

## Sometimes Whistleblowers Get Paid: A Go-To Guide to the False Claims Act

By Janel Quinn

**IMPORTANT:** *The following article is intended as a general summary of facts and laws and not as individual legal advice upon which you should rely or act. Every case is unique and specific. This article represents this author's best knowledge as of July 2022.*

### 13.0—Blowing the whistle on fraud, waste, and abuse

In an ideal world, you'd be working for an upstanding company that does things by the book and takes employee concerns seriously. Unfortunately, the world is less than ideal, and sometimes that puts **you** in a tough spot.

Because of their experience and expertise, veterans and reservists make up a large portion of the defense contractor workforce. This also means that veterans and reservists are some of the people most likely to spot fraud against the government.

Let's say your employer receives state or federal funding for some of its work. Your company needs to submit reports with details such as the number of hours put into a project. Now, let's say you notice the reports seem off. Maybe the results of a quality test are exaggerated. Maybe the report claims to have used tools you never saw at work.

What's in the report to the government and what you believe to be fact *aren't lining up*. In an ideal world, this would be a simple mistake, but in our less-than-ideal world, there's a chance that it could be purposeful and possibly for profit motives.

If you believe that your employer is submitting false information to obtain government money, you might want to look into [the False Claims Act \(FCA\)](#), 31 U.S.C. § 3729 *et seq.*

The FCA is a federal law prohibiting the submission of false claims for payment to the government and other related actions such as falsifying records to support those claims or to reduce a debt owed to the government. In summary, the FCA is designed to combat fraud against the federal government. It applies to many areas where U.S. taxpayers ultimately foot the bill, including Medicare, university research grants, and defense contracting.

Under the law's famous "[qui tam](#)" provision, people who know about fraud may sue on behalf of taxpayers to recover the ill-gotten gains — and, as a reward, may receive up to 30% of the money they help to recover. Doing so may result in illegal punishments from your employer, but the FCA's anti-retaliation provision is designed to protect employees — regardless of whether the fraud turns out to be true or not.

The process leading up to any kind of compensation is a long one. The aim of this article is to walk you through the basics and give general advice on how one might proceed through a qui tam lawsuit.

Our number one piece of advice though is to contact an attorney as soon as possible. Our firm, [The Employment Law Group](#), has worked on qui tam cases for nearly 20 years, and qui tam law is my primary focus at the firm. Trust us when we say this article is only an overview of a process that can get **extremely** complicated depending on your specific circumstances.

You're better off having an attorney to help you through it. Not to mention that in order to bring a qui tam case at all, you must be represented by an attorney.

Let's start at the very beginning:

### **Is there fraud occurring?**

There is no FCA case without fraud — specifically fraud against the federal government.

While it comes in many different forms, fraud can succinctly be described as a broken agreement. In exchange for funding or other resources, your employer has agreed to follow guidelines set forth by a government contract or rule and then gone against those guidelines without informing the government.

The relationship between your employer and the federal government might not be so linear. It is possible that the funding is moving through a third party before reaching your employer. Your company then submits the false claims to the third party who, with all good intentions, forwards those claims to the government who ultimately foots the bill. If you can trace the stolen money back to the federal government, then the FCA applies.

At the time that the FCA was signed into law, fraud looked a bit different. Abraham Lincoln passed the law during the American Civil War after noticing that the Union army was receiving lower quality supplies than it asked for if it received supplies at all. The troops would request horses and guns, for instance, and get diseased horses and crates of sawdust.

The FCA has gone through a number of iterations since the Civil War. Amendments over the years have strengthened aspects of the law including the qui tam provision and the role of the relator. The "relator" being the private party filing a claim on behalf of the government. They're often called whistleblowers.

There are many examples of fraud across different industries. If you work for a provider billing TRICARE, a government-funded healthcare program for service members and their families, fraud can look like providers billing for services that were not rendered or upcoding services (i.e., billing the insurance for a more expensive procedure than what was actually done).

If you work for a defense contractor working on a government-funded project, it could mean billing the government for more hours than employees worked. It could also mean reporting

false metrics when talking about the quality of products such as engines. Our firm recently had [a client who claimed her company was conducting less rigorous security clearance investigations for the government than it claimed.](#)

Typically, someone who moves forward with an FCA claim has personally observed the fraud occurring. Perhaps your supervisor told you to report that your company worked 250 hours on a project, but you've seen that it's closer to 160 hours.

