to the employer or the Federal Government information relating to any violation . . . of any . . . Federal law relating to air carrier safety . . .
- filed . . . a proceeding relating to any violation of [such law] . . .
- testified [or assisted] . . . in such proceeding”

b) Covered Employees: 495,610

c) Source: DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimate NAICS 481000 – Air Transportation http://www.bls.gov/oes/2008/may/naics3_481000.htm

7) The Asbestos Hazard Emergency Response Act of 1986 (AHERA)

a) Language –“No State or local educational agency [defined elsewhere as an elementary or secondary school] may discriminate against a person . . . because the person provided information relating to a . . . violation of this title . . . ”

b) Covered Employees: 8,527,840

c) Source: DOL Bureau of Labor Statistics, May 2008 National Industry-Specific Occupational Employment and Wage Estimates NAICS 611100 - Elementary and Secondary Schools. http://www.bls.gov/oes/2008/may/naics4_611100.htm

8) The Surface Transportation Assistance Act of 1982 (STAA)

a) Language:

- i) Protected activity: filing a complaint or starting a proceeding related to a violation of a commercial motor vehicle safety regulation, or has or will testify in such; refusing to operate a vehicle because the operation violates a regulation related to vehicle safety; accurately reporting hours
- ii) 'employee' means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who -
 - directly affects commercial motor vehicle safety or security in the course of employment by a commercial motor carrier; and
 - is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

b) Covered Employees: 3,231,000

c) Source: DOL Bureau of Labor Statistics, Occupational Employment and Wages, May 2008 –

i) 53-3033 Truck Drivers, Light or Delivery Services;

<http://www.bls.gov/oes/2008/may/oes533033.htm>

ii) 53-3032 Truck Drivers, Heavy and Tractor-Trailer

<http://www.bls.gov/oes/2008/may/oes533032.htm>;

iii) 49-3023 Automotive Service Technicians and Mechanics.

<http://www.bls.gov/oes/2008/may/oes493023.htm>

9) The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)

a) Language:

i) Scope of employers:

- [the current owner and operator of ;
- any person who at the time of disposal of any hazardous substance owned or operated ;
- any person who arranged for disposal or treatment of hazardous substances at ; transport for disposal or treatment of hazardous substances to
- any person who accepts . . . any hazardous substances for transport to
- any facility, incineration vessel, or site at which such hazardous substances were disposed of, from which there is a release or a threatened release which causes the incurrence of response costs]

ii) Protected Activity: provid[ing] information to [the] Government, fil[ing] . . . any proceeding under this Act.

b) Sector totals

i) Sector 11 – Agriculture, Forestry, Fishing and Hunting388,590

ii) Sector 21 – Mining685,650

iii) Sector 22 – Utilities57,010

iv) Sector 23 – Construction7,456,300

v) Sectors 31, 32, & 33 – Manufacturing13,655,340

vi) Sectors 48 & 49 – Transportation and Warehousing.....2,938,260

c) Total Covered Employees.....25,681,150

- d) Source: DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimates.
<http://www.bls.gov/oes/2008/may/oessrci.htm#21>

10) The Clean Air Act of 1977 (CAA)

- a) Language
 - i) Scope of Employers – “any stationary facility or source of air pollutants which directly emits . . . one hundred tons per year or more of any air pollutant”
 - ii) Protected Activity – “commenc[ing] . . . a proceeding under this act”
- b) Covered Employees: 9,094,580
- c) Source: DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimate
<http://www.bls.gov/oes/2008/may/oessrci.htm#21>

11) The International Safe Container Act of 1977 (ISCA)

- a) Language: “No person shall . . . in any manner discriminate against an employee because the employee has reported the existence of an unsafe container . . .”
- b) Covered Employees: 12,330
- c) Source: DOL Bureau of Labor Statistics, May 2008 National Industry-Specific Occupational Employment and Wage Estimates 53-7121 Tank Car, Truck, and Ship Loaders. <http://www.bls.gov/oes/2008/may/oes537121.htm>

12) The Toxic Substances Control Act of 1976 (TSCA)

- a) Language
 - i) Scope of Employers – manufacturers, processors, and distributors of chemicals that present “an unreasonable risk of injury to health or the environment”
 - ii) Protected Activity – “No person shall . . . discriminate against . . . any employee . . . [because he] . . . has filed . . . any proceeding under this Act.”
- b) Covered Employees: 854,940
- c) Source: DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimate NAICS 325000 - **Chemical Manufacturing** http://www.bls.gov/oes/2008/may/naics3_325000.htm

13) The Solid Waste Disposal Act of 1976 (SWDA)

- a) Language
 - i) Scope of Employers – “owners and operators of hazardous waste treatment, storage, and disposal facilities”
 - ii) Protected Activity -- “No person shall . . . discriminate against . . . any employee . . . [because he] . . . has filed . . . any proceeding under this Act.”
- b) Covered Employees: 358,990
- c) Source: DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimate NAICS 562000 - Waste Management and Remediation Services
http://www.bls.gov/oes/2008/may/naics3_562000.htm

14) The Safe Drinking Water Act of 1974 (SDWA)

