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Section 806 of the Sarbanes-Oxley Act (SOX) creates a private right of action for whistleblower employees who are retaliated against for disclosing violations of federal securities laws by their employer. In 2012, the United States Court of Appeals for the First Circuit ruled that Section 806 extends only to employees of publicly traded companies. Recently, in *Lawson v. FRM, LLC*, the United States Supreme Court reversed the First Circuit's decision and held that SOX's whistleblower rule also protects employees of privately-held companies that serve as contractors or subcontractors to public companies.

In *Lawson*, two former employees of a private company sued the company in federal court for violation of their whistleblower rights under Section 806. The plaintiffs alleged that they were retaliated against by their former employer for raising concerns about potential fraud relating to a public company customer. In response, the employer argued that the definition of an "employee" in Section 806 refers only to employees of public companies and not to employees of a public company's private contractors or subcontractors.

The U.S. Supreme Court sided with the plaintiffs and ruled that Section 806 applies to employees of private companies when those employees report alleged fraud against shareholders. The Court's ruling is consistent with longstanding Department of Labor regulations that interpret SOX as protecting contractor employees.

## Practical considerations

In light of the decision in *Lawson*, private employers that provide services to public companies are now covered by the SOX whistleblower rule and should familiarize themselves with its requirements. It is more important than ever that employers implement effective compliance policies and procedures and train managers to recognize protected activity. Internal reporting of whistleblower-type complaints should be encouraged, an anonymous hotline is recommended, and employers should thoroughly investigate all complaints. Employers must also be vigilant about maintaining detailed personnel files on employees, so that they can present evidence documenting legitimate, non-discriminatory business reasons for all adverse employment actions.

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