But what if you only have a vague idea or rumors that something hinky is going on?

To be honest with you, there is a legal answer, and there is a life answer. Sometimes the soundest advice is to leave it alone because there's always a chance you'll get fired for looking into it. As mentioned, the FCA does have an anti-retaliation provision, which we'll discuss later, but that never really puts the genie back in the bottle.

If you are determined to find the truth though, then maybe it's worth doing some investigation within the scope of your normal responsibilities. Key word being "normal."

We absolutely do not recommend attempting to access anything you would not otherwise have access to in your day-to-day duties. So, don't log into your friend's email and print out their emails, don't break into locked filing cabinets or offices, and don't listen in on calls.

Just ask questions and observe. At this point, documenting everything will be your best friend. If you see or hear something that may be evidence of fraud, write it down, take a picture, or make a copy. Keep this documentation somewhere safe and only share it with your lawyer or the government.

Make sure to be specific in your notes whether those notes are in your calendar, your diary, etc. If, during your regular responsibilities, you come across a document with falsified information, jot down exactly what it said and when you saw it. If you have lunch with a coworker and they happen to mention something related to the fraud, feel free to ask questions as you normally would. Don't interrogate them, but keep the conversation moving along naturally. Afterwards, note what was said, when it was said, and who said it.

Keep the W's and H questions in mind: Who, what, when, where, why, and how. The more you can answer these questions in regard to the falsity or the fraud scheme, the better your chances are in a future case.

It's worth asking your management questions as well. Talk to them about your concerns. Sometimes, it's not fraud. Sometimes, it really is an innocent mistake that management fixes, and isn't that the best resolution for everyone?

Of course, your employer is under no obligation to explain things to you, so it's also possible that you'll walk away knowing nothing more. On the other hand, if you ask your supervisor why they're telling you to report the wrong information, they might say, "Because the CEO said so." That is valuable information you didn't have before.

There is also a very real chance that you might face retaliation, such as a demotion or termination, after bringing up the potential fraud. If that happens, then it is likely that something is wrong.

If you have not yet contacted an attorney, we highly recommend you do so at this point. An attorney can help you figure out next steps and evaluate the strength of your case.

### **Are you the best person to take on this case?**

We already explained that FCA cases need to involve fraud against the federal government — but even if this is true, federal employees, including active-duty service members, cannot file a lawsuit under the FCA. Federal employees are required to report fraud up the chain of command, typically by going to the relevant Office of the Inspector General.

(Note: Non-federal employees are also able to notify the government of potential fraud by going through OIG channels. This is something to keep in mind if you don't want to go through a lawsuit but do want to do something.)

There is one exception. If the person happens to have two jobs — one federal and one civilian — and fraud occurs in their civilian job, they are allowed to file an FCA claim.

But should you be the person filing the lawsuit versus a coworker?

In general, the best person to file the lawsuit is the person who not only knows the most about the situation but is also willing to take on the financial and emotional load of a lawsuit.

You don't need to know everything there is to know about the fraud right now. There is a chance of gaining more information during the legal process. That being said, you need to be able to talk about the fraud with some specificity. How much specificity depends on the court where the claim is being filed, but you do need to have more than just a general claim. You need to have some specific events and details to work with.

Consider the four elements that would need to be proven in an FCA claim.

Two elements have already been discussed and are pretty self-explanatory. The case needs to involve government money and some kind of falsity, whether that's blatant misreporting of facts or doing something outside of what the government contract allows. The other two elements are:

**Knowledge:** Is the falsity being directed by the company? Your employer has a duty to have some level of knowledge of 1) the rules and requirements of the government contract and 2) what's going on in their own company such as the hours someone works or what tools are used. They can't claim total ignorance of everything, but if it's just a rogue employee who's making things up and your employer tells them to stop, your company likely isn't knowingly submitting false information to the government.

Typically, knowledge is established if you know that management or higher-ups are aware of or even directing the falsity.

Materiality: Would the government care about the falsity? If the government knew the truth, would it have perhaps made a different decision such as refusing to pay the claim or enter into the contract?