- a) Language:** “No employer may . . . discriminate against any employee . . . because the employee . . . has . . . [reported a violation] of drinking water regulations.”
- b) Covered Employees:** 48,210
- c) Source:** DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimates NAICS 221300 - Water, Sewage and Other Systems.
http://www.bls.gov/oes/2008/may/naics4_221300.htm

15) The Energy Reorganization Act of 1974 (ERA)

- a) Language**
 - i) Employers –NRC licensees**
 - ii) Protected Activity -**
 - “notified his employer of an alleged violation of this Act . . . ;
 - refused to engage in any practice made unlawful by this Act . . . if the employee has identified the alleged illegality to the employer;
 - testified . . . regarding any provision . . . of this Act . . . ;
 - commenced, . . . a proceeding under this Act;
 - testified or is about to testify in any such proceeding or;
 - assist . . . in any manner in such a proceeding”
- b) Covered Employees:** 4,970
- c) Source:** DOL Bureau of Labor Statistics Occupational Employment and Wages, May 2008 51-9011 Nuclear Power Reactor Operators
<http://www.bls.gov/oes/2008/may/oes518011.htm>

16) The Federal Water Pollution Control Act of 1972 (FWPCA)

- a) Language**
 - i) “the discharge of any pollutant by any person shall be unlawful.”**
 - ii) “No person shall . . . discriminate against . . . any employee . . . [because he] . . . has filed . . . any proceeding under this Act.”**
- b) Sector totals**
 - i) Sector 11 – Agriculture, Forestry, Fishing and Hunting**388,590
 - ii) Sector 21 – Mining**685,650
 - iii) Sector 22 – Utilities**57,010
 - iv) Sector 23 – Construction**7,456,300
 - v) Sectors 31, 32, & 33 – Manufacturing**13,655,340
 - vi) Sectors 48 & 49 – Transportation and Warehousing**.....2,938,260
- c) Covered Employees:** 25,681,150
- d) Source:** DOL Bureau of Labor Statistics May 2008 National Industry-Specific Occupational Employment and Wage Estimates.
<http://www.bls.gov/oes/2008/may/oessrci.htm#21>

17) The Federal Rail Safety Act of 1970 (FRSA)

- a) Language**
 - i) Employers:** Railroad carriers engaged in interstate or foreign commerce, a contractor or a subcontractor of such carrier.

ii) Protected Activity:

- assist in any investigation regarding any . . . violation of any Federal law . . . relating to railroad safety or security, or gross fraud, waste, or abuse of Federal . . . funds intended to be used for railroad safety or security . . .
- to refuse to violate or assist in the violation of any Federal law . . . relating to railroad safety or security;
- cause to be brought a proceeding related to the enforcement of this part . . . or to testify in that proceeding;
- to notify, or . . . the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;
- to cooperate with a safety or security investigation . . .
- to furnish information to . . . any . . . regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or
- to accurately report hours . . .
- reporting . . . a hazardous . . . condition;
- refusing to work when confronted by a . . . condition related to the performance of the employee's duties
- refusing to authorize the use of any safety-related equipment . . . when the employee believes that the equipment . . . are in a hazardous . . . condition . . .
- A railroad carrier . . . may not . . . interfere with the medical . . . treatment of an employee who is injured during the course of employment. . . the railroad shall promptly arrange to have the injured employee transported to the nearest hospital . . .

b) Covered Employees: 219,740

c) Source: DOL Bureau of Labor Statistics Occupational Employment and Wages, May 2008 NAICS 482100 - Rail Transportation
http://www.bls.gov/oes/2008/may/naics4_482100.htm

18. OSH Act of 1970

A) Total Employed Civilian Labor Force, May 2008: 146,023,000.

DOL Bureau of Labor Statistics

<http://data.bls.gov/cgi-bin/surveymost?ln>

B) Section 11(c) of the Occupational Safety and Health Act of 1970 (OSHA)

d) Language

- i)** This Act shall apply with respect to *employment performed in a workplace*.
- ii)** "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.
- iii)** The term "employer" means a person engaged in a business affecting commerce who has employees,
 - but *does not* include the United States (not including the United States Postal Service) or
 - any State or political subdivision of a State.

- e) Covered Employees in Private Sector: 115,005,000
- f) Source: DOL Bureau of Labor Statistics May 2008
<http://data.bls.gov/cgi-bin/surveymost?ce>

[Employee numbers are approximations based upon referenced sources]

II. OSHA staff assigned to WB cases

- B) Total of 69 WB investigators and 8 Supervisory Investigators**
 - 1) Source: Whistleblower Protection Program: Better Data and Improved Oversight Would Help Ensure Program Quality and Consistency. GAO-09-106 January 27, 2009. U.S. Government Accountability Office.
- C) National average was 16 open cases per investigator, as of October 2008**
 - 1) Source: Id.
- D) “In FY 2011, the agency will conduct 2,378 investigations of complaints of discriminatory actions under these 17 federal statutes.”**
 - 1) Source: FY 2011 Congressional Budget Justification - Occupational Safety and Health Administration.