Let's say your company was given funding under the condition that they use American-made tools to build planes. Instead, your employer uses wrenches made outside of the U.S. If the government still gets the safe, functional planes they ordered, maybe it wouldn't care enough about not complying with the provision of the contract to use U.S.-made wrenches.

On the other hand, if your employer is falsely claiming that concrete in a project has cured when it has not, that creates an unsafe environment, which the government likely would care about. Harm to people is generally a good indicator of materiality.

Neither you nor an attorney can decide what's material to the government, and we can't always predict it either although an attorney can give you their best guess based on previous cases and discussions with the government. We can only argue that we think the government should care about this specific fraud.

If you think you have information that would support all four elements — or at least have an idea of where an investigator would be able to find said information — then you could be a good relator, a solid driving force behind fighting against fraud.

Even if you're not entirely sure, however, you should at least meet with an attorney. You might know more than you think.

### **Why should you contact a lawyer ASAP?**

We cannot stress enough that lawsuits are complicated. There are a lot of deadlines to keep track of. There are a lot of factors to consider. Each case is entirely unique, so relying on the internet alone isn't the smartest move.

If you want to file a qui tam suit, you will eventually have to speak with an attorney anyway. Relators cannot move forward with a case on their own. If you wait too long to contact an attorney, you risk doing something wrong that ruins your chances of succeeding from the beginning. You might also miss out on gaining more compensation from claims you didn't even realize were relevant to your situation.

Let's talk about deadlines first. The statute of limitations on substantive FCA claims is either:

- Six years from the date of occurrence; or
- No more than three years from the date in which the government official who would have responsibility for the fraud is put on notice.

In any event, you have no more than 10 years to file a claim. It sounds like you have a lot of time, but reality is different. The sooner you file your FCA claim the better, and this is true for a couple reasons.

Like I've mentioned, a certain amount of specificity is required in an FCA claim. As time goes on, your memory starts to fail you when trying to report a specific conversation regarding falsity. Details that you maybe subconsciously don't consider important enough to remember could make all the difference. An attorney can help pick out all those details while they're still fresh in your mind.

Time is also of the essence because of the First-to-File provision under the FCA. The first relator to the courthouse who is able to provide specific information regarding a fraud wins the relator share award if money is recovered. Other relators are barred from recovering an award.

In a qui tam case, the chances are you'll also want to consider filing other claims alongside it. Each claim has its own statute of limitations that might shorten the time frame.

It's possible that you're so focused on the FCA claim that you don't realize other laws can be applied to your situation as well. We have had plenty of clients who tell us their story and don't notice that they're also mentioning issues such as wrongful termination or discrimination.

Oftentimes, a relator might want to file a claim under the anti-retaliation provision of the FCA. This provision prohibits an employer from taking an adverse employment action — such as termination, denying a promotion, switching you to a worse location or shift time, etc. — against an employee, contractor, or agent who takes one or more steps to stop or oppose a violation of the FCA.

This protection covers any employee, even if they are not a relator and even if it turns out there is no fraud. Suppose someone reports concerns of fraud against the government, but an investigation reveals there's nothing illegal going on. If their employer thereafter demotes them as punishment for even bringing up their concerns, that is a violation of the FCA's anti-retaliation provision.

Being a whistleblower comes with risk. You may be doing the right thing, but there are plenty of people who might want to punish you for that. Filing a retaliation claim can result in:

- Reinstatement to your previous position;
- Two times your amount of back-pay if you lost pay as a result of retaliation;
- Compensatory damages, which are sometimes called pain and suffering or emotional distress damages, and/or;
- Attorney's fees and costs.

You have three years from the date of the adverse action to file a retaliation claim under the False Claims Act. Any adverse action that happened before those three years would not be considered when determining compensation.

[State-based FCA claims](#), which focus on state rather than federal government funds, are also commonly filed in conjunction with a federal FCA claim.

Only about 30 states have an FCA. For the most part, they closely mimic the federal FCA, but a handful differ. Some states don't have a private right of action, which means a whistleblower can't file a state-based FCA claim. Some states have an FCA for Medicaid specifically.

Medicaid and other projects like some construction contracts are dually funded by the state and federal governments. If state funds are involved in the fraud, you absolutely want to consider filing a state FCA claim.

Doing so brings more resources to the fraud investigation and allows for more open communication between state and federal governments. This can ultimately strengthen your case and result in more of a monetary reward for you.

As a relator, you are entitled to a share of the money recovered — but only if you have made a claim. If state funds are recovered throughout the process but you didn't file a state FCA claim, you do not have a right to any of the money recovered. It will all go back to the state.

Other claims that an attorney might speak with you about include a Dodd-Frank Act claim, an SEC claim, an IRS claim, and other potential employment issues. All have different deadlines, and when talking about some employment issues, you may be looking at days rather than years.

It's a lot to keep track of, and it's better to get the help of an expert. Your attorney will likely have a good idea of which claims are worth pursuing.

### **What does the timeline of a qui tam case look like?**

Long, unfortunately.

Once you contact an attorney, you should expect a ramp-up period while they familiarize themselves with your case and review the documentation and information you already have. At our firm, we have an evaluation period that takes about two to four weeks in which we sort through all available documents, analyze the strengths and weaknesses of your case, and form a solid plan for moving forward.

Afterwards, a complaint will be drafted and filed, which formally marks the beginning of the lawsuit. How long this takes varies depending on the firm and case. A more complex case with more details in the story will take more time as your attorney figures out the most effective way to tell your story.

Under the FCA, the complaint must be filed in a federal district court along with all material disclosures (i.e., documents and other information). This means everything we have, everything else we think exists, and how to go get it.

The case will be filed under seal, which grants you a level of anonymity. Only you, your legal team, and the government will know the case even exists — which means you are legally not allowed to talk about the case with anyone, including family, friends, or coworkers.

Ostensibly, the case is under seal for 60 days while the government does its own investigation. In reality, it's almost guaranteed that the government will ask for an extension of the seal — typically, six months. Most of our cases remain under seal for three to five years. Some resolve more quickly, and others take even longer.

You might stay anonymous for a long time, but be aware that eventually, the case will come out from under seal. Eventually, the fact that you blew the whistle on your employer and filed a lawsuit will become public knowledge.

During the government's investigation, you and your legal team will take a backseat for the most part and just try to be as helpful as possible. The government typically wants to interview the relator to collect as much knowledge as they can. Relators are often subject matter experts or at least the available experts for their specific company. They know the lingo, the people most likely to step forward as witnesses, the kinds of personalities the government might run into during an investigation or trial, where the documents are, and more.

Once the relator files a qui tam lawsuit, the government doesn't want the relator taking any more investigative steps. Your job while the case is under seal is to go about your day-to-day business as naturally as possible. If you hear something, of course, tell your attorney, but don't act any differently than you would if you hadn't learned of the fraud.

A lot of relators question whether they should immediately quit their jobs in order to distance themselves from the fraud. That is not necessary. The government understands that at the end of the day, people have bills to pay and families to support. Rarely can people afford to walk out on their job.

The government knows that often, the people who are best positioned to report the fraud may have unknowingly been involved in the fraud scheme. For example, maybe you know that time sheets were falsified from June 1 – July 1 because you were responsible for verifying and submitting the timesheets. Unknowing involvement, at the direction of management, is usually not a concern for the government. However, if you are a planner or initiator of the fraud, chances are you're going to get in trouble. Planning or initiating the fraud shows a lot more intent. You're unlikely to receive any kind of reward for reporting a fraud that you shouldn't have started in the first place, and you may face liability personally for the fraud.

Once the government finishes its investigation, the case is ready to come out from under seal, and the government needs to decide: Are they going to intervene in the case or not?

The government intervening essentially means that it is taking over the case. Your name would still be on the case, and you would still be entitled to a percentage of any money recovered as



the relator. The government can intervene for the purposes of effectuating a settlement or to litigate the claims in court before a Judge and jury.

If the government intervenes, the case generally has a better chance of ending favorably for the relator whether that's in the form of a settlement or a trial verdict.

If the government does not intervene however, the relator may choose to voluntarily dismiss the claims or attempt to move forward in litigating the claims without the government's support. These cases are incredibly fact specific and require a lot of resources. Your attorney will likely make a recommendation to you about whether to pursue the qui tam claims based at least in part on why the government declined to intervene in the case.

There is a chance that the government will choose not to intervene but instead exercise its authority to dismiss the case. This does not happen often, but the government does have this option.

If the case moves forward into litigation, assume it's going to be another two to three years before you see the results of it. Even when the litigation is over, there might be an appeal that adds another year or more.

These cases can take a very long time. There are horror stories of a case that went on for 18 years, which is, of course, not the norm. But even on the fast end of the spectrum, cases last about three years.

### **If the case is resolved favorably, where's your compensation?**

Let's say you went ahead with the case. After several years, it's finally ending, and you're looking at getting a reward. How much are you getting, and when do you get it?

Assuming the case is won, the government is entitled to recover three times the damages of the fraud plus a per claim penalty between \$5,500 and \$23,000 or so. Of that money, you as the relator are entitled to a percentage of it under the qui tam provision.

If the government intervenes in your case, you are entitled to between 15 and 25% of the money recovered. If the government does not intervene, the percentage goes up to between 25 and 30%. The majority of the money will always go to the government because it was the government money that was originally defrauded.

The Department of Justice determines where you fall within those ranges by looking at [a variety of factors](#). Below is a list of some of the questions it may consider:

- How quickly did you report the fraud?
- Did you try to stop the fraud internally before reporting it?
- How much help did you provide during the government's investigation?
- What was the personal impact this case had on you?

- How much work did you and your legal team have to put in to bring this case to fruition?  
This includes you acting as a witness during trial or potentially having to go up to appeal.

Dozens of factors are considered, but it boils down to whether you contributed to or hindered the process.

As an example, let's say you're getting 20% of the money recovered.

In a settlement agreement, there will be a payment deadline by which the defendant has to pay the agreed-upon sum to the government. This sum is typically less than the maximum the government is entitled to because, of course, no party gets exactly what they want in a settlement.

The defendant may either be required to pay in one lump sum or over time. Typically, either to speed up agreements or in cases where there are multiple payments, the government will impose an interest rate on the initial sum. Relators are entitled to a portion of that interest as well because it is considered a part of the money recovered by the government.

In a trial, the payment deadline is decided by the court.

The money, whether in one go or in installments, is paid to the government. You would also receive your share in a similar format: either in one go or in installments.

The government doesn't give itself a deadline by which it has to disperse the relator's share. Based on our firm's experience, it can take anywhere between 10 days and six weeks. If it's been about two to four weeks, we typically reach out to see what the holdup is.

Once the government is ready, the money will be wired according to the instructions you and your legal team have provided.

If you have other claims and are receiving compensation unrelated to the relator share award, that money is delivered directly from the defendant, and you get every dollar (subject to whatever arrangement you have with counsel regarding fees).

You might not get the entire relator share award though. Many relator's counsels take a contingency fee from the amount awarded. If there are co-relators, the award is divided based on an agreement they formed amongst themselves.

The money relators receive is also taxable income in the year that it's received. We would recommend talking to a tax expert because the government isn't aware of how much money actually goes to you and how much money is given to counsel or co-relators. A tax expert should be able to help you.

**Is there anything else you should consider before proceeding?**

As attorneys, the only advice we can give you is legal advice — but you are more than just a lawsuit.

When deciding if you want to pursue a lawsuit, regardless of the strength of your claim, you need to think about what lets you sleep at night. The answer is different for everyone, and no one is in any position to judge you for your answer.

Some clients say, “I know that I am going to lose my job, but I cannot sleep at night knowing that this conduct is happening and that the government is not on notice of it.” Other people say, “I think that this conduct is horrible, but I can’t sleep at night knowing that I’m jeopardizing my family’s source of income.”

Both are legitimate decisions. They don’t determine what kind of person you are.

A qui tam case takes a lot out of a relator. You will spend a lot of time on the case. You might lose pay or your job or your standing in your industry. Your mental health might take a hit because of retaliation or the general strain of the legal process. Your physical health might also be affected.

While a relator share award is offered partially as an incentive for people who may still feel a duty to their employers or who may even stand to profit off the fraud itself, the award is also meant to be an acknowledgement of the major undertaking a relator takes on.

Based on experience, we can give you our best guess of how your case might go, but you are the only one who can decide if you want to and are able to go through with a lawsuit.

If you do proceed with a lawsuit, our biggest piece of advice remains to speak with an attorney. Your legal team will be your fiercest advocates in the years ahead.

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